AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

Federal Register

1–21–09 Wednesday
Vol. 74 No. 12 Jan. 21, 2009

Pages 3395–3962

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

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

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

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

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

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

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

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

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

How To Cite This Publication: Use the volume number and the page number. Example: 74 FR 12345.

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

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**

General online information **202–512–1530; 1–888–293–6498**

Single copies/back copies:

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

FEDERAL AGENCIES

Subscriptions:

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

FEDERAL REGISTER WORKSHOP

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

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

WHO: Sponsored by the Office of the Federal Register.

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

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

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

3. The important elements of typical Federal Register documents.

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

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

WHEN: Tuesday, January 27, 2009
9:00 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

Contents

Federal Register

Vol. 74, No. 12

Wednesday, January 21, 2009

Administrative Committee of the Federal Register
See Federal Register, Administrative Committee

Agricultural Marketing Service
RULES
Grapes Grown in a Designated Area of Southeastern California and Imported Table Grapes:
Change in Regulatory Periods, 3412–3420
NOTICES
United States Standards for Livestock and Meat Marketing Claims, Naturally Raised Claim for Livestock and the Meat and Meat Products Derived from such Livestock, 3541–3545

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Commodity Credit Corporation
See Foreign Agricultural Service
See Forest Service
See Rural Business–Cooperative Service
See Rural Housing Service
RULES
Revision of Delegations of Authority, 3395–3412

Alcohol and Tobacco Tax and Trade Bureau
RULES
Establishment of the Snipes Mountain Viticultural Area (2007R–300P), 3422–3425
Expansion of the Paso Robles Viticultural Area (2008R–073P), 3425–3429

Animal and Plant Health Inspection Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 3545–3546

Antitrust Division
NOTICES
Modified Final Judgment; Proposed Modification:
United States v. Cemex, S.A.B. de C.V. and Rinker Group Ltd., 3640
National Cooperative Research and Production Act of 1993:
DVD Copy Control Association, 3640–3641
Wireless Industrial Technology Konsortium Inc., 3641

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

Centers for Disease Control and Prevention
NOTICES
Meetings:
Healthcare Infection Control Practices Advisory Committee, (HICPAC), 3608
Rescission of February 4, 2004, Order and Subsequent Amendments:
Prohibiting the Importation of Birds and Bird Products from Specified Countries, 3608–3609

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 3609–3610

Coast Guard
PROPOSED RULES
Vessel Requirements for Notices of Arrival and Departure and Automatic Identification System, 3534–3535
NOTICES
Meetings:
Lower Mississippi River Waterway Safety Advisory Committee, 3627

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 3558–3559

Commodity Credit Corporation
RULES
Grassland Reserve Program, 3856–3879

Commodity Futures Trading Commission
PROPOSED RULES
Conflicts of Interest in Self–Regulation and Self–Regulatory Organizations, 3475–3480
NOTICES
Additional Conditions on the No–Action Relief:
Foreign Boards of Trade that have Received Staff No–Action Relief to Permit Direct Access to their Automated Trading Systems, etc., 3570–3572
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 3572–3573

Defense Department
See Navy Department

Drug Enforcement Administration
PROPOSED RULES
Disposal of Controlled Substances by Persons Not Registered with the Drug Enforcement Administration, 3480–3487
NOTICES
Applications:
Importer of Controlled Substances; Kenco Group, Inc., 3641–3642
Importer of Controlled Substances; Medical Isotopes Inc., 3642
Importer of Controlled Substances; Noramco Inc., 3642
Manufacturer of Controlled Substances; Johnson Matthey Inc., 3642–3643
Manufacturer of Controlled Substances; Mallinckrodt Inc., 3643
Manufacturer of Controlled Substances; Organix Inc., 3643

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 3575
Indian Education—Demonstration Grants for Indian Children, 3575–3579
Strengthening Institutions Program (SIP), American Indian Tribally Controlled Colleges and Universities, etc., 3579–3582

Employee Benefits Security Administration
RULES
Investment Advice – Participants and Beneficiaries, 3822–3853
NOTICES
Prohibited Transaction Exemptions and Grant of Individual Exemptions:
Calpine Corporation, et al., 3644–3646
Proposed Exemptions:
UBS AG (UBS) and Its Affiliates, 3647–3654

Employment and Training Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 3654

Employment Standards Administration
RULES
Labor Organization Annual Financial Reports, 3678–3820

Energy Department
See Federal Energy Regulatory Commission
PROPOSED RULES
Energy Conservation Program: Test Procedures for Fluorescent Lamp Ballasts in Standby Mode, 3450–3462
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 3582–3583

Environmental Protection Agency
RULES
Air Quality:
Revision to Definition of Volatile Organic Compounds – Exclusion of Propylene Carbonate and Dimethyl Carbonate, 3437–3441
Finding of Failure to Submit a Required State Implementation Plan Revision for 1–Hour Ozone Standard, California:
San Joaquin Valley – Reasonably Available Control Technology, 3442–3444
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 3591–3592
Draft National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges from Horse, Cattle and Dairy Concentrated Animal Feeding Operations (CAFOs) in New Mexico (except Indian Country), 3592–3595
Meetings:
Board of Scientific Counselors, 3595–3596

Equal Employment Opportunity Commission
RULES
Change of Address for Headquarters and Washington Field Office, 3429–3430

Executive Office of the President
See Management and Budget Office
See Presidential Documents
See Trade Representative, Office of United States

Federal Aviation Administration
PROPOSED RULES
Airworthiness Directives:
McCauley Propeller Systems Propeller Models B5JFR36C1101/114GCA–0, et al., 3462–3465
Crewmember Requirements When Passengers Are Onboard, 3469–3475
Proposed Amendment of the Atlantic Low Offshore Airspace Area; East Coast United States, 3465–3466
Proposed Amendment of the South Florida Low Offshore Airspace Area; Florida, 3466–3468
Proposed Establishment of Area Navigation Route Q–42; East–Central United States, 3468–3469

Federal Communications Commission
RULES
Amendment of the Commission's Rules Concerning Commission Organization, Practice and Procedure, Frequency Allocations and Radio Treaty Matters:
General Rules and Regulations, Tariffs, Miscellaneous Rules Relating to Common Carriers, Radio Broadcast Services, and Stations in Maritime Services, 3444–3446
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 3596–3597

Federal Deposit Insurance Corporation
NOTICES
Meetings:
FDIC Advisory Committee on Economic Inclusion (ComE–IN), 3597

Federal Election Commission
NOTICES
Filing Dates for the Illinois Special Election in the 5th Congressional District, 3597–3598

Federal Energy Regulatory Commission
NOTICES
Amendment:
Midcontinent Express Pipeline LLC, 3583
Combined Notice of Filings, 3584–3588
Deferring Technical Conference:
Tuscarora Gas Transmission Co., 3588
Environmental Impact Statements; Availability, etc.:
Freeport LNG Development, L.P.; Freeport LNG Export and Bog Liquefaction and Truck Delivery Facilities Projects, 3588–3590
Technical Conference:
Wyoming Interstate Co., Ltd., 3590

Federal Highway Administration
PROPOSED RULES
Credit Assistance for Surface Transportation Projects, 3487–3508

Federal Railroad Administration
PROPOSED RULES
Credit Assistance for Surface Transportation Projects, 3487–3508

Federal Register, Administrative Committee
RULES
Availability and Official Status of the Compilation of Presidential Documents, 3950–3952

Federal Reserve System
NOTICES
Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies, 3598–3599

Federal Transit Administration
PROPOSED RULES
Credit Assistance for Surface Transportation Projects, 3487–3508

NOTICES
Guidelines for Preparation of Environmental Assessments: Withdrawal of Circular, 3667–3668

Financial Crimes Enforcement Network
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 3670–3671

Fish and Wildlife Service
NOTICES
Environmental Assessment, Intent, etc.:
White River National Wildlife Refuge, Desha, Monroe, AR, and Phillips Counties, AR, 3628–3629

Food and Drug Administration
NOTICES
Draft Guidance for Industry on Animal Models:
Essential Elements to Address Efficacy Under the Animal Rule, 3610–3611
Draft Guidance for Industry:
Citizen Petitions and Petitions for Stay of Action Subject to Section 505(q) of the Federal Food, Drug, and Cosmetic Act; Availability, 3611–3614
Final Guidance for Sponsors, Industry, Researchers, Investigators, and Food and Drug Administration Staff:
Certifications to Accompany Drug, Biological Product, and Device Applications/Submissions; Compliance, etc., 3614–3615
Report of Quantitative Risk and Benefit Assessment of Commercial Fish Consumption, etc.; Availability, 3615–3617
Risk Assessment of the Public Health Impact From Foodborne Listeria Monocytogenes in Some Ready–to–Eat Foods, etc., 3617–3619

Foreign Agricultural Service
NOTICES
Applications:
Consultative Group to Eliminate the Use of Child Labor and Forced Labor in Imported Agricultural Products, 3546–3547

Foreign Assets Control Office
NOTICES
Additional Designations:
Foreign Narcotics Kingpin Designation Act, 3671–3672

Forest Service
NOTICES
Environmental Impact Statements; Availability, etc.:
Shasta–Trinity National Forest, CA; Moosehead Vegetation and Road Management Project, 3547–3548
Meetings:
Federal Lands Recreation Enhancement Act, (Title VIII, Public Law 108–447), 3549
Lake Tahoe Basin Federal Advisory Committee, 3549
Oregon Coast Provincial Advisory Committee, 3549–3550

General Services Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 3599

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health
NOTICES
Secretarial Recognition of Certain Healthcare Information Technology Standards Panel (HITSP) Interoperability Specifications, etc., 3599–3608

Health Resources and Services Administration
NOTICES
Meetings:
National Advisory Council on Migrant Health, 3619

Homeland Security Department
See Coast Guard

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service
See National Park Service
See Surface Mining Reclamation and Enforcement Office
NOTICES
National Park System Advisory Board Reestablishment, 3627–3628
National Park System Concessions Management Advisory Board Reestablishment, 3628

Internal Revenue Service
RULES
Employer's Annual Federal Tax Return and Modifications to the Deposit Rules; Correction, 3421
Guidance Regarding the Treatment of Stock of a Controlled Corporation Under Section 355(a)(3)(B); Correction, 3420–3421
PROPOSED RULES
Allocation of Consideration and Allocation and Recovery of Basis in Transactions Involving Corporate Stock or Securities, 3509–3526
Guidance Regarding Treatment of Stock of a Controlled Corporation Under Section 355(a)(3)(B); Correction, 3508
Section 707 Regarding Disguised Sales, Generally, 3508–3509

International Trade Administration
NOTICES
Antidumping:
Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan, 3559–3560
Folding Metal Tables and Chairs from the People's Republic of China, 3560–3563
Stainless Steel Plate in Coils from Belgium, 3563
Imports of Certain Apparel Articles:
Interim Procedures for the Implementation of the Earned Import Allowance Program Established Under the Andean Trade Preference Act of 2008, 3563–3566

Justice Department
See Antitrust Division
See Antitrust Division
See Drug Enforcement Administration
See Parole Commission
NOTICES
Consent Decree:
United States, et al. v. Chemtrade Logistics (US), Inc., et al., 3639
Lodging of Amendment to Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act, 3639–3640

Labor Department
See Employee Benefits Security Administration
See Employment and Training Administration
See Employment Standards Administration
See Mine Safety and Health Administration
See Occupational Safety and Health Administration

Land Management Bureau
NOTICES
Meetings:
Alaska Resource Advisory Council, 3629
Pinedale Anticline Working Group, 3629–3630
Public Land Order (No. 7728):
Revocation of the Withdrawal Created by Executive Order Dated April 4, 1917, as Modified; Idaho, 3630
Realty Actions:
Classification and Lease for Recreation and Public Purposes Act of Public Lands in Eureka County, NV, 3630–3631

Management and Budget Office
NOTICES
2008 and 2009 List of Designated Federal Entities and Federal Entities, 3656–3657
2010 Standard Occupational Classification (SOC) – OMB's Final Decisions, 3920–3936

Maritime Administration
PROPOSED RULES
Credit Assistance for Surface Transportation Projects, 3487–3508

Mine Safety and Health Administration
RULES
Flame–Resistant Conveyor Belt, Fire Prevention and Detection, and Use of Air from the Belt Entry; Correction, 3430–3431

Minerals Management Service
NOTICES
Environmental Impact Statements; Availability, etc.:
5–Year Outer Continental Shelf (OCS) Oil and Gas Leasing Program (for 2010–2015), 3631–3635
Cape Wind Energy Project, 3635–3636
Geological and Geophysical Exploration on the Atlantic Outer Continental Shelf, 3636–3637

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
National Endowment for the Arts; Arts Advisory Panel, 3654–3655

National Highway Traffic Safety Administration
NOTICES
Denial of Petition for Decision of Inconsequential Noncompliance:
Goodyear Tire & Rubber Co., 3668–3669

National Institutes of Health
NOTICES
Government–Owned Inventions; Availability for Licensing, 3619–3622
Meetings:
National Cancer Institute, 3622
National Center for Research Resources, 3622–3623
National Institute of Arthritis and Musculoskeletal and Skin Diseases, 3626–3627
National Institute of Diabetes and Digestive and Kidney Diseases, 3624
National Institute of Environmental Health Sciences, 3623–3624
National Institute of Mental Health, 3624–3626
National Institute on Drug Abuse, 3623
National Library of Medicine, 3627

National Oceanic and Atmospheric Administration
RULES
Fisheries of the Exclusive Economic Zone Off Alaska, Groundfish of the Gulf of Alaska, 3446–3448
Fisheries of the Exclusive Economic Zone Off Alaska:
Chiniak Gully Research Area for Vessels Using Trawl Gear, 3449
Taking and Importing Marine Mammals:
U.S. Navy Training in the Southern California Range Complex, 3882–3918
NOTICES
Endangered and Threatened Species:
Recovery Plan, 3566–3569
Meetings:
New England Fishery Management Council, 3569–3570

National Park Service
NOTICES
National Register of Historic Places:
Notification of Pending Nominations and Related Actions, 3637–3638

National Transportation Safety Board
NOTICES
Meetings; Sunshine Act, 3655

Navy Department
NOTICES
Intent to Grant Partially Exclusive Patent Licenses:
DRS Technologies, Inc., 3573
Gem City Engineering Co., 3573
Record of Decision for Homeporting of Additional Surface Ships at Naval Station Mayport, Florida, 3573–3574
Supplemental Environmental Impact Statements, Intent, etc.:
Employment of Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) Sonar, 3574–3575

Nuclear Regulatory Commission
NOTICES
Receipt and Availability for Application of Renewal:
Arizona Public Service Co., 3655

Occupational Safety and Health Administration
PROPOSED RULES
Additional Quantitative Fit–Testing Protocols for the Respiratory Protection Standard, 3526–3534
Occupational Exposure to Diacetyl and Food Flavorings Containing Diacetyl, 3938–3947

Office of Management and Budget
See Management and Budget Office

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

Parole Commission
NOTICES
Meetings; Sunshine Act, 3644

Presidential Documents
PROCLAMATIONS
Special observances:
National Sanctity of Human Life Day (Proc. 8339), 3953–3956
ADMINISTRATIVE ORDERS
Cuba; Continuation of the National Emergency Relating to the Anchorage and Movement of Vessels (Notice of January 15, 2009), 3959–3960
Middle East Peace Process; Continuation of National Emergency with Respect to Terrorists Who Threaten to Disprupt (Notice of January 15, 2009), 3961
Tom Lantos Block Burmese Junta's Anti–Democratic Efforts (JADE) Act of 2008, Limited Waiver of Sanctions and Delegation of Authorities (Memorandum of January 15, 2009), 3957–3958

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health

Rural Business–Cooperative Service
NOTICES
Meetings:
Implementation of Title VI, Rural Development Authorities of the Food, Conservation, and Energy Act of 2008, etc., 3550–3551

Rural Housing Service
NOTICES
Request for Proposals for Loan Guarantees Under the Section 538 Guaranteed Rural Rental Housing Program (FY 2009), 3551–3558

Securities and Exchange Commission
See Securities and Exchange Commission
NOTICES
Filings:
Consolidated Tape Association, etc., 3659–3661
Self–Regulatory Organizations; Proposed Rule Changes:
National Securities Clearing Corp., 3661–3666

Small Business Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 3666

Social Security Administration
NOTICES
Meetings:
Occupational Information Development Advisory Panel, 3666–3667

State Department
NOTICES
Gifts to Federal Employees From Foreign Government Sources Reported to Employing Agencies in CY 2007: Correction, 3667

Surface Mining Reclamation and Enforcement Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 3638–3639

Trade Representative, Office of United States
NOTICES
Generalized System of Preferences (GSP):
Acceptance of Competitive Need Limitation Waiver and Further Review of Country Practice Petitions (2008 Annual Review), 3657–3659

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration
See Federal Transit Administration
See Maritime Administration
See National Highway Traffic Safety Administration
PROPOSED RULES
Credit Assistance for Surface Transportation Projects, 3487–3508
NOTICES
Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits:
Filed Under Subpart B (Formerly Subpart Q During the Week Ending December 27, 2008), 3667

Treasury Department
See Alcohol and Tobacco Tax and Trade Bureau
See Financial Crimes Enforcement Network
See Foreign Assets Control Office
See Internal Revenue Service
RULES
TARP Conflicts of Interest, 3431–3436
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 3669–3670

Veterans Affairs Department
RULES
Increase in Rates Payable Under the Survivors' and Dependents' Educational Assistance Program and Other Miscellaneous Issues; Correction, 3436
PROPOSED RULES
Expansion of Enrollment in the VA Health Care System, 3535–3540
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 3672–3675

Separate Parts In This Issue

Part II
Labor Department, Employment Standards Administration, 3678–3820

Part III
Labor Department, Employee Benefits Security Administration, 3822–3853

Part IV
Agriculture Department, Commodity Credit Corporation, 3856–3879

Part V
Commerce Department, National Oceanic and Atmospheric Administration, 3882–3918

Part VI
Management and Budget Office, 3920–3936

Part VII
Labor Department, Occupational Safety and Health Administration, 3938–3947

Part VIII
Federal Register, Administrative Committee, 3950–3952

Part IX
Presidential Documents, 3953–3961

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

1 CFR
2 3950
10 3950
11 3950

3 CFR
Proclamations:
8339 3955
Administrative Orders:
Notices:
Notice of January 15, 2009 3959
Notice of January 15, 2009 3961
Presidential Determinations:
No. 2009-11 of January 15, 2009 3957

7 CFR
2 3395
925 3412
944 3412
1415 3856

10 CFR
Proposed Rules:
430 3450

14 CFR
Proposed Rules:
39 3462
71 (3 documents) ...3465, 3466, 3468
121 3469

17 CFR
Proposed Rules:
38 3475

21 CFR
Proposed Rules:
1300 3480
1301 3480
1304 3480
1305 3480
1307 3480

23 CFR
Proposed Rules:
180 3487

26 CFR
1 (2 documents) 3420
31 3421
Proposed Rules:
1 (3 documents) 3508, 3509

27 CFR
9 (2 documents) 3422, 3425

29 CFR
250 0000
403 3678
408 3678
1601 3429
1603 3429
1605 3429
1610 3429
1611 3429
1612 3429
1614 3429
1615 3429
1621 3429
1626 3429
2550 3822
Proposed Rules:
1910 (2 documents) 3526, 3938

30 CFR
6 3430
14 3430
18 3430
48 3430
75 3430

31 CFR
31 3431

33 CFR
Proposed Rules:
160 3534
161 3534
164 3534
165 3534

38 CFR
21 3436
Proposed Rules:
17 3535

40 CFR
51 3437
52 3442

47 CFR
1 3444

49 CFR
Proposed Rules:
80 3487
261 3487
640 3487
1700 3487

50 CFR
216 3882
679 (2 documents) 3446, 3449

Rules and Regulations

Federal Register
Vol. 74, No. 12
Wednesday, January 21, 2009

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

Office of the Secretary

7 CFR Part 2

RIN 0503–AA37

Revision of Delegations of Authority

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and general officers of the Department of Agriculture (USDA) principally to reflect changes and additions to the delegations required by the Food, Conservation, and Energy Act of 2008 (FCEA), Public Law 110–246. Other additions, deletions, and changes are made as summarized below.

DATES: *Effective Date:* Effective January 21, 2009.

FOR FURTHER INFORMATION CONTACT: Adam J. Hermann, Office of the General Counsel, USDA, 1400 Independence Avenue, SW., Washington, DC 20250, (202) 720–9425, *adam.hermann@ogc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Food, Conservation, and Energy Act of 2008

The Secretary of Agriculture (Secretary) previously delegated authorities under the Food, Conservation, and Energy Act of 2008, Public Law 110–246 (FCEA), in Secretary's Memorandum (SM) 1053–001 (July 1, 2008). This rule codifies those delegations and makes other changes to existing delegations required by FCEA, as follows.

Title I of FCEA renews a number of commodity programs already delegated by the Secretary to the Under Secretary for Farm and Foreign Agricultural Services (FFAS) under 7 CFR 2.16, and by the Under Secretary for FFAS to the Administrator of the Farm Service Agency (FSA) under 7 CFR 2.42. Those existing delegations cover all production-related commodity programs of the Commodity Credit Corporation (CCC) of USDA not otherwise delegated by the Secretary including programs that are marketing-related or disaster-related. FCEA does contain ''permanent'' disaster provisions, which are found in sections 12033 and 15101 (which are duplicative of each other). Because the new disaster provisions are not consigned to CCC, the current delegations in 7 CFR 2.16 and 2.42 are amended to add a reference to allow for coverage of non-CCC disaster programs and other income support commodity programs that might be enacted at some point but which might not be CCC programs. A specific delegation for the disaster provisions in sections 12033 and 15101 of FCEA is also added to 7 CFR 2.16 and 2.42.

In addition, title I of FCEA includes a number of new authorities that do not as such fit within the current delegations and are delegated herein to the Administrator of FSA through the Under Secretary for FFAS, as follows: Section 1605 (quality incentive payments for covered oilseed producers); section 1609 (tracking of benefits); section 1612 (hard white wheat development program); section 1613 (durum wheat quality program); and section 1621 (payments to geographically disadvantaged farmers and ranchers).

Additionally, section 1502 of FCEA provides authority for a dairy forward pricing program, and section 1509 of FCEA directs the Secretary to establish a Federal Milk Marketing Order Review Commission to conduct a comprehensive review and evaluation of the Federal milk marketing order system and non-Federal marketing order systems. The delegations at 7 CFR 2.22 and 2.79 are amended to reflect the delegation of these authorities to the Under Secretary for Marketing and Regulatory Programs (MRP) and the Administrator of the Agricultural Marketing Service (AMS).

Section 1510 of FCEA amended the Dairy Product Mandatory Reporting provisions of title II, subtitle C, of the Agricultural Marketing Act of 1946, to include provisions for the establishment of an electronic reporting system and for quarterly audits of information submitted or reported under that act. A new provision is added to 7 CFR 2.22 and 2.79 to reflect that the Under Secretary for MRP and Administrator of AMS are delegated lead responsibility to administer the Dairy Product Mandatory Reporting provisions of title II, subtitle C, of the Agricultural Marketing Act of 1946. Existing delegations at 7 CFR 2.21 and 2.68 are amended to reflect an ancillary delegation to the Under Secretary for Research, Education, and Economics (REE) and the Administrator of the National Agricultural Statistics Service (NASS).

Title I of FCEA also included requirements relating to the disclosure and release of information. The delegations at 7 CFR 2.16, 2.17, 2.20, 2.22, 2.42, 2.48, 2.49, 2.60, 2.61, and 2.80 are amended to reflect the delegation of the Secretary's information disclosure authorities in section 1619(b)(3) to the Under Secretaries for FFAS, Rural Development (RD), Natural Resources and Environment (NRE), and MRP, the Administrators of FSA, the Rural Business-Cooperative Service (RBS), and the Rural Housing Service (RHS), the Chiefs of the Forest Service and Natural Resources Conservation Service (NRCS), and the Administrator of the Animal and Plant Health Inspection Service (APHIS), respectively.

Also, the delegations to the Under Secretary for FFAS in 7 CFR 2.16 and the Administrator of FSA in 7 CFR 2.42 are amended by removing outdated references to programs that are no longer in existence.

Title II of FCEA made numerous amendments to the Conservation title (title XII) of the Food Security Act of 1985, 16 U.S.C. 3801 *et seq.,* to revise or extend existing program and funding authority and to provide some new authority. Several of these revised authorities were previously delegated or otherwise fit within existing delegations to the Under Secretary for NRE (7 CFR 2.20) and Chief of NRCS (7 CFR 2.61), or to the Under Secretary for FFAS (7 CFR 2.16) and Administrator of FSA (7 CFR 2.42), and, thus, do not need further action.

The following sections of title II of FCEA provided authorities that require delegations: Section 2301 (new Conservation Stewardship Program authority); section 2710 (authority to

utilize services from experienced agriculture conservation technical service providers); and section 2711 (revised authority to establish and utilize State technical committees). The delegations at 7 CFR 2.20 are amended to reflect the delegation of these authorities to the Under Secretary for NRE, and the delegations at 7 CFR 2.61 are amended to reflect the delegation of these authorities by the Under Secretary for NRE to the Chief of NRCS.

Section 2403 of FCEA amends the Grassland Reserve Program (GRP) under title XII of the Food Security Act of 1985. New provisions are added to 7 CFR 2.16 and 2.42 to reflect the delegation of the authority to administer the GRP to the Under Secretary for FFAS (in cooperation with the Under Secretary for NRE) and the Administrator of FSA (with respect to those aspects of the GRP that are or become the responsibility of the Under Secretary for FFAS). New provisions also are added to 7 CFR 2.20 and 2.61 to reflect the delegation of the authority to administer the GRP to the Under Secretary for NRE (in cooperation with the Under Secretary for FFAS) and the Chief of NRCS (with respect to those aspects of the GRP that are or become the responsibility of the Under Secretary for NRE).

Section 2606 of FCEA requires the establishment of a voluntary public access and habitat incentive program. The delegations at 7 CFR 2.16 and 2.42 are amended to reflect the delegation of this authority to the Under Secretary for FFAS and the Administrator of FSA.

Section 2702 of FCEA provides authority to accept and use contributions of non-Federal funds to support conservation programs under subtitle D of title XII of the Food Security Act of 1985. The delegations at 7 CFR 2.16 are amended to reflect the delegation of this authority to the Under Secretary for FFAS (with respect to those conservation programs delegated to the Under Secretary for FFAS), and the delegations at 7 CFR 2.42 are amended to reflect the delegation of this authority to the Administrator of FSA (with respect to programs delegated to the Administrator of FSA). The delegations at 7 CFR 2.20 are amended to reflect the delegation of this authority to the Under Secretary for NRE (with respect to those conservation programs delegated to the Under Secretary for NRE), and the delegations at 7 CFR 2.61 are amended to reflect the delegation of this authority to the Chief of NRCS (with respect to those programs delegated to the Chief of NRCS).

Other miscellaneous amendments are made to the delegations at 7 CFR 2.20 and 2.61 to correct descriptions.

Section 3205 of FCEA established a Consultative Group to Eliminate the Use of Child Labor and Forced Labor in Imported Agricultural Products. The Consultative Group will include two representatives from USDA, as determined by the Secretary. Not later than two years after the date of enactment of FCEA, the Consultative Group must submit to the Secretary recommendations relating to standard practices for independent monitoring and verification for the production, processing, and distribution of agricultural products or commodities to reduce the likelihood that agricultural products or commodities imported into the United States are produced with the use of forced labor or child labor. Not later than one year after receiving the Consultative Group's recommendations, the Secretary must release guidelines for a voluntary initiative to enable entities to address issues raised by the Trafficking Victims Protection Act of 2000. This rule amends 7 CFR 2.16 and 2.43 to add the lead delegation of these authorities to the Under Secretary for FFAS and the Administrator of the Foreign Agricultural Service (FAS), and 7 CFR 2.22 and 2.79 to add an ancillary delegation to the Under Secretary for MRP and the Administrator of AMS.

Section 3206 of FCEA requires the Secretary to initiate a study of prior local and regional procurements for food aid programs conducted by other donor countries, private voluntary organizations, and the World Food Programme of the United Nations; provide grants to, or enter into cooperative agreements with, eligible organizations to carry out field-based projects that consist of local or regional procurements of eligible commodities to respond to food crises and disasters; and ensure that an independent third party conducts an independent evaluation of all such field-based projects not later than November 1, 2011. The delegations at 7 CFR 2.16 and 2.43 are amended to reflect that the Under Secretary for FFAS and the Administrator of FAS are delegated these authorities.

Section 4001 of FCEA renamed the Food Stamp Act of 1977 the Food and Nutrition Act of 2008. This section also struck all references to the Food Stamp Program and replaced them with the Supplemental Nutrition Assistance Program. The delegations at 7 CFR 2.19 and 2.57 are amended to reflect these changes.

Section 4142 of FCEA directs the Secretary to carry out a study of the feasibility and effects of treating Puerto Rico the same as one of the States under the Supplemental Nutrition Assistance Program in lieu of the block grant it currently receives. This section includes an assessment of the administrative impact, the appropriate income eligibility, benefit, and deduction levels, and the effect on low-income Puerto Ricans. The delegations at 7 CFR 2.19 and 2.57 are amended to reflect that the Under Secretary for Food, Nutrition, and Consumer Services (FNCS) and the Administrator of the Food and Nutrition Service (FNS) are delegated the responsibility to conduct the study and prepare the report to Congress.

Section 4301 of FCEA requires the Secretary to submit to Congress annually a report on the effectiveness of each State in automatically enrolling school-aged children for free school meals using ''direct certification'' based on their participation in the Supplemental Nutrition Assistance Program. The delegations at 7 CFR 2.19 and 2.57 are amended to reflect that the Under Secretary for FNCS and the Administrator of FNS are delegated this responsibility.

Section 4305 of FCEA requires the Secretary to purchase whole grains and whole grain products for use in the National School Lunch Program and the School Breakfast Program. This section further requires an evaluation and report by the Secretary. The delegations at 7 CFR 2.19 and 2.57 are amended to reflect that the Under Secretary for FNCS and the Administrator of FNS are delegated these responsibilities.

Section 4307 of FCEA requires the Secretary to carry out a nationally representative survey of the foods purchased by school food authorities participating in the National School Lunch Program during the most recent school year for which data are available. This section further requires a report on the results of the survey. The delegations at 7 CFR 2.19 and 2.57 are amended to reflect that the Under Secretary for FNCS and the Administrator of FNS are delegated these responsibilities.

Section 4401 of FCEA amends section 4404 of the Farm Security and Rural Investment Act of 2002 (2 U.S.C. 1161) and directs the Secretary to offer to provide a grant to the Congressional Hunger Center to administer the Bill Emerson National Hunger Fellowship Program and the Mickey Leland International Hunger Fellowship Program. The delegations at 7 CFR 2.19 and 2.57 are amended to reflect that the Under Secretary for FNCS and the Administrator of FNS are delegated the authority to provide the grant for the

Bill Emerson and Mickey Leland Fellowships.

Section 4403 of FCEA requires that the Secretary continue joint efforts with the Department of Health and Human Services for national nutrition monitoring and related research activities. The delegations at 7 CFR 2.19 are amended to reflect that the Under Secretary for FNCS is delegated the responsibility to continue these monitoring and research functions.

Section 4405 of FCEA authorizes appropriations for Hunger-Free Communities Collaborative Grants and Hunger-Free Communities Infrastructure Grants and directs the Secretary to report to Congress on the activities carried out under this authority and the degrees of the success of each activity. The delegations at 7 CFR 2.19 and 2.57 are amended to reflect that the Under Secretary for FNCS and the Administrator of FNS are delegated these authorities.

Section 4406(c)(2) of FCEA extends the authority of the Secretary to carry out the Nutrition Information and Awareness Pilot Project in section 4403 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 3171 note). The delegations at 7 CFR 2.19 and 2.57 are amended to reflect that the Under Secretary for FNCS and the Administrator of FNS are delegated the responsibility for this pilot project.

Title IV of FCEA (section 4402(3)) also included new grant authority to establish and support a healthy urban food enterprise development center to increase access to healthy affordable foods, including locally produced agricultural products, to underserved communities. That authority has been delegated through the Under Secretary for REE to the Administrator of the Cooperative State Research, Education, and Extension Service (CSREES), and the delegations at 7 CFR 2.21 and 2.66 have been amended accordingly.

Title V of FCEA established a conservation loan and loan guarantee program (section 5002) and provided expanded authority to make loans to certain purchasers of highly fractionated land (section 5501). The delegations at 7 CFR 2.16, 2.17, 2.42, and 2.48 are revised to reflect that these authorities are delegated to the Under Secretary for FFAS and Administrator of FSA.

Section 6013(d) of FCEA amended section 310B of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932) to provide the Secretary with authority to enter into cooperative research agreements with qualified academic institutions to conduct research on the effects of cooperatives on the national economy. Additionally, section 6013(e) of FCEA amended section 310B of the Consolidated Farm and Rural Development Act to provide the Secretary with the authority to administer a grants program to address the needs of minority communities. Additionally, section 6016 of FCEA amended section 310B of the Consolidated Farm and Rural Development Act to direct the Secretary to establish the Appropriate Technology Transfer for Rural Areas Program. The delegations at 7 CFR 2.17 and 2.48 to the Under Secretary for RD and Administrator of RBS are amended to include these additional authorities by making a general reference to section 310B of the Consolidated Farm and Rural Development Act without listing specific authorities in that section.

Section 6018(b) of FCEA directs the Secretary to prepare and submit a report on the definitions of ''rural'' and ''rural area.'' The delegations at 7 CFR 2.17 are amended to reflect that the Under Secretary for RD is delegated responsibility for this report.

Section 6022 of FCEA directs the Secretary to establish a Rural Microentrepreneur Assistance Program to provide loans and grants to support microentrepreneurs in the development and ongoing success of rural microenterprises. The delegations at 7 CFR 2.17 and 2.48 are amended to reflect that the Under Secretary for RD and the Administrator of RBS are delegated the responsibility for this program. Section 6023 of FCEA directs the Secretary to establish the Expansion of Employment Opportunities for Individuals with Disabilities in Rural Areas Program. This grant program is intended to expand and enhance employment opportunities for individuals with disabilities in rural areas. The delegations at 7 CFR 2.17 and 2.48 are amended to reflect that the Under Secretary for RD and the Administrator of RBS are delegated the responsibility for this program.

Section 6024 of FCEA directs the Secretary to establish a Health Care Services Program to award a grant to an eligible entity for the development of health care services, health education programs, and health care job training programs and the development and expansion of public health-related facilities in the Delta region to address longstanding and unmet health needs of the region. The delegations at 7 CFR 2.17 and 2.48 are amended to reflect that the Under Secretary for RD and the Administrator of RBS are delegated the responsibility for this program.

Section 6025 of FCEA reauthorized the Delta Regional Authority. The delegations at 7 CFR 2.17 and 2.48 are amended to reflect that the Under Secretary for RD and Administrator of RBS are delegated responsibility for this program.

Section 6026 of FCEA reauthorized and made several modifications to the Northern Great Plains Regional Authority. The delegations at 7 CFR 2.17 and 2.48 are amended to reflect that the Under Secretary for RD and Administrator of RBS are delegated responsibility for this program.

Section 6028 of FCEA directs the Secretary to establish a Rural Collaborative Investment Program to support comprehensive regional investment strategies for achieving rural competitiveness. The existing delegations to the Under Secretary for RD and Administrator of RBS at 7 CFR 2.17 and 2.48 are amended by removing references to the Rural Strategic Investment Program and adding references to the Rural Collaborative Investment Program.

Title VII of FCEA provided a number of new research, education, economics, and extension authorities to the Secretary. The delegations at 7 CFR 2.21 are amended to reflect the delegation of these authorities to the Under Secretary for REE, and the delegations at 7 CFR 2.65 and 2.66 are amended to reflect the further delegation of these authorities by the Under Secretary for REE to the Administrators of the Agricultural Research Service (ARS) and CSREES, respectively, as follows: A program of competitive grants for fundamental and applied research, extension, and education, known as the Agriculture and Food Research Initiative (CSREES); a program of facilities and equipment grants to assist the land-grant university in the District of Columbia (CSREES); a program of facilities and equipment grants to assist insular area land-grant institutions (CSREES); a program of endowment and other payments, institutional capacity-building grants, and competitive fundamental and applied research grants for Hispanic-serving agricultural colleges and universities (CSREES); a New Era Rural Technology Program to provide grants for technology development, applied research, and training to aid in the development of an agriculture-based renewable energy workforce (CSREES); a capacity-building grants program for non-land-grant colleges of agriculture (CSREES); an Agricultural Bioenergy Feedstock and Energy Efficiency Research and Extension Initiative to enhance production of biomass energy crops and the energy efficiency of agricultural operations (CSREES); a research and extension grants program to improve farm management

knowledge and skills of agricultural producers and maintain a publicly available financial management database (CSREES); a Specialty Crop Research Initiative (CSREES); broad authority to exchange, sell, acquire, and dispose of animals, animal products, plants, and plant products in carrying out the research functions of the Department (ARS); a pilot program to lease nonexcess property at the Beltsville Agricultural Research Center and the National Agricultural Library (ARS); broad authority to lease land at the Grazinglands Research Laboratory at El Reno, Oklahoma (ARS); a research and education grants program relating to antibiotics and antibiotic-resistant bacteria (CSREES); a grants program to establish and maintain a Farm and Ranch Stress Assistance Network (CSREES); a grants program relating to seed distribution (CSREES); a research program for natural products (ARS); a Sun Grants Program (CSREES); and a grants program relating to agricultural and rural transportation research and education (CSREES).

A new delegation to the Administrator of CSREES, through the Under Secretary for REE, has been added for the program of providing grants to Alaska Native and Native Hawaiian serving institutions under 7 U.S.C. 3156. The FCEA (section 7112) amended and re-authorized the program.

Title VII (section 7139) also provided a new authority to provide fellowships for scientific training and study in the United States to individuals from eligible countries who specialize in agricultural education, research, and extension, known as the Borlaug International Agricultural Science and Technology Fellowship Program. The delegations at 7 CFR 2.16 and 2.43 are amended to reflect the delegation of this authority to the Under Secretary for FFAS and the Administrator of FAS.

Additionally, a new delegation to the Administrator of FAS, through the Under Secretary for FFAS, has been added for the agricultural biotechnology research and development grant program for developing countries under 7 U.S.C. 7631. FCEA (section 7310) reauthorized the program.

Additionally, section 7524 of FCEA directs the Secretary to issue a permit to the Secretary of Homeland Security for work on the live virus of foot and mouth disease at a successor facility to the Plum Island Animal Disease Center. The delegations at 7 CFR 2.22 and 2.80 are amended to reflect that the Under Secretary for MRP and the Administrator of APHIS are delegated this authority, except that the authority to suspend, revoke, or impair the permit is reserved to the Secretary.

The existing delegations to the Under Secretary for REE and the Administrators of ARS and CSREES also have been amended by removing delegations of authorities that were repealed by FCEA and making other miscellaneous changes required by FCEA.

Title VIII of FCEA (section 8205) revised the authority for the Healthy Forests Reserve Program, Title V of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6571–6578) as to enrollment of lands, including lands owned by Indian tribes, and as to funding. The delegations at 7 CFR 2.20 and 2.61 are amended to reflect that the authority to administer the Healthy Forests Reserve Program is delegated to the Under Secretary for NRE and the Chief of NRCS.

Section 8402 provided new authority to administer a competitive grants program for the purpose of establishing an undergraduate scholarship program to assist in the recruitment, retention, and training of Hispanics and other under-represented groups in forestry and related fields. The delegations at 7 CFR 2.21 and 2.66 are amended to reflect the delegation of this authority to the Under Secretary for REE and the Administrator of CSREES.

Title IX of FCEA provides additional authorities relating to energy, including section 9001, which is a substitute amendment for title IX of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8101—8113).

Five authorities in this amendment are delegated through the Under Secretary for RD to the Administrator of RBS: A Biorefinery Assistance Program (''section 9003''); a Repowering Assistance Program (''section 9004''); a Bioenergy Program for Advanced Biofuels (''section 9005''); a Rural Energy for America Program (''section 9007''); and a Rural Energy Self-Sufficiency Initiative (''section 9009''). The delegations at 7 CFR 2.17 and 2.48 are amended to reflect the delegation of these authorities to the Under Secretary for RD and Administrator of RBS.

One authority in this amendment—administration of the Biomass Research and Development Program (''section 9008'') in consultation with other mission areas of the Department as appropriate—is delegated to the Under Secretary for REE. One component of the Biomass Research and Development Program—the Biomass Research and Development Initiative—is further delegated to the Administrator of CSREES. The delegations at 7 CFR 2.21 and 2.66 are amended to reflect the delegation of these authorities.

Two authorities in this amendment are delegated through the Under Secretary for FFAS to the Administrator of FSA: A feedstock flexibility program for bioenergy producers (''section 9010''); and a biomass crop assistance program (''section 9011''). The delegations at 7 CFR 2.16 and 2.42 are amended to reflect the delegation of these authorities to the Under Secretary for FFAS and Administrator of FSA.

Two authorities in this amendment are delegated through the Under Secretary for NRE to the Chief of the Forest Service: A competitive research and development program to encourage the use of forest biomass for energy (''section 9012''); and a program to provide grants to State and local governments to develop community wood energy plans and to acquire and upgrade community wood energy systems (''section 9013''). The delegations at 7 CFR 2.20 and 2.60 are amended to reflect the delegation of these authorities to the Under Secretary for NRE and Chief of the Forest Service.

Additionally, the existing delegations to the Under Secretary for RD and Administrator of RBS, in 7 CFR 2.17 and 2.48, respectively, are amended by removing delegations of energy authorities repealed by FCEA. The existing delegations to the Chief Economist and the Director of the Office of Energy Policy and New Uses (OEPNU), in 7 CFR 2.29 and 2.73, respectively, are amended by correcting statutory citations.

The delegations for the Chief Economist and Director of OEPNU also are amended to add a delegation to conduct a study on biofuels infrastructure in section 9002 of FCEA.

Section 10105 of FCEA authorizes a food safety education program for fresh produce, and section 10107 requires that market news activities provide timely price and shipping information concerning specialty crops in the United States and that reporting levels be increased for specialty crops. The delegations at 7 CFR 2.22 and 2.79 are amended to reflect the delegation of these authorities to the Under Secretary for MRP and the Administrator of AMS.

Section 10109 of FCEA amended the Specialty Crops Competitiveness Act of 2004, including section 101 of that act relating to specialty crop block grants. The delegations at 7 CFR 2.22 and 2.79 are amended to reflect that the Under Secretary for MRP and Administrator of AMS are delegated the authority to administer the provisions of section 101 of the Specialty Crops Competitiveness Act of 2004.

Section 10202 of FCEA provides authority to establish a National Clean Plant Network, and section 10204 directs the Secretary to develop regulations to improve management and oversight of certain regulated articles. The delegations at 7 CFR 2.22 and 2.80 are amended to reflect the delegation of these authorities to the Under Secretary for MRP and the Administrator of APHIS.

Section 10205 of FCEA includes authority to provide loans to units of local government to finance the purchase of equipment necessary for the management of forest land, which must be used to monitor, remove, dispose of, and replace infested trees on land under the jurisdiction of the local government or within the borders of a quarantined area. The delegations at 7 CFR 2.20 and 2.60 are amended to reflect the delegation of this authority to the Under Secretary for NRE and the Chief of the Forest Service.

Section 10302 of FCEA provides authorities regarding the collection and reporting of data on the production and marketing of organic agricultural products. The delegations at 7 CFR 2.22 and 2.79 are amended to reflect that the Under Secretary for MRP and Administrator of AMS are delegated the responsibility to collect and distribute comprehensive reporting of prices relating to organically produced agricultural products. The delegations at 7 CFR 2.21 and 2.67 are amended to reflect that the Under Secretary for REE and Administrator of the Economic Research Service (ERS) are delegated the responsibility to conduct surveys and analysis and publish reports relating to organic production, handling, distribution, retail, and trend studies. The delegations at 7 CFR 2.21 and 2.68 are amended to reflect that the Under Secretary for REE and Administrator of NASS are delegated the responsibility to develop surveys and report statistical analysis on organically produced agricultural products.

Section 10403 of FCEA authorizes a grant program to improve the movement of specialty crops. The delegations at 7 CFR 2.22 and 2.79 are amended to reflect the delegation of this authority to the Under Secretary for MRP and Administrator of AMS.

Section 10404 of FCEA provides authority to make payments to certain producers of asparagus crops. The delegations at 7 CFR 2.16 and 2.42 are amended to reflect that the Under Secretary for FFAS and Administrator of FSA are delegated this responsibility.

Title XI of FCEA provides several new authorities relating to livestock. Section 11001 amended the Livestock Mandatory Reporting provisions of title II, subtitle B, of the Agricultural Marketing Act of 1946, to include under the current electronic reporting and publishing section of that act provisions for improvement and education. A new provision is added to 7 CFR 2.22 and 2.79 to reflect that the Under Secretary for MRP and Administrator of AMS are delegated the authority to administer the Livestock Mandatory Reporting provisions of title II, subtitle B, of the Agricultural Marketing Act of 1946.

Section 11006 of FCEA requires the Secretary to promulgate regulations with respect to the Packers and Stockyards Act, 1921 (7 U.S.C. 181 *et seq.*), to establish criteria that the Secretary will consider in determining whether regulated entities have violated that act and whether live poultry dealers and swine contractors have acted reasonably in their dealings with contract growers. The delegations at 7 CFR 2.22 and 2.81 are amended to reflect that this authority is delegated through the Under Secretary for MRP to the Administrator, Grain Inspection, Packers and Stockyards Administration.

Section 11009 of FCEA amended a provision concerning funding for the National Sheep Industry Improvement Center under section 375 of the Consolidated Farm and Rural Development Act and provided for repeal of a provision in that section requiring privatization of the revolving fund. The delegations at 7 CFR 2.16, 2.22, 2.42, and 2.79 are amended to reflect the delegation of authority for this program to the Under Secretary for MRP and Administrator of AMS.

Title XI of FCEA also amended the Federal Meat Inspection Act and the Poultry Products Inspection Act to provide for the interstate shipment of meat and poultry inspected by Federal and state agencies and to require federally inspected meat and poultry establishments to notify the Secretary of the receipt or shipment of adulterated or misbranded meat or poultry product in commerce, to prepare and maintain recall plans, and to document each reassessment of its process control plans. The delegations at 7 CFR 2.18 and 2.53 are amended to reflect that the Under Secretary for Food Safety and the Administrator of the Food Safety and Inspection Service are delegated these authorities.

Title XII of FCEA (section 12014) requires the Secretary to conduct a study and issue a report on the efficacy and accuracy of the application of pack factors regarding the measurement of farm-stored production for purposes of providing policies or plans of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*). The delegations at 7 CFR 2.16 and 2.44 are amended to reflect that this authority is delegated to the Under Secretary for FFAS and the Administrator of the Risk Management Agency.

Title XIV of FCEA provides a number of new miscellaneous authorities to the Secretary. Section 14003 amended section 2501A of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279–1) by directing the Secretary to issue receipts for service or denials of service to current or prospective producers or landowners who request such a receipt at the time they request a benefit or service from FSA, NRCS, or an agency of the RD mission area. The delegations at 7 CFR 2.16 and 2.42 are amended to reflect that the Under Secretary for FFAS and the Administrator of FSA are delegated lead coordinating responsibility for the issuance of such receipts, as well as the authority to issue receipts with respect to FSA. The delegations at 7 CFR 2.17, 2.47, 2.48, and 2.49 are amended to reflect that the Under Secretary for RD and the Administrators of the Rural Utilities Service (RUS), RBS, and RHS are delegated the authority to issue receipts with respect to RUS, RBS, and RHS, respectively, in coordination with the lead agency. Additionally, the delegations at 7 CFR 2.20 and 2.61 are amended to reflect that the Under Secretary for NRE and the Chief of NRCS are delegated the authority to issue receipts with respect to NRCS, in coordination with the lead agency.

Section 14005 of FCEA directs the Secretary to ensure that the Census of Agriculture conducted by NASS and studies conducted by the Economic Research Service (ERS) document certain information regarding socially disadvantaged farmers and ranchers in agricultural production. The delegations at 7 CFR 2.21 and 2.68 are amended to reflect the delegation of these responsibilities with respect to the Census of Agriculture to the Under Secretary for REE and the Administrator of NASS. The delegations at 7 CFR 2.21 and 2.67 are amended to reflect the delegation of these responsibilities with respect to ERS studies to the Under Secretary for REE and the Administrator of ERS.

Section 14111 of FCEA established the Office of Homeland Security (''OHS'') within the Department. The current delegations at 7 CFR 2.32 to the Director, Homeland Security Staff are amended to reflect the establishment of OHS and the delegation of authorities to the Director, OHS. Additionally, the 7 CFR 2.32 delegations are amended to reflect the delegation of the Secretary's

authority in FCEA section 14112 (establishment of a communication center within the Department to collect and disseminate information and prepare for agricultural biosecurity emergencies and threats) and FCEA section 14113 (competitive grants program to support development and expansion of advanced training programs in agricultural biosecurity planning and response for food science professionals and veterinarians; competitive grants and low-interest loan assistance program to assist States in assessing agricultural disease response capability) to the Director, OHS. Finally, the delegations in 7 CFR 2.32 are amended by making other miscellaneous updates and corrections.

Title XIV of FCEA also provided the following two authorities that have been delegated through the Under Secretary for REE to the Administrator of CSREES: A competitive grant program for the development of qualified agricultural countermeasures (section 14121); and a competitive grant program for the development of teaching programs to increase the number of trained individuals with an expertise in agricultural biosecurity (section 14122). 7 CFR 2.21 and 2.66 are amended to reflect these delegations.

Section 14208 of FCEA requires the submission of reports to Congress on conferences sponsored or held by the Department or attended by employees of the Department. The delegations at 7 CFR 2.28 are amended to reflect that the Chief Financial Officer (CFO) is delegated this responsibility.

Section 14211 provides new debarment authorities to the Secretary with respect to participation in USDA programs. The delegations at 7 CFR 2.28 are amended to reflect that the CFO is delegated lead responsibility to administer the debarment authorities in section 14211, in coordination with the Assistant Secretary for Administration (ASA). The delegations at 7 CFR 2.24 and 2.93 are amended to delegate the authority to implement the debarment authorities in section 14211 to the ASA and the Director, Office of Procurement and Property Management (OPPM) with respect to procurement activities, in coordination with the CFO.

Section 14212 of FCEA established several requirements regarding the closure or relocation of FSA county or field offices. The delegations at 7 CFR 2.16 and 2.42 are amended to reflect the delegation of these responsibilities to the Under Secretary for FFAS and Administrator of FSA.

Section 14216 of FCEA directs the Secretary to review recommendations on the use of dogs and cats in Federally supported research and report to Congress. The delegations at 7 CFR 2.22 and 2.80 are amended to reflect the delegation of this authority to the Under Secretary for MRP and Administrator of APHIS.

Section 14218 of FCEA requires the Secretary to establish a Coordinator for Chronically Underserved Rural Areas to be located in the Rural Development Mission Area. The delegations at 7 CFR 2.17 are amended to reflect that the Under Secretary for RD is delegated the responsibility for establishing the Coordinator.

Section 14220 of FCEA authorizes the Secretary to make available to organizations surplus computers and technical equipment for the purpose of distribution to municipalities in rural areas. The delegations at 7 CFR 2.24 and 2.93 are amended to reflect the delegation of this authority to the ASA and the Director of OPPM.

Finally, section 15353 established certain information reporting requirements pertaining to CCC transactions. The delegations at 7 CFR 2.16 and 2.42 are amended to reflect the delegation of these responsibilities to the Under Secretary for FFAS and Administrator of FSA.

Disaster Relief and Recovery Supplemental Appropriations Act, 2008

Section 10101 of the Disaster Relief and Recovery Supplemental Appropriations Act, 2008, established the Rural Development Disaster Assistance Fund to provide additional amounts for authorized activities of agencies of the Rural Development Mission Area in areas affected by a disaster declared by the President or the Secretary. The delegations at 7 CFR 2.17 are amended to reflect that the Under Secretary for RD is delegated responsibility for this Fund.

Other Delegations

A new delegation to the Chief of NRCS, through the Under Secretary for NRE, has been added for the authority to permit employees of NRCS to carry and use firearms for personal protection while conducting field work in remote locations in the performance of their official duties. This rule codifies the delegation of this authority made by the Secretary in a Secretary's Memorandum dated October 20, 2008.

A new delegation to the Under Secretary for FNCS has been added for the authority to enter into contracts, grants, and cooperative agreements under section 1472 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3318). This rule codifies the delegation of this authority made by the Secretary in a Secretary's Memorandum dated November 4, 2008.

Miscellaneous

A number of miscellaneous minor changes have been made to the delegations for other reasons, including to correct citations and descriptions and delete obsolete authorities.

To correspond to the revision of delegations of authority made in 2003 (68 FR 27431), 7 CFR 2.81(a) is revised to reflect the change in the title of the policy official responsible for Marketing and Regulatory Programs from Assistant Secretary to Under Secretary. This paragraph is also revised to reflect the establishment of the agency that is responsible for all programs and activities formerly performed by the Federal Grain Inspection Service and by the Packers and Stockyards Administration as the Grain Inspection, Packers and Stockyards Administration. The Grain Inspection, Packers and Stockyards Administration was established by Secretary's Memorandum 1010–1 and codified in the regulations by the 1995 revision of delegations of authority (60 FR 56392).

The delegations at 7 CFR 2.79 also are revised to reflect the change in the title of the policy official responsible for Marketing and Regulatory Programs from Assistant Secretary to Under Secretary.

Classification

Finally, this rule relates to internal agency management. Accordingly, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. This rule also is exempt from the provisions of Executive Orders 12866 and 12988. This action is not a rule as defined by the Regulatory Flexibility Act, Public Law 96–354, and the Small Business Regulatory Fairness Enforcement Act, 5 U.S.C. 801 *et seq.*, and thus is exempt from the provisions of those Acts. This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

■ Accordingly, Title 7 of the Code of Federal Regulations is amended as set forth below:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

■ 1. The authority for Part 2 continues to read as follows:

Authority: 7 U.S.C. 6912(a)(1); 5 U.S.C. 301; Reorganization Plan No. 2 of 1953, 3 CFR 1949–1953 Comp., p. 1024.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretaries and Assistant Secretaries

■ 2. Amend § 2.16 as follows:

■ a. Revise paragraphs (a)(1)(xxv), (a)(2)(i)(G), (a)(2)(x), (a)(3)(vi), (a)(3)(vii)(E), (a)(3)(ix), (a)(3)(x), (a)(3)(xv), and (a)(3)(xliv);

■ b. Remove and reserve paragraphs (a)(1)(xvii), (a)(1)(xx), (a)(1)(xxi), (a)(1)(xxii), (a)(1)(xxiv), (a)(2)(i)(A), and (a)(3)(xviii); and

■ c. Add new paragraphs (a)(1)(xxix), (a)(1)(xxx), (a)(1)(xxxi), (a)(1)(xxxii), (a)(1)(xxxiii), (a)(1)(xxxiv), (a)(1)(xxxv), (a)(2)(i)(L), (a)(3)(xlv), (a)(3)(xlvi), (a)(3)(xlvii), (a)(3)(xlviii), and (a)(4)(v), to read as follows:

§ 2.16 Under Secretary for Farm and Foreign Agricultural Services.

(a) * * *

(1) * * *

(xvii) [Reserved]

* * * * *

(xx)–(xxii) [Reserved]

* * * * *

(xxiv) [Reserved]

(xxv) Administer all programs of the Commodity Credit Corporation that provide assistance with respect to the production of agricultural commodities, including disaster assistance and the domestic marketing of such commodities, except as may otherwise be reserved by the Secretary of Agriculture, and similar programs (including commodity quality development programs) consigned by statute to the Secretary of Agriculture unless otherwise delegated.

* * * * *

(xxix) Administer the feedstock flexibility program for bioenergy producers under section 9010 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8110) and the biomass crop assistance program under section 9011 of that Act (7 U.S.C. 8111).

(xxx) Administer the Grassland Reserve Program under sections 1238N–1238Q of the Food Security Act of 1985 (16 U.S.C. 3838n–3838q) in cooperation with the Under Secretary for Natural Resources and Environment.

(xxxi) Administer the provisions of section 1240R of the Food Security Act of 1985 (16 U.S.C. 3839bb–5) regarding voluntary public access and habitat incentives.

(xxxii) Implement the authority in section 1241 of the Food Security Act of 1985 (16 U.S.C. 3841) to accept and use voluntary contributions of non-Federal funds in support of natural resources conservation programs under subtitle D of title XII of that Act with respect to authorities delegated to the Under Secretary for Farm and Foreign Agricultural Services.

(xxxiii) Coordinate Department policy for, and issue, receipts under section 2501A(e) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279–1(e)).

(xxxiv) Administer the following provisions of the Food, Conservation, and Energy Act of 2008, Public Law 110–246:

(A) Section 1605 relating to quality incentive payments for covered oilseed producers.

(B) Section 1609 relating to the tracking of benefits.

(C) Section 1612 relating to the hard white wheat development program.

(D) Section 1613 relating to the durum wheat quality program.

(E) Section 1621 relating to direct reimbursement payments to geographically disadvantaged farmers or ranchers.

(F) Section 10404 relating to market loss assistance for asparagus producers.

(G) Sections 12033 and 15101 relating to supplemental agricultural disaster assistance.

(H) Section 14212 relating to the closure or relocation of county or field offices of the Farm Service Agency.

(I) Section 15353(a) relating to information reporting for Commodity Credit Corporation transactions.

(xxxv) Implement the information disclosure authorities of section 1619(b)(3)(A) of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8791(b)(3)(A)).

(2) * * *

(i) * * *

(A) [Reserved]

* * * * *

(G) Section 310B (7 U.S.C. 1932), regarding various Rural Development programs;

* * * * *

(L) Section 375 (7 U.S.C. 2008j), relating to the National Sheep Industry Improvement Center.

* * * * *

(x) Administer loans to Indian tribes, tribal corporations, and purchasers of highly fractionated land (25 U.S.C. 488–492).

* * * * *

(3) * * *

(vi) Exercise the Department's functions with respect to the International Coffee Agreement or any such future agreement.

(vii) * * *

(E) Section 204(d) of the Andean Trade Preference Act (19 U.S.C. 3203(d));

* * * * *

(ix) Exercise the Department's responsibilities in connection with international negotiations of the Grains Trade Convention and in the administration of such Convention.

(x) Plan and carry out programs and activities under the foreign market promotion authority of: The Wheat Research and Promotion Act (7 U.S.C. 1292 note); the Cotton Research and Promotion Act (7 U.S.C. 2101–2118); the Potato Research and Promotion Act (7 U.S.C. 2611–2627); the Egg Research and Consumer Information Act of 1974 (7 U.S.C. 2701–2718); the Beef Research and Information Act, as amended (7 U.S.C. 2901–2911); the Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3401–3417); the Floral Research and Consumer Information Act of 1981 (7 U.S.C. 4301–4319); subtitle B of title I of the Dairy and Tobacco Adjustment Act of 1983 (7 U.S.C. 4501–4514); the Honey Research, Promotion, and Consumer Information Act of 1984, as amended (7 U.S.C. 4601–4613); the Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819); the Watermelon Research and Promotion Act, as amended (7 U.S.C. 4901–4916); the Pecan Promotion and Research Act of 1990 (7 U.S.C. 6001–6013); the Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6101–6112); the Lime Research, Promotion, and Consumer Information Act of 1990 (7 U.S.C. 6201–6212); the Soybean Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6301–6311); the Fluid Milk Promotion Act of 1990 (7 U.S.C. 6401–6417); the Fresh Cut Flowers and Fresh Cut Greens Promotion and Consumer Information Act (7 U.S.C. 6801–6814); the Sheep Promotion, Research, and Information Act of 1994 (7 U.S.C. 7101–7111); the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411–7425); the Canola and Rapeseed Research, Promotion, and Consumer Information Act (7 U.S.C. 7441–7452); the National Kiwifruit Research, Promotion, and Consumer Information Act (7 U.S.C. 7461–7473); and, the Popcorn Promotion, Research, and Consumer Information Act (7 U.S.C. 7481–7491). This authority includes

determining the programs and activities to be undertaken and assuring that they are coordinated with the overall departmental programs to develop foreign markets for U.S. agricultural products.

* * * * *

(xv) Formulate policies and implement programs to promote the export of dairy products, as authorized under section 153 of the Food Security Act of 1985, as amended (15 U.S.C. 713a–14).

* * * * *

(xviii) [Reserved]

* * * * *

(xliv) Implement section 3107 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 1736o–1).

(xlv) Implement section 3205 of the Food, Conservation, and Energy Act of 2008 (22 U.S.C. 7112 note) regarding the Consultative Group to Eliminate the Use of Child Labor and Forced Labor in Imported Agricultural Products, in consultation with the Under Secretary for Marketing and Regulatory Programs.

(xlvi) Implement section 3206 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 1726c) regarding local and regional food aid procurement projects.

(xlvii) Administer the Borlaug International Agricultural Science and Technology Fellowship Program (7 U.S.C. 3319j).

(xlviii) Administer the grant program for agricultural biotechnology research and development for developing countries (7 U.S.C. 7631).

(4) * * *

(v) Conduct a study and issue a report on the efficacy and accuracy of the application of pack factors regarding the measurement of farm-stored production for purposes of providing policies or plans of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*).

* * * * *

■ 3. Amend § 2.17 as follows:

■ a. Redesignate paragraph (a)(21)(ii)(H) as paragraph (a)(21)(ii)(M);

■ b. Redesignate and revise paragraph (a)(21)(ii)(I) as paragraph (a)(21)(ii)(N);

■ c. Revise paragraphs (a)(21)(ii)(D) and (a)(21)(xxiii);

■ d. Remove and reserve paragraphs (a)(20)(iv)(J), (a)(21)(ii)(B), (a)(24) and (a)(25); and

■ e. Add new paragraphs (a)(20)(xi), (a)(21)(ii)(H), (a)(21)(ii)(I), (a)(21)(ii)(J), (a)(21)(ii)(K), (a)(21)(ii)(L), (a)(21)(xxiv), (a)(21)(xxv), (a)(22)(vii), (a)(22)(viii), (a)(27), (a)(28), and (a)(29), to read as follows:

§ 2.17 Under Secretary for Rural Development.

(a) * * *

(20) * * *

(iv) * * *

(J) [Reserved]

* * * * *

(xi) In coordination with the Under Secretary for Farm and Foreign Agricultural Services, issue receipts under section 2501A(e) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279–1(e)).

(21) * * *

(ii) * * *

(B) [Reserved]

* * * * *

(D) Section 310B (7 U.S.C. 1932), relating to various Rural Development programs, except for subsection (b) of that section.

* * * * *

(H) Section 379E (7 U.S.C. 2008s) relating to the Rural Microentrepreneur Assistance Program.

(I) Section 379F (7 U.S.C. 2000t) relating to the Expansion of Employment Opportunities for Individuals with Disabilities in Rural Areas Program.

(J) Section 379G (7 U.S.C. 2008u) relating to Health Care Services.

(K) Section 382A *et seq.* (7 U.S.C. 2009aa *et seq.*) relating to the Delta Regional Authority.

(L) Section 383A *et seq.* (7 U.S.C. 2009bb *et seq.*) relating to the Northern Great Plains Regional Authority.

* * * * *

(N) Section 385A *et seq.* (7 U.S.C. 2009dd *et seq.*) relating to the Rural Collaborative Investment Program.

* * * * *

(xxiii) Administer the renewable energy programs authorized in sections 9003, 9004, 9005, 9007, and 9009 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8103, 8104, 8105, 8107, and 8109).

(xxiv) Implement the information disclosure authorities of section 1619(b)(3)(A) of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8791(b)(3)(A)).

(xxv) In coordination with the Under Secretary for Farm and Foreign Agricultural Services, issue receipts under section 2501A(e) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279–1(e)).

(22) * * *

(vii) Implement the information disclosure authorities of section 1619(b)(3)(A) of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8791(b)(3)(A)).

(viii) In coordination with the Under Secretary for Farm and Foreign Agricultural Services, issue receipts under section 2501A(e) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279–1(e)).

* * * * *

(24) [Reserved]

(25) [Reserved]

* * * * *

(27) Exercise the authority in section 10101 of the Disaster Relief and Recovery Supplemental Appropriations Act, 2008, Public Law 110–329, div. B., regarding the Rural Development Disaster Assistance Fund.

(28) Prepare and submit the report required by section 6018(b) of the Food, Conservation, and Energy Act of 2008, Public Law 110–246.

(29) Implement section 14218 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 6941a).

* * * * *

■ 4. Amend § 2.18 to revise paragraphs (a)(1)(ii)(A) and (a)(1)(ii)(B), to read as follows:

§ 2.18 Under Secretary for Food Safety.

(a) * * *

(1) * * *

(ii) * * *

(A) Poultry Products Inspection Act, as amended (21 U.S.C. 451–470, 472);

(B) Federal Meat Inspection Act, as amended, and related legislation, excluding so much of section 18 as pertains to issuance of certificates of condition of live animals intended and offered for export (21 U.S.C. 601–613, 615–624, 641–645, 661, 671–680, 683, 691–692, 694–695);

* * * * *

■ 5. Amend § 2.19 as follows:

■ a. Revise paragraphs (a)(1)(i)(A), (a)(1)(i)(B), (a)(1)(iii), (a)(1)(iv), and (a)(3)(v);

■ b. Remove and reserve paragraph (a)(1)(ii)(F); and

■ c. Add new paragraphs (a)(1)(i)(G), (a)(1)(i)(H), (a)(1)(i)(I), (a)(1)(i)(J), (a)(1)(i)(K), (a)(1)(i)(L), (a)(1)(i)(M), (a)(3)(ix), and (a)(3)(x), to read as follows:

§ 2.19 Under Secretary for Food, Nutrition, and Consumer Services.

(a) * * *

(1) * * *

(i) * * *

(A) The Food and Nutrition Act of 2008, as amended (7 U.S.C. 2011–2036), except for section 25, regarding assistance for community food projects.

(B) Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1751–1769i), except procurement of agricultural commodities and other foods under section 6 thereof.

* * * * *

(G) Section 4403 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 3171 note).

(H) Section 4404 of the Farm Security and Rural Investment Act of 2002 (2 U.S.C. 1161).

(I) Section 4142 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246).

(J) Section 4301 of the Food, Conservation, and Energy Act of 2008 (42 U.S.C. 1758a).

(K) Section 4305 of the Food, Conservation, and Energy Act of 2008 (42 U.S.C. 1755a).

(L) Section 4307 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246).

(M) Section 4405 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 7517).

(ii) * * *

(F) [Reserved]

* * * * *

(iii) Administer those functions relating to the distribution of supplemental nutrition assistance program benefits under section 412 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5179).

(iv) In connection with the functions assigned in paragraphs (a)(1)(i), (ii) and (iii) of this section, relating to the distribution and donation of agricultural commodities and products thereof and supplemental nutrition assistance program benefits to eligible recipients, authority to determine the requirements for such agricultural commodities and products thereof and supplemental nutrition assistance program benefits to be so distributed.

* * * * *

(3) * * *

(v) Develop food plans for use in establishing supplemental nutrition assistance benefit levels, and assess the nutritional impact of Federal food programs.

* * * * *

(ix) In conjunction with the Department of Health and Human Services, administer section 4403 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 5311a).

(x) Enter into contracts, grants, and cooperative agreements in accordance with section 1472 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3318).

* * * * *

■ 6. Amend § 2.20 as follows:

■ a. Revise paragraphs (a)(3)(iv)(G), (a)(3)(xiii)(D), and (a)(3)(xiii)(N); and

■ b. Add new paragraphs (a)(2)(xli), (a)(2)(xlii), (a)(2)(xliii), (a)(2)(xliv), (a)(3)(xiii)(O), (a)(3)(xiii)(P), (a)(3)(xiii)(Q), (a)(3)(xiii)(R), (a)(3)(xx), (a)(3)(xxi), (a)(3)(xxii), and (a)(3)(xxiii), to read as follows:

§ 2.20 Under Secretary for Natural Resources and Environment.

(a) * * *

(2) * * *

(xli) Implement the information disclosure authorities of section 1619(b)(3)(A) of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8791(b)(3)(A)).

(xlii) Administer a program for providing loans to eligible units of local government to finance the purchase of equipment to monitor, remove, dispose of, and replace infested trees located under their jurisdiction and within the borders of quarantined areas (16 U.S.C. 2104a).

(xliii) Conduct a competitive research and development program to encourage the use of forest biomass for energy (7 U.S.C. 8112).

(xliv) Administer the community wood energy program providing grants for community wood energy plans and energy systems (7 U.S.C. 8113).

(3) * * *

(iv) * * *

(G) The Emergency Conservation Program and the Emergency Watershed Protection Program under sections 401–405 of the Agricultural Credit Act of 1978, 16 U.S.C. 2201–2205, except for the provisions of sections 401 and 402, 16 U.S.C. 2201–2202, as administered by the Under Secretary for Farm and Foreign Agricultural Services.

* * * * *

(xiii) * * *

(D) The Conservation Security Program authorized by sections 1238–1238C (16 U.S.C. 3838–3838c) and the Conservation Stewardship Program authorized by sections 1238D–1238G (16 U.S.C. 3838d–3838g).

* * * * *

(N) The incentives for certain farmers and ranchers and Indian tribes and the protection of certain proprietary information related to natural resources conservation programs as provided by section 1244 of the Act (16 U.S.C. 3844), except for responsibilities assigned to the Under Secretary for Farm and Foreign Agricultural Services.

(O) The Agriculture Conservation Experienced Services Program authorized by section 1252 of the Act (16 U.S.C. 3851).

(P) The authority under sections 1261–1262 of the Act (16 U.S.C. 3861–3862) to establish and utilize State Technical Committees.

(Q) The Grassland Reserve Program under sections 1238N–1238Q of the Act (16 U.S.C. 3838n–3838q) in cooperation with the Under Secretary for Farm and Foreign Agricultural Services.

(R) The authority in section 1241 of the Act (16 U.S.C. 3841) to accept and use voluntary contributions of non-Federal funds in support of natural resources conservation programs under subtitle D of title XII of the Act with respect to authorities delegated to the Under Secretary for Natural Resources and Environment.

* * * * *

(xx) Administer the Healthy Forests Reserve Program authorized by sections 501–508, Title V of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6571–6578).

(xxi) Implement the information disclosure authorities of section 1619(b)(3)(A) of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8791(b)(3)(A)).

(xxii) In coordination with the Under Secretary for Farm and Foreign Agricultural Services, issue receipts under section 2501A(e) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279–1(e)).

(xxiii) Authorize employees of the Natural Resources Conservation Service to carry and use firearms for personal protection while conducting field work in remote locations in the performance of their official duties (7 U.S.C. 2274a).

* * * * *

■ 7. Amend § 2.21 as follows:

■ a. Remove and reserve paragraphs (a)(1)(xlv), (a)(1)(xlvii), (a)(1)(lxxxviii), (a)(1)(xciv), (a)(1)(clvii), (a)(1)(clviii), (a)(1)(clix), (a)(1)(clxi), and (a)(1)(clxxvii);

■ b. Revise paragraphs (a)(1)(xx), (a)(1)(xliv), (a)(1)(cxxi), (a)(1)(cxli), (a)(1)(clii), (a)(1)(clvi), (a)(1)(clxxi), (a)(8)(xiv), and (a)(8)(xv); and

■ c. Add new paragraphs (a)(1)(clxxxiii), (a)(1)(clxxxiv), (a)(1)(clxxxv), (a)(1)(clxxxvi), (a)(1)(clxxxvii), (a)(1)(clxxxviii), (a)(1)(clxxxix), (a)(1)(cxc), (a)(1)(cxci), (a)(1)(cxcii), (a)(1)(cxciii), (a)(1)(cxciv), (a)(1)(cxcv), (a)(1)(cxcvi), (a)(1)(cxcvii), (a)(1)(cxcviii), (a)(1)(cxcix), (a)(1)(cc), (a)(1)(cci), (a)(1)(ccii), (a)(1)(cciii), (a)(1)(cciv), and (a)(8)(xvii); to read as follows:

§ 2.21 Under Secretary for Research, Education, and Economics.

(a) * * *

(1) * * *

(xx) Administer the Agriculture and Food Research Initiative for competitive grants for fundamental and applied research, extension, and education to address food and agricultural sciences; administer a program of making special

grants for research, extension, or education activities (7 U.S.C. 450i(b), (c)).

* * * * *

(xliv) Promote and strengthen higher education in the food and agricultural sciences; administer grants to colleges and universities; maintain a national food and agricultural education information system; conduct programs regarding the evaluation of teaching programs and continuing education; administer the National Food and Agricultural Sciences Teaching, Extension, and Research Awards Program to recognize and promote excellence in teaching, extension, and research in the food and agricultural sciences; administer programs relating to secondary education and 2-year postsecondary education, including grants to public secondary schools, institutions of higher education that award an associate's degree, other institutions of higher education, and nonprofit organizations; and report to Congress on the distribution of funds to carry out such teaching programs (7 U.S.C. 3152).

(xlv) [Reserved]

* * * * *

(xlvii) [Reserved]

* * * * *

(lxxxviii) [Reserved]

* * * * *

(xciv) [Reserved]

* * * * *

(cxxi) Administer a Cooperative Agricultural Extension Program related to agriculture, uses of solar energy with respect to agriculture, home economics, and rural energy in the District of Columbia (D.C. Code 38–1202.09).

* * * * *

(cxli) Implement and administer the Community Food Projects Program, Innovative Programs for Addressing Common Community Problems, and the Healthy Urban Food Enterprise Center pursuant to the provisions of section 25 of the Food and Nutrition Act of 2008 (7 U.S.C. 2034).

* * * * *

(clii) Solicit and consider input and recommendations from persons who conduct or use agricultural research, extension, or education and, after consultation with appropriate subcabinet officials, establish priorities for agricultural research, extension, and education activities conducted or funded by the Department; promulgate regulations concerning implementation of a process for obtaining stakeholder input at 1862, 1890, and 1994 Institutions and Hispanic-serving agricultural colleges and universities; and ensure that federally supported and conducted agricultural research, extension, and education activities are accomplished in accord with identified management principles (7 U.S.C. 7612).

* * * * *

(clvi) Require a procedure to be established by each 1862, 1890, and 1994 Institution and Hispanic-serving agricultural college and university, for merit review of each agricultural research and extension activity funded and review of the activity in accordance with the procedure (7 U.S.C. 7613(e)).

(clvii)–(clix) [Reserved]

* * * * *

(clxi) [Reserved]

* * * * *

(clxxi) Take a census of agriculture in 1998 and every fifth year thereafter pursuant to the Census of Agriculture Act of 1997, Public Law 105–113 (7 U.S.C. 2204g); ensure that the census of agriculture documents the number, location, and economic contributions of socially disadvantaged farmers or ranchers in agricultural production (7 U.S.C. 2279(h)).

* * * * *

(clxxvii) [Reserved]

* * * * *

(clxxxiii) Administer grants to assist the land-grant university in the District of Columbia to acquire, alter, or repair facilities or relevant equipment necessary for conducting agricultural research (7 U.S.C. 3222b–1).

(clxxxiv) Administer grants to assist the land-grant institutions in insular areas to acquire, alter, or repair facilities or relevant equipment necessary for conducting agricultural research (7 U.S.C. 3222b–2).

(clxxxv) Enter into agreements necessary to administer an Hispanic-Serving Agricultural Colleges and Universities Fund; enter into agreements necessary to administer a program of making annual payments to Hispanic-serving agricultural colleges and universities; administer an institutional capacity-building grants program for Hispanic-serving agricultural colleges and universities; administer a competitive grants program to fund fundamental and applied research at Hispanic-serving agricultural colleges and universities (7 U.S.C. 3243).

(clxxxvi) Administer the New Era Rural Technology Program to make grants for technology development, applied research, and training to aid in the development of an agriculture-based renewable energy workforce (7 U.S.C. 3319e).

(clxxxvii) Administer a competitive grants program to assist NLGCA Institutions in maintaining and expanding capacity to conduct education, research, and outreach activities relating to agriculture, renewable resources, and other similar disciplines (7 U.S.C. 3319i).

(clxxxviii) Administer the Agricultural Bioenergy Feedstock and Energy Efficiency Research and Extension Initiative to enhance the production of biomass energy crops and the energy efficiency of agricultural operations (7 U.S.C. 5925e).

(clxxxix) Administer a competitive research and extension grants program to improve the farm management knowledge and skills of agricultural producers and establish and maintain a national, publicly available farm financial management database to support improved farm management (7 U.S.C. 5925f).

(cxc) Administer the Specialty Crop Research Initiative (7 U.S.C. 7632).

(cxci) Exchange, sell, or otherwise dispose of animals, animal products, plants, and plant products, and use the sale or other proceeds to acquire such items or to offset costs related to the maintenance, care, or feeding of such items (7 U.S.C. 2241a).

(cxcii) Establish and administer a pilot program at the Beltsville Agricultural Research Center and National Agricultural Library to lease nonexcess property (7 U.S.C. 3125a note).

(cxciii) Lease land at the Grazinglands Research Laboratory at El Reno, Oklahoma, pursuant to section 7503 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246).

(cxciv) Administer a competitive research and education grants program relating to antibiotics and antibiotic-resistant bacteria (7 U.S.C. 3202).

(cxcv) Administer a competitive grants program to establish and maintain a Farm and Ranch Stress Assistance Network (7 U.S.C. 5936).

(cxcvi) Administer a competitive grants program relating to seed distribution (7 U.S.C. 415–1).

(cxcvii) Administer a natural products research program (7 U.S.C. 5937).

(cxcviii) Administer a Sun Grants Program (7 U.S.C. 8114).

(cxcix) Administer a competitive grants program relating to agricultural and rural transportation research and education (7 U.S.C. 5938).

(cc) Administer a program of providing competitive grants to Hispanic-serving institutions for the purpose of establishing an undergraduate scholarship program to assist in the recruitment, retention, and training of Hispanics and other under-

represented groups in forestry and related fields (16 U.S.C. 1649a).

(cci) Administer a Biomass Research and Development Program (7 U.S.C. 8108) in consultation with other mission areas of the Department as appropriate.

(ccii) Administer a competitive grants program to encourage basic and applied research and the development of qualified agricultural countermeasures (7 U.S.C. 8921).

(cciii) Administer a competitive grants program to promote the development of teaching programs in agriculture, veterinary medicine, and disciplines closely allied to the food and agriculture system to increase the number of trained individuals with an expertise in agricultural biosecurity (7 U.S.C. 8922).

(cciv) Administer a program of providing grants to Alaska Native serving institutions and Native Hawaiian serving institutions for the purpose of promoting and strengthening the ability of those institutions to carry out education, applied research, and related community development programs (7 U.S.C. 3156).

* * * * *

(8) * * *

(xiv) Conduct surveys and analysis and publish reports relating to organic production, handling, distribution, retail, and trend studies (including consumer purchasing patterns); develop surveys and report statistical analysis on organically produced agricultural products (7 U.S.C. 5925c).

(xv) Assist the Under Secretary for Marketing and Regulatory Programs with respect to Dairy Product Mandatory Reporting (7 U.S.C. 1637–1637b).

* * * * *

(xvii) Ensure that studies carried out by the Economic Research Service document the number, location, and economic contributions of socially disadvantaged farmers or ranchers in agricultural production (7 U.S.C. 2279(h)).

■ 8. Amend § 2.22 to add new paragraphs (a)(1)(viii)(HHH), (a)(1)(viii)(III), (a)(1)(viii)(JJJ), (a)(1)(viii)(KKK), (a)(1)(viii)(LLL), (a)(1)(viii)(MMM), (a)(1)(viii)(NNN), (a)(1)(viii)(OOO), (a)(1)(viii)(PPP), (a)(1)(xi), (a)(1)(xii), (a)(2)(xxxvi), (a)(2)(xxxvii), (a)(2)(xxxviii), (a)(2)(xxxix), (a)(2)(xl), (a)(3)(vi), and (b)(2)(iv), to read as follows:

§ 2.22 Under Secretary for Marketing and Regulatory Programs.

(a) * * *

(1) * * *

(viii) * * *

(HHH) Section 7407 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 5925c), with respect to the collection and distribution of comprehensive reporting of prices relating to organically produced agricultural products.

(III) Livestock Mandatory Reporting (7 U.S.C. 1635–1636i).

(JJJ) Section 375 of the Consolidated Farm and Rural Development Act (7 U.S.C. 2008j).

(KKK) Section 101 of the Specialty Crops Competitiveness Act of 2004 (7 U.S.C. 1621 note).

(LLL) Section 1502 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8772).

(MMM) Section 1509 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246).

(NNN) Section 10105 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 7655a).

(OOO) Section 10107 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 1622b).

(PPP) Section 10403 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 1622c).

* * * * *

(xi) Administer a program for Dairy Product Mandatory Reporting (7 U.S.C. 1637–1637b), with the assistance of the Under Secretary for Research, Education, and Economics.

(xii) Assist the Under Secretary for Farm and Foreign Agricultural Services with implementing section 3205 of the Food, Conservation, and Energy Act of 2008 (22 U.S.C. 7112 note) regarding the Consultative Group to Eliminate the Use of Child Labor and Forced Labor in Imported Agricultural Products.

(2) * * *

(xxxvi) Implement the information disclosure authorities of section 1619(b)(3)(A) of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8791(b)(3)(A)).

(xxxvii) Section 7524 of the Food, Conservation, and Energy Act of 2008 (21 U.S.C. 113a note), except for the suspension, revocation, or other impairment of a permit issued under that section.

(xxxviii) Section 10202 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 7761).

(xxxix) Section 10204 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 7701 note).

(xl) Section 14216 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246).

(3) * * *

(vi) Administer responsibilities and functions assigned to the Secretary in section 11006 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 228 note), with respect to the Packers and Stockyards Act, 1921.

* * * * *

(b) * * *

(2) * * *

(iv) The suspension, revocation, or other impairment of a permit issued under section 7524 of the Food, Conservation, and Energy Act of 2008 (21 U.S.C. 113a note).

■ 9. Amend § 2.24 to add new paragraphs (a)(7)(xix) and (a)(7)(xx), to read as follows:

§ 2.24 Assistant Secretary for Administration.

(a) * * *

(7) * * *

(xix) Make available to organizations excess or surplus computers or other technical equipment of the Department for the purpose of distribution to cities, towns, or local government entities in rural areas (7 U.S.C. 2206b).

(xx) In coordination with the Chief Financial Officer, implement the debarment authorities in section 14211 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 2209j), in connection with procurement activities.

* * * * *

Subpart D—Delegations of Authority to Other General Officers and Agency Heads

■ 10. Amend § 2.28 to add new paragraphs (b)(18) and (b)(19), to read as follows:

* * * * *

§ 2.28 Chief Financial Officer.

* * * * *

(b) * * *

(18) Administer the debarment authorities in section 14211 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 2209j), in coordination with the Assistant Secretary for Administration.

(19) Prepare and submit to Congress reports on conferences sponsored or held by the Department or attended by employees of the Department (7 U.S.C. 2255b).

■ 11. Amend § 2.29 as follows:

■ a. Revise paragraphs (a)(11)(vii) and (a)(11)(viii); and

■ b. Add a new paragraph (a)(11)(ix), to read as follows:

§ 2.29 Chief Economist.

(a) * * *

(11) * * *

(vii) Administer a competitive biodiesel fuel education grants program (7 U.S.C. 8106).

(viii) Implement a memorandum of understanding with the Secretary of

Energy regarding cooperation in the application of hydrogen and fuel cell technology programs for rural communities and agricultural producers.

(ix) Conduct a study on biofuels infrastructure under section 9002 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246).

■ 12. Revise § 2.32 to read as follows:

§ 2.32 Director, Office of Homeland Security.

(a) The following delegations of authority are made by the Secretary to the Director, Office of Homeland Security:

(1) Administer the Department Emergency Preparedness Program. This includes the:

(i) Coordination of the delegations and assignments made to the Department under the Defense Production Act of 1950, 50 U.S.C. App. 2061, *et seq.*, and the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121, *et seq.*, and by Executive Orders 12148, ''Federal Emergency Management,'' 12919, ''National Defense Industrial Resources Preparedness,'' 12656, ''Assignment of Emergency Preparedness Responsibilities,'' or any successor to these Executive Orders, to ensure that the Department has sufficient capabilities to respond to any occurrence, including natural disaster, military attack, technological emergency, or any other emergency.

(ii) Activation of the USDA incident management system in accordance with the National Response Framework and the National Incident Management System in the event of a major incident.

(iii) Establishment and oversight of a Department-wide Incident Command System training program.

(iv) Development and promulgation of policies for the Department regarding emergency preparedness and national security, including matters relating to anti-terrorism and agriculture-related emergency preparedness planning both national and international, and guidance to USDA State and County Emergency Boards.

(v) Representation and liaison for the Department in contacts with other Federal entities and organizations, including the Department of Homeland Security, Federal Emergency Management Agency, National Security Council, Office of Management and Budget, and Department of Defense concerning matters of a national security, natural disaster, other emergencies, and agriculture-related international civil emergency planning and related activities, and as the primary USDA representative for anti-terrorism activities.

(vi) Oversight and coordination of the Department's Emergency Support Functions as outlined in the National Response Framework.

(vii) Development and submission of a coordinated budget request for homeland security.

(viii) Provide for the personal security for the Secretary and the Deputy Secretary.

(2) Serve as the USDA focal point to identify, receive, disseminate and store USDA intelligence requirements and convey information to the intelligence community.

(3) Serve as the primary point of contact for GAO and OIG audits of USDA homeland security activities.

(4) Coordinate interaction between Department agencies and private sector businesses and industries in emergency planning and public education under Department authorities delegated or assigned under the National Response Framework, Defense Production Act of 1950, 50 U.S.C. App. 2061, *et seq.*, and Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121, *et seq.*

(5) Serve as the document classification authority for the Department.

(6) Provide staff support to the USDA Homeland Security Council.

(7) Establish and administer a communication center within the Department to collect and disseminate information and prepare for an agricultural disease emergency, agroterrorist act, or other threat to agricultural biosecurity, and coordinate such activities among agencies and offices within the Department (7 U.S.C. 8912).

(8) Administer a competitive grant program to support the development and expansion of advanced training programs in agricultural biosecurity planning and response for food science professionals and veterinarians; administer a competitive grant and low-interest loan assistance program to assist States in assessing agricultural disease response capability (7 U.S.C. 8913).

(b) [Reserved]

Subpart F—Delegations of Authority by the Under Secretary for Farm and Foreign Agricultural Services

■ 13. Amend § 2.42 as follows:

■ a. Revise paragraphs (a)(28)(vii), (a)(37), and (a)(45);

■ b. Remove and reserve paragraphs (a)(19), (a)(24), (a)(25), (a)(26), (a)(28)(i), and (a)(44); and

■ c. Add new paragraphs (a)(28)(xii), (a)(51), (a)(52), (a)(53), (a)(54), (a)(55), (a)(56), and (a)(57), to read as follows:

§ 2.42 Administrator, Farm Service Agency.

(a) * * *

(19) [Reserved]

* * * * *

(24)–(26) [Reserved]

* * * * *

(28) * * *

(i) [Reserved]

* * * * *

(vii) Section 310B (7 U.S.C. 1932), regarding various Rural Development programs;

* * * * *

(xii) Section 375 (7 U.S.C. 2008j), relating to the National Sheep Industry Improvement Center.

* * * * *

(37) Administer loans to Indian tribes, tribal corporations, and purchasers of highly fractionated land (25 U.S.C. 488–492).

* * * * *

(44) [Reserved]

(45) Administer all programs of the Commodity Credit Corporation that provide assistance with respect to the production of agricultural commodities, including disaster assistance and the domestic marketing of such commodities, except as may otherwise be reserved by the Under Secretary for Farm and Foreign Agricultural Services, and similar programs (including commodity quality development programs) consigned by statute to the Secretary of Agriculture unless otherwise delegated.

* * * * *

(51) Administer the feedstock flexibility program for bioenergy producers under section 9010 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8110) and the biomass crop assistance program under section 9011 of that Act (7 U.S.C. 8111).

(52) Administer those portions of the Grassland Reserve Program under sections 1238N–1238Q of the Food Security Act of 1985 (16 U.S.C. 3838n–3838q) that are or become the responsibility of the Under Secretary for Farm and Foreign Agricultural Services.

(53) Administer the provisions of section 1240R of the Food Security Act of 1985 (16 U.S.C. 3839bb–5) regarding voluntary public access and habitat incentives.

(54) Implement the authority in section 1241 of the Food Security Act of 1985 (16 U.S.C. 3841) to accept and use voluntary contributions of non-Federal funds in support of natural resources conservation programs under subtitle D

of title XII of that Act with respect to authorities delegated to the Administrator, Farm Service Agency.

(55) Coordinate Department policy for, and issue, receipts under section 2501A(e) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279–1(e)).

(56) Administer the following provisions of the Food, Conservation, and Energy Act of 2008, Public Law 110–246:

(i) Section 1605 relating to quality incentive payments for covered oilseed producers.

(ii) Section 1609 relating to the tracking of benefits.

(iii) Section 1612 relating to the hard white wheat development program.

(iv) Section 1613 relating to the durum wheat quality program.

(v) Section 1621 relating to direct reimbursement payments to geographically disadvantaged farmers or ranchers.

(vi) Section 10404 relating to market loss assistance for asparagus producers.

(vii) Sections 12033 and 15101 relating to supplemental agricultural disaster assistance.

(viii) Section 14212 relating to the closure or relocation of county or field offices of the Farm Service Agency.

(ix) Section 15353(a) relating to information reporting for Commodity Credit Corporation transactions.

(57) Implement the information disclosure authorities of section 1619(b)(3)(A) of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8791(b)(3)(A)).

* * * * *

■ 14. Amend § 2.43 as follows:

■ a. Revise paragraphs (a)(5), (a)(8), (a)(18), (a)(24), and (a)(44);

■ b. Remove and reserve paragraph (a)(21); and

■ c. Add new paragraphs (a)(46), (a)(47), (a)(48), and (a)(49), to read as follows:

§ 2.43 Administrator, Foreign Agricultural Service.

(a) * * *

(5) Exercise the Department's functions with respect to the International Coffee Agreement or any such future agreement.

* * * * *

(8) Exercise the Department's responsibilities in connection with international negotiations of the Grains Trade Convention and in the administration of such Convention.

* * * * *

(18) Formulate policies and implement programs to promote the export of dairy products, as authorized under section 153 of the Food Security Act of 1985, as amended (15 U.S.C. 713a–14).

* * * * *

(21) [Reserved]

* * * * *

(24) Plan and carry out programs and activities under the foreign market promotion authority of: The Wheat Research and Promotion Act (7 U.S.C. 1292 note); the Cotton Research and Promotion Act (7 U.S.C. 2101–2118); the Potato Research and Promotion Act (7 U.S.C. 2611–2627); the Egg Research and Consumer Information Act of 1974 (7 U.S.C. 2701–2718); the Beef Research and Information Act, as amended (7 U.S.C. 2901–2911); the Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3401–3417); the Floral Research and Consumer Information Act of 1981 (7 U.S.C. 4301–4319); subtitle B of title I of the Dairy and Tobacco Adjustment Act of 1983 (7 U.S.C. 4501–4514); the Honey Research, Promotion, and Consumer Information Act of 1984, as amended (7 U.S.C. 4601–4613); the Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819); the Watermelon Research and Promotion Act, as amended (7 U.S.C. 4901–4916); the Pecan Promotion and Research Act of 1990 (7 U.S.C. 6001–6013); the Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6101–6112); the Lime Research, Promotion, and Consumer Information Act of 1990 (7 U.S.C. 6201–6212); the Soybean Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6301–6311); the Fluid Milk Promotion Act of 1990 (7 U.S.C. 6401–6417); the Fresh Cut Flowers and Fresh Cut Greens Promotion and Consumer Information Act (7 U.S.C. 6801–6814); the Sheep Promotion, Research, and Information Act of 1994 (7 U.S.C. 7101–7111); the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411–7425); the Canola and Rapeseed Research, Promotion, and Consumer Information Act (7 U.S.C. 7441–7452); the National Kiwifruit Research, Promotion, and Consumer Information Act (7 U.S.C. 7461–7473); and, the Popcorn Promotion, Research, and Consumer Information Act (7 U.S.C. 7481–7491). This authority includes determining the programs and activities to be undertaken and assuring that they are coordinated with the overall departmental programs to develop foreign markets for U.S. agricultural products.

* * * * *

(44) Implement section 3107 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 1736o-1).

* * * * *

(46) Implement section 3205 of the Food, Conservation, and Energy Act of 2008 (22 U.S.C. 7112 note) regarding the Consultative Group to Eliminate the Use of Child Labor and Forced Labor in Imported Agricultural Products, in consultation with the Administrator of the Agricultural Marketing Service.

(47) Implement section 3206 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 1726c) regarding local and regional food aid procurement projects.

(48) Administer the Borlaug International Agricultural Science and Technology Fellowship Program (7 U.S.C. 3319j).

(49) Administer the grant program for agricultural biotechnology research and development for developing countries (7 U.S.C. 7631).

* * * * *

■ 15. Amend § 2.44 to add a new paragraph (a)(4), to read as follows:

§ 2.44 Administrator, Risk Management Agency and Manager, Federal Crop Insurance Corporation.

(a) * * *

(4) Conduct a study and issue a report on the efficacy and accuracy of the application of pack factors regarding the measurement of farm-stored production for purposes of providing policies or plans of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*).

* * * * *

Subpart G—Delegations of Authority by the Under Secretary for Rural Development

■ 16. Amend § 2.47 as follows:

■ a. Remove and reserve paragraph (a)(4)(xi); and

■ b. Add a new paragraph (a)(16), to read as follows:

§ 2.47 Administrator, Rural Utilities Service.

(a) * * *

(4) * * *

(xi) [Reserved]

* * * * *

(16) In coordination with the Administrator, Farm Service Agency, issue receipts under section 2501A(e) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279–1(e))

* * * * *

■ 17. Amend § 2.48 as follows:

■ a. Redesignate paragraph (a)(2)(viii) as (a)(2)(xiii);

■ b. Revise paragraphs (a)(2)(iv) and (a)(30);
■ c. Remove and reserve paragraph (a)(2)(ii); and
■ d. Add new paragraphs (a)(2)(viii), (a)(2)(ix), (a)(2)(x), (a)(2)(xi), (a)(2)(xii), (a)(2)(xiv), (a)(31), and (a)(32), to read as follows:

§ 2.48 Administrator, Rural Business-Cooperative Service.

(a) * * *
(2) * * *
(ii) [Reserved]
* * * * *
(iv) Section 310B (7 U.S.C. 1932), relating to various Rural Development programs, except for subsection (b) of that section.
* * * * *
(viii) Section 379E (7 U.S.C. 2008s) relating to the Rural Microentrepreneur Assistance Program.
(ix) Section 379F (7 U.S.C. 2000t) relating to the Expansion of Employment Opportunities for Individuals with Disabilities in Rural Areas Program.
(x) Section 379G (7 U.S.C. 2008u) relating to Health Care Services.
(xi) Section 382A *et seq.* (7 U.S.C. 2009aa *et seq.*) relating to the Delta Regional Authority.
(xii) Section 383A *et seq.* (7 U.S.C. 2009bb *et seq.*) relating to the Northern Great Plains Regional Authority.
* * * * *
(xiv) Section 385A *et seq.* (7 U.S.C. 2009dd *et seq.*) relating to the Rural Collaborative Investment Program.
* * * * *
(30) Administer the renewable energy programs authorized in sections 9003, 9004, 9005, 9007, and 9009 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8103, 8104, 8105, 8107, and 8109).
(31) Implement the information disclosure authorities of section 1619(b)(3)(A) of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8791(b)(3)(A)).
(32) In coordination with the Administrator, Farm Service Agency, issue receipts under section 2501A(e) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279–1(e)).
* * * * *

■ 18. Amend § 2.49 to add new paragraphs (a)(12) and (a)(13), to read as follows:

§ 2.49 Administrator, Rural Housing Service.

(a) * * *
(12) Implement the information disclosure authorities of section 1619(b)(3)(A) of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8791(b)(3)(A)).
(13) In coordination with the Administrator, Farm Service Agency, issue receipts under section 2501A(e) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279–1(e)).
* * * * *

Subpart H—Delegations of Authority by the Under Secretary for Food Safety

■ 19. Amend § 2.53 to revise paragraphs (a)(2)(i) and (a)(2)(ii), to read as follows:

§ 2.53 Administrator, Food Safety and Inspection Service.

(a) * * *
(2) * * *
(i) Poultry Products Inspection Act, as amended (21 U.S.C. 451–470, 472);
(ii) Federal Meat Inspection Act, as amended, and related legislation, excluding so much of section 18 as pertains to issuance of certificates of condition of live animals intended and offered for export (21 U.S.C. 601–613, 615–624, 641–645, 661, 671–680, 683, 691–692, 694–695);
* * * * *

Subpart I—Delegations of Authority by the Under Secretary for Food, Nutrition, and Consumer Services

■ 20. Amend § 2.57 as follows:
■ a. Revise paragraphs (a)(1)(i), (a)(1)(ii), (a)(3), (a)(4), and (a)(6);
■ b. Remove and reserve paragraph (a)(2)(vi); and
■ c. Add new paragraphs (a)(1)(vii), (a)(1)(viii), (a)(1)(ix), (a)(1)(x), (a)(1)(xi), (a)(1)(xii), and (a)(1)(xiii), to read as follows:

§ 2.57 Administrator, Food and Nutrition Service.

(a) * * *
(1) * * *
(i) The Food and Nutrition Act of 2008, as amended (7 U.S.C. 2011–2036), except for section 25, regarding assistance for community food projects.
(ii) Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1751–1769i), except procurement of agricultural commodities and other foods under section 6 thereof.
* * * * *
(vii) Section 4403 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 3171 note).
(viii) Section 4404 of the Farm Security and Rural Investment Act of 2002 (2 U.S.C. 1161).
(ix) Section 4142 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246).
(x) Section 4301 of the Food, Conservation, and Energy Act of 2008 (42 U.S.C. 1758a).
(xi) Section 4305 of the Food, Conservation, and Energy Act of 2008 (42 U.S.C. 1755a).
(xii) Section 4307 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246). (xiii) Section 4405 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 7517).
(2) * * *
(vi) [Reserved]
* * * * *
(3) Administer those functions relating to the distribution of supplemental nutrition assistance program benefits under section 412 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5179).
(4) In connection with the functions assigned in paragraphs (a)(1), (a)(2), and (a)(3) of this section, relating to the distribution and donation of agricultural commodities and products thereof and supplemental nutrition assistance program benefits to eligible recipients, authority to determine the requirements for such agricultural commodities and products thereof and supplemental nutrition assistance program benefits to be so distributed.
* * * * *
(6) Authorize defense emergency supplemental nutrition assistance program benefits.
* * * * *

Subpart J—Delegations of Authority by the Under Secretary for Natural Resources and Environment

■ 21. Amend § 2.60 by adding new paragraphs (a)(50), (a)(51), (a)(52), and (a)(53), to read as follows:

§ 2.60 Chief, Forest Service.

(a) * * *
(50) Implement the information disclosure authorities of section 1619(b)(3)(A) of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8791(b)(3)(A)).
(51) Administer a program, through the Deputy Chief of State and Private Forestry, for providing loans to eligible units of local government to finance the purchase of equipment to monitor, remove, dispose of, and replace infested trees located under their jurisdiction and within the borders of quarantined areas (16 U.S.C. 2104a).
(52) Conduct a competitive research and development program to encourage the use of forest biomass for energy (7 U.S.C. 8112).
(53) Administer the community wood energy program providing grants for

community wood energy plans and energy systems (7 U.S.C. 8113).

* * * * *

■ 22. Amend § 2.61 as follows:
■ a. Revise paragraphs (a)(4)(vii), (a)(13)(iv), and (a)(13)(xiv); and
■ b. Add new paragraphs (a)(13)(xv), (a)(13)(xvi), (a)(13)(xvii), (a)(13)(xviii), (a)(19), (a)(26), (a)(27), and (a)(28), to read as follows:

§ 2.61 Chief, Natural Resources Conservation Service.

(a) * * *

(4) * * *

(vii) The Emergency Conservation Program and the Emergency Watershed Protection Program under sections 401–405 of the Agricultural Credit Act of 1978, 16 U.S.C. 2201–2205, except for the provisions of sections 401 and 402, 16 U.S.C. 2201–2202, as administered by the Farm Service Agency.

* * * * *

(13) * * *

(iv) The Conservation Security Program authorized by sections 1238–1238C (16 U.S.C. 3838–3838c) and the Conservation Stewardship Program authorized by sections 1238D–1238G (16 U.S.C. 3838d–3838g).

* * * * *

(xiv) The incentives for certain farmers and ranchers and Indian tribes and the protection of certain proprietary information related to natural resources conservation programs as provided by section 1244 of the Act (16 U.S.C. 3844), except for responsibilities assigned to the Administrator, Farm Service Agency.

(xv) The Agriculture Conservation Experienced Services Program authorized by section 1252 of the Act (16 U.S.C. 3851).

(xvi) The authority under sections 1261–1262 of the Act (16 U.S.C. 3861–3862) to establish and utilize State Technical Committees.

(xvii) Those portions of the Grassland Reserve Program under sections 1238N–1238Q of the Act (16 U.S.C. 3838n–3838q) that are or become the responsibility of the Under Secretary for Natural Resources and Environment.

(xviii) The authority in section 1241 of the Act (16 U.S.C. 3841) to accept and use voluntary contributions of non-Federal funds in support of natural resources conservation programs under subtitle D of title XII of the Act with respect to authorities delegated to the Chief, Natural Resources Conservation Service.

* * * * *

(19) Administer the Healthy Forests Reserve Program authorized by sections 501–508, Title V of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6571–6578).

* * * * *

(26) Implement the information disclosure authorities of section 1619(b)(3)(A) of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8791(b)(3)(A)).

(27) In coordination with the Administrator, Farm Service Agency, issue receipts under section 2501A(e) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279–1(e)).

(28) Authorize employees of the Natural Resources Conservation Service to carry and use firearms for personal protection while conducting field work in remote locations in the performance of their official duties (7 U.S.C. 2274a).

* * * * *

Subpart K—Delegations of Authority by the Under Secretary for Research, Education, and Economics

■ 23. Amend § 2.65 as follows:
■ a. Remove and reserve paragraph (a)(46);
■ b. Revise paragraph (a)(12); and
■ c. Add new paragraphs (a)(108), (a)(109), (a)(110), (a)(111), and (a)(112), to read as follows:

§ 2.65 Administrator, Agricultural Research Service.

(a) * * *

(12) Conduct research under the IR–4 program (7 U.S.C. 450i(e)).

* * * * *

(46) [Reserved]

* * * * *

(108) Exchange, sell, or otherwise dispose of animals, animal products, plants, and plant products, and use the sale or other proceeds to acquire such items or to offset costs related to the maintenance, care, or feeding of such items (7 U.S.C. 2241a).

(109) Establish and administer a pilot program at the Beltsville Agricultural Research Center and National Agricultural Library to lease nonexcess property (7 U.S.C. 3125a note).

(110) Lease land at the Grazinglands Research Laboratory at El Reno, Oklahoma, pursuant to section 7503 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246).

(111) Administer a natural products research program (7 U.S.C. 5937).

(112) Provide staff support to the Under Secretary for Research, Education, and Economics related to the National Agricultural Research, Extension, Education, and Economics Advisory Board (7 U.S.C. 3123).

* * * * *

■ 24. Amend § 2.66 as follows:
■ a. Remove and reserve paragraphs (a)(14), (a)(15), (a)(38), (a)(46), (a)(111), (a)(124), (a)(125), (a)(126), and (a)(127);
■ b. Revise paragraphs (a)(7), (a)(8), (a)(13), (a)(62), (a)(102), (a)(120), and (a)(123); and
■ c. Add new paragraphs (a)(142), (a)(143), (a)(144), (a)(145), (a)(146), (a)(147), (a)(148), (a)(149), (a)(150), (a)(151), (a)(152), (a)(153), (a)(154), (a)(155), (a)(156), (a)(157), (a)(158), and (a)(159); to read as follows:

§ 2.66 Administrator, Cooperative State Research, Education, and Extension Service.

(a) * * *

(7) Administer the Agriculture and Food Research Initiative for competitive grants for fundamental and applied research, extension, and education to address food and agricultural sciences (7 U.S.C. 450i(b)).

(8) Administer a program of making special grants for research, extension, or education activities (7 U.S.C. 450i(c)).

* * * * *

(13) Promote and strengthen higher education in the food and agricultural sciences; administer grants to colleges and universities; maintain a national food and agricultural education information system; conduct programs regarding the evaluation of teaching programs and continuing education; administer the National Food and Agricultural Sciences Teaching, Extension, and Research Awards Program to recognize and promote excellence in teaching, extension, and research in the food and agricultural sciences; administer programs relating to secondary education and 2-year postsecondary education, including grants to public secondary schools, institutions of higher education that award an associate's degree, other institutions of higher education, and nonprofit organizations; and report to Congress on the distribution of funds to carry out such teaching programs (7 U.S.C. 3152).

(14)–(15) [Reserved]

* * * * *

(38) [Reserved]

* * * * *

(46) [Reserved]

* * * * *

(62) Administer a cooperative agricultural extension program relating to agriculture, uses of solar energy with respect to agriculture, home economics, and rural energy in the District of Columbia (DC Code 38–1202.09).

* * * * *

(102) Implement and administer the Community Food Projects Program, Innovative Programs for Addressing

Common Community Problems, and the Healthy Urban Food Enterprise Center pursuant to the provisions of section 25 of the Food and Nutrition Act of 2008 (7 U.S.C. 2034).

* * * * *

(111) [Reserved]

* * * * *

(120) Solicit and consider input and recommendations from persons who conduct or use agricultural research, extension, or education; ensure that Federally supported and conducted agricultural research, extension, and education activities are accomplished in accord with identified management principles; and promulgate regulations concerning implementation of a process for obtaining stakeholder input at 1862, 1890, and 1994 Institutions and Hispanic-serving agricultural colleges and universities (7 U.S.C. 7612(b), (c), and (d)).

* * * * *

(123) Require a procedure to be established by each 1862, 1890, and 1994 Institution and Hispanic-serving agricultural college and university, for merit review of each agricultural research and extension activity funded and review of the activity in accordance with the procedure (7 U.S.C. 7613(e)).

(124) [Removed and reserved]

* * * * *

(142) Administer grants to assist the land-grant university in the District of Columbia to acquire, alter, or repair facilities or relevant equipment necessary for conducting agricultural research (7 U.S.C. 3222b–1).

(143) Administer grants to assist the land-grant institutions in insular areas to acquire, alter, or repair facilities or relevant equipment necessary for conducting agricultural research (7 U.S.C. 3222b–2).

(144) Enter into agreements necessary to administer an Hispanic-Serving Agricultural Colleges and Universities Fund; enter into agreements necessary to administer a program of making annual payments to Hispanic-serving agricultural colleges and universities; administer an institutional capacity-building grants program for Hispanic-serving agricultural colleges and universities; administer a competitive grants program to fund fundamental and applied research at Hispanic-serving agricultural colleges and universities (7 U.S.C. 3243).

(145) Administer the New Era Rural Technology Program to make grants for technology development, applied research, and training to aid in the development of an agriculture-based renewable energy workforce (7 U.S.C. 3319e).

(146) Administer a competitive grants program to assist NLGCA Institutions in maintaining and expanding capacity to conduct education, research, and outreach activities relating to agriculture, renewable resources, and other similar disciplines (7 U.S.C. 3319i).

(147) Administer the Agricultural Bioenergy Feedstock and Energy Efficiency Research and Extension Initiative to enhance the production of biomass energy crops and the energy efficiency of agricultural operations (7 U.S.C. 5925e).

(148) Administer a competitive research and extension grants program to improve the farm management knowledge and skills of agricultural producers and establish and maintain a national, publicly available farm financial management database to support improved farm management (7 U.S.C. 5925f).

(149) Administer the Specialty Crop Research Initiative (7 U.S.C. 7632).

(150) Administer a competitive research and education grants program relating to antibiotics and antibiotic-resistant bacteria (7 U.S.C. 3202).

(151) Administer a competitive grants program to establish and maintain a Farm and Ranch Stress Assistance Network (7 U.S.C. 5936).

(152) Administer a competitive grants program relating to seed distribution (7 U.S.C. 415–1).

(153) Administer a Sun Grants Program (7 U.S.C. 8114).

(154) Administer a competitive grants program relating to agricultural and rural transportation research and education (7 U.S.C. 5938).

(155) Administer a program of providing competitive grants to Hispanic-serving institutions for the purpose of establishing an undergraduate scholarship program to assist in the recruitment, retention, and training of Hispanics and other under-represented groups in forestry and related fields (16 U.S.C. 1649a).

(156) Administer the Biomass Research and Development Initiative (7 U.S.C. 8108(e)).

(157) Administer a competitive grants program to encourage basic and applied research and the development of qualified agricultural countermeasures (7 U.S.C. 8921).

(158) Administer a competitive grants program to promote the development of teaching programs in agriculture, veterinary medicine, and disciplines closely allied to the food and agriculture system to increase the number of trained individuals with an expertise in agricultural biosecurity (7 U.S.C. 8922).

(159) Administer a program of providing grants to Alaska Native serving institutions and Native Hawaiian serving institutions for the purpose of promoting and strengthening the ability of those institutions to carry out education, applied research, and related community development programs (7 U.S.C. 3156).

* * * * *

■ 25. Amend § 2.67 to add new paragraphs (a)(19) and (a)(20), to read as follows:

§ 2.67 Administrator, Economic Research Service.

(a) * * *

(19) Conduct surveys and analysis and publish reports relating to organic production, handling, distribution, retail, and trend studies (including consumer purchasing patterns) (7 U.S.C. 5925c).

(20) Ensure that studies carried out by the Economic Research Service document the number, location, and economic contributions of socially disadvantaged farmers or ranchers in agricultural production (7 U.S.C. 2279(h)).

* * * * *

■ 26. Amend § 2.68 to revise paragraphs (a)(9), (a)(10), and (a)(11), to read as follows:

§ 2.68 Administrator, National Agricultural Statistics Service.

(a) * * *

(9) Take a census of agriculture in 1998 and every fifth year thereafter pursuant to the Census of Agriculture Act of 1997, Public Law 105–113 (7 U.S.C. 2204g); ensure that the census of agriculture documents the number, location, and economic contributions of socially disadvantaged farmers or ranchers in agricultural production (7 U.S.C. 2279(h)).

(10) Develop surveys and report statistical analysis on organically produced agricultural products (7 U.S.C. 5925c).

(11) Assist the Administrator, Agricultural Marketing Service with respect to Dairy Product Mandatory Reporting (7 U.S.C. 1637–1637b).

* * * * *

Subpart L—Delegations of Authority by the Chief Economist

■ 27. Amend § 2.73 as follows:

■ a. Revise paragraphs (a)(8) and (a)(9); and

■ b. Add a new paragraph (a)(10), to read as follows:

§ 2.73 Director, Office of Energy Policy and New Uses.

(a) * * *

(8) Administer a competitive biodiesel fuel education grants program (7 U.S.C. 8106).

(9) Implement a memorandum of understanding with the Secretary of Energy regarding cooperation in the application of hydrogen and fuel cell technology programs for rural communities and agricultural producers.

(10) Conduct a study on biofuels infrastructure under section 9002 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246).

* * * * *

Subpart N—Delegations of Authority by the Under Secretary for Marketing and Regulatory Programs

■ 28. Amend § 2.79 as follows:

■ a. Revise paragraph (a) introductory text; and

■ b. Add new paragraphs (a)(8)(lxviii), (a)(8)(lxix), (a)(8)(lxx), (a)(8)(lxxi), (a)(8)(lxxii), (a)(8)(lxxiii), (a)(8)(lxxiv), (a)(8)(lxxv), (a)(8)(lxxvi), (a)(13), and (a)(14), to read as follows:

§ 2.79 Administrator, Agricultural Marketing Service.

(a) *Delegations.* Pursuant to § 2.22(a)(1), (a)(5) and (a)(8), subject to reservations in § 2.22(b)(1), the following delegations of authority are made by the Under Secretary for Marketing and Regulatory Programs to the Administrator, Agricultural Marketing Service:

* * * * *

(8) * * *

(lxviii) Section 7407 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 5925c), with respect to the collection and distribution of comprehensive reporting of prices relating to organically produced agricultural products.

(lxix) Livestock Mandatory Reporting (7 U.S.C. 1635–1636i).

(lxx) Section 375 of the Consolidated Farm and Rural Development Act (7 U.S.C. 2008j).

(lxxi) Section 101 of the Specialty Crops Competitiveness Act of 2004 (7 U.S.C. 1621 note).

(lxxii) Section 1502 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8772).

(lxxiii) Section 1509 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246).

(lxxiv) Section 10105 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 7655a).

(lxxv) Section 10107 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 1622b).

(lxxvi) Section 10403 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 1622c).

* * * * *

(13) Administer a program for Dairy Product Mandatory Reporting (7 U.S.C. 1637–1637b), with the assistance of the Administrator, National Agricultural Statistics Service.

(14) Assist the Administrator of the Foreign Agricultural Service with implementing section 3205 of the Food, Conservation, and Energy Act of 2008 (22 U.S.C. 7112 note) regarding the Consultative Group to Eliminate the Use of Child Labor and Forced Labor in Imported Agricultural Products.

* * * * *

■ 29. Amend § 2.80 to add new paragraphs (a)(42), (a)(43), (a)(44), (a)(45), and (a)(46), to read as follows:

§ 2.80 Administrator, Animal and Plant Health Inspection Service.

(a) * * *

(42) Implement the information disclosure authorities of section 1619(b)(3)(A) of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8791(b)(3)(A)).

(43) Section 7524 of the Food, Conservation, and Energy Act of 2008 (21 U.S.C. 113a note), except for the suspension, revocation, or other impairment of a permit issued under that section.

(44) Section 10202 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 7761).

(45) Section 10204 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 7701 note).

(46) Section 14216 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246).

* * * * *

■ 30. Amend § 2.81 as follows:

■ a. Revise paragraph (a) introductory text;

■ b. Redesignate paragraphs (a)(6) and (a)(7) as paragraphs (a)(7) and (a)(8), respectively; and

■ c. Add a new paragraph (a)(6), to read as follows:

§ 2.81 Administrator, Grain Inspection, Packers and Stockyards Administration.

(a) *Delegations.* Pursuant to §§ 2.22(a)(3) and (a)(9), the following delegations of authority are made by the Under Secretary for Marketing and Regulatory Programs to the Administrator, Grain Inspection, Packers and Stockyards Administration:

* * * * *

(6) Administer responsibilities and functions assigned to the Secretary in section 11006 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 228 note), with respect to the Packers and Stockyards Act, 1921.

* * * * *

Subpart P—Delegations of Authority by the Assistant Secretary for Administration

■ 31. Amend § 2.93 to add new paragraphs (a)(19) and (a)(20), to read as follows:

§ 2.93 Director, Office of Procurement and Property Management.

(a) * * *

(19) Make available to organizations excess or surplus computers or other technical equipment of the Department for the purpose of distribution to cities, towns, or local government entities in rural areas (7 U.S.C. 2206b).

(20) In coordination with the Chief Financial Officer, implement the debarment authorities in section 14211 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 2209j), in connection with procurement activities.

* * * * *

Dated: January 9, 2009.

For Part 2, Subparts C and D:

Edward T. Schafer,

Secretary of Agriculture.

For Part 2, Subpart F:

Dated: January 12, 2009.

Floyd D. Gaibler,

Acting Under Secretary for Farm and Foreign Agricultural Services.

For Part 2, Subpart G:

Dated: January 12, 2009.

Douglas L. Faulkner,

Acting Under Secretary for Rural Development.

For Part 2, Subpart H:

Dated: January 12, 2009.

H. Scott Hurd,

Acting Under Secretary for Food Safety.

For Part 2, Subpart I:

Dated: January 12, 2009.

Nancy Montanez Johner,

Under Secretary for Food, Nutrition, and Consumer Services.

For Part 2, Subpart J:

Dated: January 13, 2009.

Mark E. Rey,

Under Secretary for Natural Resources and Environment.

For Part 2, Subpart K:

Dated: January 12, 2009.

Gale A. Buchanan,

Under Secretary for Research, Education, and Economics.

For Part 2, Subpart L:

Dated: January 9, 2009.

Joseph Glauber,

Chief Economist.

For Part 2, Subpart M:

Dated: January 12, 2009.

Charles R. Christopherson, Jr.,

Chief Financial Officer.

For Part 2, Subpart N:

Dated: January 9, 2009.

Bruce I. Knight,

Under Secretary for Marketing and Regulatory Programs.

For Part 2, Subpart P:

Dated: January 13, 2009.

Boyd K. Rutherford,

Assistant Secretary for Administration.

[FR Doc. E9–976 Filed 1–16–09; 8:45 am]

BILLING CODE 3410–90–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 925 and 944

[Doc. No. AMS–FV–06–0184; FV03–925–1 IFR]

Grapes Grown in a Designated Area of Southeastern California and Imported Table Grapes; Change in Regulatory Periods

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule revises the regulatory period when minimum grade, size, quality, and maturity requirements apply to southeastern California grapes under Marketing Order No. 925 (order), and to imported grapes under the table grape import regulation, from April 20 through August 15 of each year to April 10 through July 10 of each year. The order regulates the handling of grapes grown in a designated area of southeastern California and is administered locally by the California Desert Grape Administrative Committee (Committee). The change to the regulatory period beginning date is needed to ensure that imported table grapes marketed in competition with domestic grapes are subject to the grade, size, quality, and maturity requirements of the order. Section 8e of the Agricultural Marketing Agreement Act of 1937 (Act) provides authority for such change. The change to the regulatory period ending date is needed to realign the regulatory period with current shipping trends for grapes in the order's production area. This rule also clarifies the maturity (soluble solids) requirements for southeastern California and imported Flame Seedless variety grapes.

DATES: *Effective Date:* January 24, 2009; comments received by March 23, 2009, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.* All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Barry Broadbent, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Suite 385, Portland, Oregon 97204; Telephone: (503) 326–2724, Fax: (503) 326–7440, or E-mail: *Barry.Broadbent@usda.gov;* or Kurt Kimmel, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; Telephone: (559) 487–5901, Fax: (559) 487–5906, or E-mail: *Kurt.Kimmel@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Marketing Order No. 925 (7 CFR part 925), regulating the handling of grapes grown in a designated area of southeastern California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

This rule is also issued under section 8e of the Act, which provides that whenever certain specified commodities, including table grapes, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities. The table grape import regulation is specified in § 944.503 (7 CFR part 944.503).

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

Introduction

This rule revises the beginning and ending dates of the regulatory period when minimum grade, size, quality, and maturity requirements apply to southeastern California grapes under Marketing Order No. 925 (order), and to imported grapes under the table grape import regulation. The revised regulatory period also applies to pack and container requirements issued under the order. The previous regulatory period for both domestic and

imported grapes was April 20 through August 15 of each year. The Committee, which locally administers the order, unanimously recommended changing the date when the order's requirements expire to July 10 of each year, because few grapes are normally shipped after that date. Additionally, the Desert Grape Growers League of California (League) requested that USDA change the beginning date of the regulatory period for imported table grapes from April 20 to April 1. The League requested this change to ensure that grapes imported prior to the beginning of the regulatory period, but marketed during the regulatory period in competition with domestically produced grapes, meet the California grape order's grade, size, quality, and maturity requirements. After much consideration, USDA has determined that a beginning regulatory period date of April 10 will adequately address the League's concerns and is consistent with the provisions of the Act.

This rule also changes the ending date of the regulatory period for imported grapes to July 10, because few grapes are shipped after that date. The rule also clarifies the maturity (soluble solids) requirements for southeastern California and imported Flame Seedless variety grapes.

Section 925.52(a)(2) of the grape marketing order provides authority to limit the handling of any grade, size, quality, maturity, or pack of grapes differently for different varieties, or any combination of the foregoing during any period or periods. Section 925.55 provides for mandatory inspection for all grapes handled pursuant to § 925.52 of the order. Section 925.304 of the order's administrative rules and regulations prescribes the period during which grapes are handled pursuant to regulation.

Current requirements under the marketing order require grapes shipped during the regulatory period to be at least U.S. No. 1 Table, as set forth in the United States Standards for Grades of Table Grapes (European or Vinifera type) (7 CFR 51.880 through 51.914) (Standards), or meet the requirements of the U.S. No. 1 Institutional grade, except for the tolerance percentage for bunch size. The tolerance is 33 percent instead of 4 percent as is required to meet the U.S. No. 1 Institutional grade.

Grapes meeting the institutional quality requirements may be marked ''DGAC No. 1 Institutional'' but shall not be marked ''Institutional Pack.'' Grapes of the Flame Seedless and Perlette varieties are required to meet the ''other varieties'' standard for berry size (ten-sixteenths of an inch).

In addition, fresh shipments of grapes from the marketing order area are required to meet the minimum maturity requirements for table grapes as specified in the California Code of Regulations (3 CCR 1436.12). Grapes of the Flame Seedless variety shall be considered mature if the juice meets or exceeds 16.5 percent soluble solids, or contains not less than 15 percent soluble solids and the soluble solids are equal to or in excess of 20 parts to every part acid contained in the juice in accordance with applicable sampling and testing procedures specified in the California Code of Regulations.

The foregoing requirements also apply to imported table grapes, under the authority of section 8e of the Act, during the regulatory period established in § 944.503(a)(3). Prior to this action, the regulatory period for imported grapes began April 20 and extended through August 15 of each year, the same as the period delineated in the marketing order for domestic grapes. This rule revises the regulatory period established in the import regulations for imported grapes to April 10 through July 10 of each year. Again, this period mirrors the period set by the marketing order for domestic regulation.

The ending date of the regulatory period is being changed from August 15 to July 10 to more accurately reflect the production season of grapes produced within the marketing order production area. Recent production history shows the majority of the grapes produced in the production area are shipped prior to July 10. Regulating after that date is unjustified, both economically and logistically, for the small quantity of grapes that are produced.

Additionally, the beginning date of the regulatory period is being changed from April 20 to April 10 of each year to respond to the marketing and technology changes that have occurred within the imported grape industry. Improvements in cold storage technology have enabled large quantities of imported grapes to be imported prior to the beginning of the marketing order regulatory period, when the order requirements come into effect, and subsequently be held in cold storage for long periods of time. This can potentially allow the stored product to be marketed after the start of the regulatory period in competition with regulated, domestically produced grapes. Establishing an earlier beginning regulatory period date for the marketing order will ensure that imported table grapes marketed in competition with domestically produced table grapes meet the minimum marketing order quality standards.

Marketing order regulation is intended to protect the interests of both the producers and consumers of agricultural commodities covered under the Act. A USDA/ERS report discussed the purposes and benefits of quality and condition standards (USDA, Economic Research Service, Agricultural Economic Report Number 707, ''Federal Marketing Orders and Federal Research and Promotion Programs, Background for 1995 Farm Legislation'', by Steven A. Neff and Gerald E. Plato, May 1995). The basic rationale for such standards is that only satisfied customers are repeat customers. Thus, quality standards help ensure that consumers are presented a product that is of a consistent quality, helps create buyer confidence, and contributes to stable market conditions. When consumers purchase satisfactory quality grapes, they are likely to purchase grapes again, and inspection helps ensure a quality product. It is anticipated that this action will improve the orderly marketing of grapes and benefit producers and consumers of grapes.

Changing the Date When Domestic and Imported Table Grape Regulations Expire

Prior to this action, § 925.304 of the order specified a regulatory period of April 20 through August 15 when minimum grade, size, quality, and maturity requirements apply to grapes grown in southeastern California. A final rule published on March 20, 1987, (52 FR 8865) established the regulatory period to promote the orderly marketing of grapes.

The Committee met on November 14, 2002, and unanimously recommended modifying § 925.304 of the order to change the date when minimum grade, size, quality, and maturity requirements expire to July 10, rather than August 15. The Committee met again on December 12, 2002, and clarified that the proposed regulatory period should also apply to pack and container requirements under the order.

Since 1987, the amount of grapes handled in the production area after July 10 has generally decreased as older vineyards, which typically produce late season varieties, have been removed. For the years 2000–2008, almost 99 percent of the approximately 7.3 million 18-pound lugs of grapes grown annually in the production area were handled during the period April 20 to July 10. On average, just over one percent of these grapes were harvested and marketed during the period July 11 to August 15. The Committee believes that ending regulatory requirements on July 10 will benefit handlers and producers

by reducing the costs associated with mandatory inspection.

Under section 8e of the Act, minimum grade, size, quality, and maturity requirements for table grapes imported into the United States are established under Table Grape Import Regulation 4 (7 CFR 944.503) (import regulation). Section 944.503(a)(3) of the import regulation specifies the regulatory period when imported grapes are subject to minimum requirements. The change to the order's regulatory period expiration date requires a corresponding change to expiration date of the regulatory period for imported table grapes.

It is expected that the earlier end to the regulatory period for domestic and imported grapes will benefit handlers, producers, and importers, because the regulatory burden on these entities will be reduced.

Changing the Beginning of the Regulatory Period for Domestic and Imported Table Grapes

In January 2003, the League requested that USDA change the beginning date of the regulatory period for imported table grapes from April 20 to April 1, and provided information in support of that request. The League contended that, in prior years, grapes not subject to marketing order requirements were imported prior to the start of the regulatory period and were subsequently marketed during the regulatory period in competition with domestically produced grapes subject to the California grape order's grade, size, maturity, and quality requirements. The League further contended that there would be no adverse effect on the availability and prices of grapes if the beginning of the regulatory period for imports were changed to April 1.

After much consideration, including the League's proposal and comments received by USDA concerning the proposed change, USDA is establishing with this rule an April 10 beginning date of the regulatory period for imported grapes.

USDA is authorized by Section 608e(b)(1) of the Act to extend marketing order requirements for a period, not to exceed 35 days, during which the order requirements would be effective for an imported commodity during any year, if USDA determines that the additional period of time is necessary to effectuate the purposes of the Act and to ensure that imports marketed during the regulatory period meet the grade, size, quality, or maturity requirements of the marketing order applicable to domestic production. Further, section 608e(b)(2) of the Act provides that in making such a determination, USDA shall consider, through notice and comment procedures:

(A) To what extent, during the previous year, imports of a commodity that did not meet the requirements of a marketing order applicable to such commodity were marketed in the United States during the period that such marketing order requirements were in effect for available domestic commodities (or would have been marketed during such time if not for any additional period established by the Secretary);

(B) If the importation into the United States of such commodity did, or was likely to, avoid the grade, size, quality, or maturity standards of a seasonal marketing order applicable to such commodity produced in the United States; and

(C) The availability and price of commodities of the variety covered by the marketing order during any additional period the marketing order requirements are to be in effect.

In its request, the League presented arguments and data that support the claim that unregulated imported grapes have been and likely will continue to be in the market in competition with grapes subject to regulation, that the presence of such grapes may result in an avoidance of the marketing order requirements, and that expanding the marketing order regulatory period to ensure that imported and domestic grapes marketed during the regulatory period meet minimum marketing order quality standards will have minimal impact on the price and availability of grapes.

Current market mechanisms for imported grapes dictate that product is either immediately shipped directly to retail markets or diverted for holding in cold storage facilities. Improved cold storage technology allows importers to divert imported grapes from normal marketing channels for up to 60 days after their arrival at a U.S. port. The practice of importing grapes into the U.S. prior to the start date of the regulatory period, holding them in cold storage, and subsequently releasing them into the market after the regulatory period has begun may result in the avoidance of the marketing order regulation. Revising the start of the regulatory period to April 10 will reduce the likelihood that uninspected grapes that are imported prior to the start of regulation are marketed during the regulatory period.

Exporting countries export many high quality grapes to the U.S. prior to April 20. Those same countries have the capability of exporting grapes which will consistently meet the minimum requirements of the import regulation. There is no expectation that an earlier beginning date for regulation will cause a shortage of grapes in the market. An earlier beginning date will help to ensure that grapes being imported and marketed during the regulatory period meet minimum requirements prior to being allowed to be marketed in the U.S.

It is expected that uniform high quality product consistently in the market will encourage repeat purchases of imported and domestic grapes, which should benefit producers, handlers, importers, and consumers of grapes.

The U.S. Census Bureau indicates that on average for the years 2000–2008, 68 million 18-pound lugs of grapes were imported into the United States. The two main countries exporting to the United States were Chile, with average exports of 51 million 18-pound lugs (76 percent of the total), and Mexico, with 14 million 18-pound lugs (21 percent of the total). The remaining three percent came from various other countries.

Total grape imports for the February through April period in the years 2000–2008 averaged 44 million 18-pound lugs. Of this amount, 97 percent came from Chile and the remaining percentage came from various other countries.

Information from USDA's Market News Service (Market News) for 2000–2008 shows that the Port of Philadelphia (where historically the greatest percentage of Chilean table grapes enter the United States) received an average of 20 million 18-pound lugs of imported Chilean grapes during the February 1 to April 19 period, with approximately 30 percent (6 million) of these 20 million 18-pound lugs arriving between April 1 and April 19. Market News import statistics for the 2008 shipping season show that 18.82 million lugs of grapes were imported from Chile into Philadelphia from February 1 to April 19, with 28 percent (5.26 million) arriving between April 1 and April 19. After the April 20 start of the regulatory period, shipments dropped off dramatically and ended completely by June 4.

Fresh grapes imported prior to the beginning of the regulatory period are not subject to mandatory inspection but may be inspected on a voluntary basis. USDA's Fresh Products Branch, Fruit and Vegetable Programs (Fresh Products), is responsible for the performance of those voluntary inspections and compiles the inspection results data. Approximately 10 percent of the table grapes imported in during

the period April 1–19, 2008 were voluntarily inspected.

The grapes that are voluntarily inspected and fail to meet the Standards are not prohibited from entering into the channels of commerce in the U.S. By contrast, imported grapes that fail import quality requirements during the regulatory period must be reworked to meet the minimum requirements before being marketed in the U.S. Otherwise, failing product must be exported, destroyed, or utilized in processed products.

Under normal marketing conditions, imported grapes move directly through distribution channels into retail markets. However, when the supply of imported product exceeds demand, the imported grapes can be put into cold storage until the market is ready to absorb them. The length of time the grapes remain in storage likely has a negative effect the quality of the grapes.

Studies of table grape importer storage behavior performed by SURRES, a division of the Applied Technology Corporation, and the College of Business and Management, University of Maryland, indicate that importers use their storage capability extensively during the March-April time frames and that storage periods in the 30 to 60 day range are not uncommon at this time of year. Thus, the utilization of cold storage facilities in this manner creates a mechanism whereby grapes imported prior to the April 20 start of the regulatory period (product which is not subject to the marketing order requirements) may be held over in cold storage and subsequently enter the market after April 20, in competition with grapes that have passed inspection and met or exceeded the marketing order and import requirements.

Market News reports of commodity movement for the years 2000–2008 show that grape imports decrease dramatically soon after the start of the regulatory period. The amount of grapes imported during the regulatory period cannot account for the substantial quantity of imported grapes consistently present in the market in May and, sometimes, into June. Since few grapes are imported early in the regulatory period, many of the imported grapes available during the regulatory period have entered the country prior to the beginning of the regulatory period and have been held in cold storage and marketed during the regulatory period.

The Market News terminal market reports generally indicate that marginal quality and condition grapes command dramatically reduced prices in the market. In addition, those same reports indicate that grapes of better quality and condition tend to receive higher prices.

The April 10 regulatory period beginning date is being implemented to ensure that imported and domestic grapes marketed during the regulatory period meet the minimum marketing order quality standards. This action is expected to reduce the quantity of unregulated imported grapes marketed during the regulatory period and to provide consumers with higher quality grapes on a more consistent basis. Experience has shown that an improvement in product quality results in increased acceptance in the marketplace and translates into more frequent purchases. USDA expects domestic producers and handlers of southeastern California grapes, and exporters and importers of foreign-produced grapes to benefit from this action through stabilized marketing conditions and prices. The regulatory period change is anticipated to benefit the producers and marketers of both domestic and imported grapes, as well as grape consumers.

Clarification of Maturity Requirements

This action also revises § 944.503(a)(1)(ii) to clarify that imported Flame Seedless variety grapes shall be considered mature if the juice meets or exceeds 16.5 percent soluble solids, or contains not less than 15 percent soluble solids and the soluble solids are equal to or in excess of 20 parts to every part acid contained in the juice in accordance with applicable sampling and testing procedures specified in the California Code of Regulations (3 CCR 1436.3, 1436.5, 1463.6, 1436.7, 1436.12, and 1436.17). Previously, this subparagraph did not include the 16.5 percent option for meeting maturity requirements. In addition, obsolete language specifically regarding requirements in effect only in 1998 is removed from paragraph (a)(1). These same requirements are already in effect for grapes shipped from southeastern California under Marketing Order No. 925.

Initial Regulatory Flexibility Impact Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility. Import regulations issued under the Act are comparable to those established under Federal marketing orders.

There are approximately 14 handlers of southeastern California grapes who are subject to regulation under the order and about 50 grape producers in the production area. In addition, there are approximately 123 importers of grapes. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those whose annual receipts are less than $750,000. Nine of the 14 handlers subject to regulation have annual grape sales of less than $7 million. Based on data from the National Agricultural Statistics Service (NASS) and the Committee, the average crop value for 2008 is about $53,040,000. Dividing this figure by the number of producers (50) yields an average annual producer revenue estimate of about $1,060,800, which is above the SBA threshold of $750,000. Based on the foregoing, it may be concluded that a majority of grape handlers and none of the producers may be classified as small entities. The average importer receives $2.8 million in revenue from the sale of grapes. Therefore, we believe that the majority of these importers may also be classified as small entities.

Summary of Changes

This rule revises the regulatory periods when minimum grade, size, quality, and maturity requirements apply to grapes grown in southeastern California under the order, and to imported grapes under the table grape import regulation. The revised regulatory period also applies to pack and container requirements issued under the order. Prior to this action, the regulatory period for both domestic and imported grapes was April 20 through August 15 of each year.

The California Desert Grape Administrative Committee, which locally administers the order for grapes grown in a designated area of southeastern California, unanimously recommended changing the date when these requirements expire for grapes grown in California to July 10. Moving the ending date of the regulatory period forward is in the interest of table grape

handlers and producers. The Desert Grape Growers League of California requested that the beginning date of the regulatory period for imported grapes be changed from April 20 to April 1 and provided information to support its request. The League proposed this regulatory period change to reduce the quantity of unregulated imported grapes that are marketed during the regulatory period in competition with regulated grapes. The League believes that regulating product quality to meet minimum standards will result in increased acceptance of grapes in the marketplace, and is expected to translate into more frequent purchases on the part of the consumer.

After publishing a proposed rule and receiving comments, USDA has subsequently determined that changing the beginning date of the regulatory period to April 10, as opposed to the April 1 date requested by the League, adequately addresses the League's concerns and is consistent with the provisions of the Act.

In addition, this action revises regulatory language in the grape import regulations to clarify maturity requirements on imported Flame Seedless variety grapes. Prior to this rule, the regulation did not include the 16.5 percent option for meeting maturity requirements that is already in effect for grapes shipped from southeastern California under Marketing Order No. 925.

Changing the Ending of the Regulatory Period for Domestic and Imported Grapes

Section 925.52(a)(2) of the grape order provides authority to limit the handling of any grade, size, quality, maturity or pack of grapes differently for different varieties, or any combination of the foregoing during any period or periods.

Section 925.304 of the order's administrative rules and regulations stipulates the regulatory period, most recently April 20 through August 15, when minimum grade, size, quality, and maturity requirements apply to grapes grown in southeastern California under the order. A final rule published on March 20, 1987, (52 FR 8865) established that regulatory period to promote the orderly marketing of grapes.

Grape handlers in the production area shipped and marketed an average of 7.3 million 18-pound lugs of grapes annually from 2000–2008. Approximately 99 percent of those grapes were shipped and marketed during the period April 20 to July 10. At least 14 varieties are grown in the production area regulated under the order and marketed in major U.S. market areas. The four major varieties are Flame Seedless, Perlettes, Thompson Seedless, and Sugraone.

Since 1987, the amount of grapes handled after July 10 has decreased, and, in the period 2000–2008, the amount of grapes handled after July 10 constituted just slightly more than 1 percent of the grapes produced in the production area. The Committee met on November 14, 2002, and unanimously recommended modifying § 925.304 of the order's administrative rules and regulations to advance the date when minimum grade, size, quality, and maturity requirements expire to July 10, rather than August 15. The Committee met again on December 12, 2002, and clarified that the proposed regulatory period should also apply to pack and container requirements under the order.

The amount of grapes handled in the production area after July 10 of each year has generally decreased as older vineyards, which typically produce late season varieties, have been removed. During the past 3 years, approximately 99 percent of the grapes grown in the production area were handled during the period April 20 through July 10.

Grapes handled after July 10 tend to bring much lower prices than early season grapes. For example, in the 2003 season that followed the Committee recommendation, early season Flame Seedless grapes had an average FOB price of $13.85 to $23.85 while end-of-season Flame Seedless grapes brought an average FOB price of $11.85 to $12.85 per 18-pound lug. In 2008, early season Flame Seedless prices averaged $22.95 to $28.95 while the late season prices averaged $11.95 per 18-pound lug.

Additionally, inspection costs for grapes handled after July 10 are higher, as inspection fees are proportionate to the volume of grapes inspected. Thus, this shortened regulatory period is expected to benefit handlers and producers.

The Committee considered other regulatory period alternatives that would more adequately reflect the end of the harvest for the domestic production area but still ensure shipments of higher quality grapes. For example, one suggestion was to change the ending date of the regulatory period for grapes grown in the designated area of southeastern California to July 1 or July 5. This suggestion was not adopted because the Committee believes that July 10 is more reflective of the end of the season. Approximately one percent of grapes are shipped from the production area after July 10, but the industry felt that commercial quantities of grapes may still be shipped before that date and was not supportive of an earlier ending date.

Section 8e of the Act specifies that whenever certain specified commodities, including table grapes, are regulated under a Federal marketing order, imports of that commodity into the United States are prohibited unless they meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestically produced commodity. Minimum grade, size, quality, and maturity requirements for table grapes imported into the United States are established under Table Grape Import Regulation 4 (7 CFR 944.503) (import regulation).

Section 944.503(a)(3) of the import regulation specifies the regulatory period during which imported grapes are subject to regulation. Prior to this rule, the regulatory period was April 20 to August 15 of each year. Since this action will change the expiration date of the regulatory period for the California production area to July 10, a corresponding change to the regulatory period for imported table grapes is required under section 8e of the Act.

Changing the Beginning of the Regulatory Period for Imported Grapes

The U.S. Census Bureau indicates that on average, for the years 2000–2008, 68 million 18-pound lugs of grapes were imported into the United States. The majority of these grapes are imported prior to April 20. Only grapes imported during the regulatory period are required to be inspected and to comply with the same minimum grade, size, quality, and maturity requirements as the domestic marketing order.

The League requested that the beginning date of the regulatory period for imported grapes be advanced from April 20 to April 1, and submitted information to support its request to USDA for review and evaluation. After much consideration, USDA determined that changing the beginning date of the regulatory period to April 10 adequately addresses the League's concerns and is consistent with the provisions of the Act. The beginning date of the marketing order regulatory period is also being changed to keep the import and domestic regulatory period dates the same.

The authority for changing the beginning date of the regulatory period for imports is specified in § 608e(b) of the Act. These provisions allow the Secretary to extend import requirements for a period, not to exceed 35 days, during which the import requirements would be effective for the imported

commodity. To change the beginning date, USDA must consider the following: (1) For the prior year, whether imports of grapes that did not meet import requirements were marketed in the United States during the period that such import requirements were in effect; (2) whether imported grapes did or were likely to avoid such import requirements; and (3) whether there would be any adverse effect on the availability and prices of grapes if the regulatory period for imports was changed.

The League contends that such an action is needed to ensure that grapes imported into the United States prior to the beginning of the regulatory period, but marketed when the regulation is in effect, meet marketing order grade, size, quality, and maturity requirements.

Grape importers use cold storage extensively during the months of March and April. Storage periods in the 30–60 day range are not uncommon at this time of year. Much of the imported product available in the market during the regulatory period is believed to have been shipped prior to the beginning of the regulatory period and held in such facilities before shipping to terminal markets.

On average, 68.0 million 18-pound lugs of grapes were imported into the United States at all ports during each of the years 2000 to 2008. During each of those years, there was a significant decrease in imports after the April 20 beginning of the regulatory period. Approximately 3 million 18-pound lugs of imported grapes arrive each week of the shipping season prior to the April 20 beginning date of regulation. After April 20, shipments drop dramatically and usually cease altogether by May 31.

Market News reports show that shipments of imported Chilean grapes in 2008 mirror the pattern of previous years. An average of 3.25 million 18-pound lugs of grapes were imported each week of the season leading up to the April 20 start of regulation. For the week following the April 20 start date, shipments dropped to approximately 750,000 lugs per week. In the weeks that followed, shipments were 430,000 lugs, 372,000 lugs, and 78,000 lugs. Shipments continued to decrease to statistically insignificant quantities, ceasing completely after June 4, 2008.

Fresh Products data indicates that from 2004–2007, less than one percent of imported Chilean grapes were subject to inspection during the regulatory period, confirming that only limited quantities of Chilean grapes are imported after the import regulation takes effect. The majority of imports from Mexico are imported during the May-July period of each year subject to the import regulation requirements.

Market News terminal market reports for grapes for the years 2000–2008 indicate that imported table grapes are in the domestic market during May and June and that they compete with regulated grapes that are required to be inspected and certified as meeting minimum quality requirements. Given the small quantity of grapes imported during the early part of the regulatory period, it is presumed that the imported grapes available in the market during that time were imported prior to the start of the regulatory period and held over in cold storage.

USDA's Economic Research Service (ERS) studies indicate that low quality commodities can adversely affect the market for shippers of acceptable quality products. Quality requirements are typically used to cultivate a positive image of a consistent and reliable supplier of high-quality product. This results in consumer goodwill that strengthens demand and boosts producer prices. (USDA, Economic Research Service, Agricultural Economic Report Number 629, ''Federal Marketing Orders for Fruits, Vegetables, Nuts, and Specialty Crops'' by Nicholas J. Powers, March 1990; USDA, Economic Research Service, ''Criteria for Evaluating Federal Marketing Orders: Fruits, Vegetables, Nuts, and Specialty Commodities'' by Leo C. Polopolus, Hoy F. Carman, Edward V. Jesse, and James D. Shaffer, December 1986).

The presence of lower quality product in the marketplace, from any source, weakens demand for all products of that type. Market research and experience shows that consumers often purchase other commodities in place of the commodity with which they have had a bad quality experience. Decreasing demand ultimately has a negative effect on grower, handler, exporter, and importer returns.

The ERS report also discusses the purposes of quality standards. The basic rationale for such standards is that only satisfied customers are repeat customers. When consumers have a good quality experience, they make repeat purchases. Thus, quality standards help ensure that consumers are presented product that is of a known level of quality. It is in the interest of the grape industry to maintain consumer confidence by consistently offering high-quality product.

According to the League, table grapes shipped from some countries exporting to the United States must meet minimum inspection requirements on a year-round basis when their product is exported to both the European Union and Canada. Hence, a change in the effective date to April 10 should not dramatically adversely affect the availability of imported table grapes in the U.S. market, as the exporting countries have the ability to supply high quality table grapes. As an example, during the period April 1–19, 2004, FOB prices for imported grapes in U.S. markets ranged from $8 to $26 per package, depending on the date, condition, and size of the grapes. During the same period, Canadian FOB prices for imported grapes ranged from $12.03 to $33.98 and European Union prices ranged from $8 to $22 depending on the date, condition, and size of the grapes.

Better quality grapes tend to command higher prices. The increase in revenue could offset the added inspection costs of 3.8 cents per box for imported grapes checked at dockside. In 2000–2008, less than 1 percent of Chilean grapes required mandatory inspection. However, if inspection in these years had been mandatory as of April 10, about 7 percent would have been required to be inspected. It is anticipated that grape prices will be slightly higher as the quality level of grapes offered to consumers is increased.

Inspection fees will now be applicable to grapes imported during the April 10–19 period. These fees vary, depending on such factors as the location of the inspection, the size of the load to be inspected, and whether there are multiple commodities to be inspected. Current inspection fees for imported grapes are 3.8 cents per package when inspected at dockside. When the inspection is performed at a location other than dockside, the fees range from $69 to $151 per car lot (approximately 45,000 pounds), depending on the number of packages in the load. (See *http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateA&navID=FreshProductInspectionService&rightNav1=FreshProductInspectionService&topNav=&leftNav=&page=FreshFVGrading&resultType=&acct=freshgrdcert* for inspection fee information).

With prices for imported grapes ranging from $6 to mostly $44 per package, depending on the month, condition, and size of the grapes, inspection fees are anticipated to be less than 1 percent of the value of the grapes imported during this period of time.

The benefits and costs associated with changing the dates when grade, size, quality, and maturity requirements apply to grapes grown in a designated area of southeastern California and to

imported grapes under the grape import regulation is not expected to be disproportionately larger or smaller for small importers than for large importers, nor for small handlers or producers than for larger entities.

A number of alternatives to an April 10 regulatory period start date were considered prior to this action, including leaving the April 20 beginning date of the regulatory period unchanged, and setting an earlier beginning date (April 1 per the League's request).

There is clear evidence that the April 20 start date has allowed unregulated imported grapes to compete in the marketplace with regulated grapes, negatively impacting domestic producers and handlers. Maintaining the status quo in relation to the regulatory period start date was not deemed to be a viable option.

An April 1 regulatory period start date, as originally proposed by the League, would certainly have addressed the problem, but may have also created some unintended consequences. The imported grape industry felt that an April 1 start date would have created undue economic hardship for the industry and may have ultimately resulted in curtailed shipments.

The April 10 regulatory period start date addresses the concerns of the domestic grape industry, while not excessively burdening the imported grape industry. An April 10 beginning date is expected to improve the quality of imported and domestic grapes available to consumers, lessen the chances of unregulated imported grapes being in the market during the regulatory period in competition with regulated grapes, and, ultimately, be in the best interest of all grape handlers, producers, importers, and consumers.

This action will not impose any additional reporting or recordkeeping requirements on either small or large grape handlers or importers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS 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.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

In addition, the Committee's meetings were widely publicized throughout the grape industry and all interested persons were invited to attend the meetings and participate in Committee deliberations. Like all Committee meetings, the November 14, 2002, and the December 12, 2002, meetings were public meetings and all entities, both large and small, were able to express their views on changing the marketing order regulatory period. Also, the World Trade Organization, the Chilean Technical Barriers to Trade (TBT) inquiry point for notifications under the U.S-Chile Free Trade Agreement, the embassies of Argentina, Brazil, Canada, Chile, Italy, Mexico, Peru, and South Africa, and known grape importers were notified of the proposed action. Finally, interested persons are invited to submit comments on this interim final rule, including the regulatory and informational impacts of this action on small businesses.

Previously Published Proposed Rule

A proposed rule concerning this action was published in the **Federal Register** on May 25, 2005 (70 FR 30001). The rule proposed changing the regulatory period for southeastern California grapes and imported grapes from April 20 through August 15 to April 1 through July 10 and clarifying the maturity requirements for southeastern California and imported Flame Seedless variety grapes.

The proposed rule was subsequently reopened five times for further comments on July 25, 2005 (70 FR 42513), on September 27, 2005 (70 FR 56378), on July 11, 2006 (71 FR 39019), on October 25, 2007 (72 FR 60588), and on December 13, 2007 (72 FR 70811). Copies of the rule were mailed or sent via facsimile to all Committee members and grape handlers. Finally, the rule was made available through the Internet by the Office of the Federal Register. A total of five 60-day comment periods and one 15-day comment period, the last of which ended December 28, 2007, were provided to allow interested persons to respond to the proposal.

In total, USDA received 161 comments in response to the proposed rule and subsequent reopenings. Comments were broken down as follows; 20 comments were in support of the proposal, 141 were in opposition, 112 of the comments originated from foreign sources, and 49 originated from domestic sources. Fifteen comments were in reference to procedural aspects of the rulemaking process and were not related directly to the merits of the proposal.

The comments were primarily directed towards the proposed change to the beginning date of the regulatory period from April 20 to April 1, as published in the proposed rule. There were no comments in opposition to the proposed change to the ending date of the regulatory period or to the proposed change in the maturity requirements in the import regulation.

All comments, both in support of and in opposition to the proposed rule, were reviewed thoroughly and considered prior to the issuance of this action. Likewise, all comments received in response to this interim final rule will be considered prior to the issuance of a final rule.

Comments in Full Support

Twenty comments were submitted in full support of the proposal. The comments were submitted by domestic grape producers and handlers, associations related to the domestic grape industry, domestic agricultural service firms, and members of the U.S. Congress.

Comments in Opposition

Of the 141 comments in opposition to the proposal, 14 were concerned with procedural aspects of the rulemaking process, 106 were so similar in style and content as to be considered form letters, and the remaining 21 were unique submissions. The commenters represented foreign grape producers, foreign grape producer associations, and shippers, importers, exporters, and maritime affiliates that are directly involved in the importation of foreign produced grapes into the U.S.

The opposition comments that had material bearing on this rulemaking action were summarized into the following four categories: (1) The proposed change in the beginning effective date contravenes the mandates set forth in the Act; (2) the proposed rule fails to supply a reasoned analysis to rescind the 1987 finding that a change of the beginning effective date for Marketing Order 925 and Import Regulation 4 to a date before April 20 would constitute an unnecessary regulation of imports at a time when domestic shipments would appear to be remote; (3) the proposed beginning effective date of April 1 is contrary to the declared administrative policy of AMS/USDA; and (4) the proposed rule imposes marketing order standards on Chilean supplies when no domestic varieties are available, and therefore allegedly constitutes a non-tariff barrier contrary to the terms of WTO Agreements and the U.S.-Chile Free Trade Agreement and assesses inspection fees starting April 1 when no domestic supplies are being so charged,

and thereby allegedly violates Article III and Article VIII of GATT 1994.

The specific comments in opposition to the proposed rule maintained that the action violated the criteria set forth in the Act for such action and lacked the required statistical evidence from ''the previous year.'' The commenters also charged that deficient or irrelevant evidence in support of the action, rebutted allegations of poor quality of grape imports being imported immediately prior to the regulatory period, and asserted that grape imports would be curtailed in response to the action. Virtually all of the commenters in opposition stated that the imported grape industry would suffer negative economic impacts as a result of such action. In addition, opposition commenters asserted that the action violated previous rulemaking findings, that the action contravenes departmental policy determinations dating back to 1982, and that the action constituted a breach of various trade agreements entered into by the U.S. Government.

USDA is in disagreement with most of the opposition comments. However, USDA believes that an April 1 beginning date for the regulatory period would be too early and could potentially place an unjustifiable hardship on the imported grape industry. USDA believes that moving the beginning date of the regulatory period forward from April 20 to April 10 is necessary and justified.

USDA further believes that this rulemaking action fully adheres to the requirements of the Act to take such action. USDA has sought to collect, present, analyze, and consider evidence that is both current and relevant, as is required by the Act. The proposed rule, the reopening of the comment period to present updated statistical data, and this interim final rule present appropriate statistical justification for this action and are in compliance with the governing statutes. In addition, USDA rejects the opposition commenters' contention that any statutory or procedural errors were committed during the course of this rulemaking process. USDA believes that all statutes, policies, and procedures of the federal government have been strictly adhered to.

Likewise, USDA believes that this action is not contrary to any previous actions, decisions, agreements, or treaties binding on the U.S. Government.

In deciding how to proceed on this matter, USDA took into consideration the information submitted prior to issue of the proposed rule, as well as the comments received and determined that an April 10 regulatory period beginning date is more appropriate than the proposed April 1 date. Consequently, this interim final rule implements an April 10 regulatory period beginning date instead of the April 1 date contained in the proposed rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on the revisions to the regulatory period when minimum grade, size, quality, and maturity requirements apply to southeastern California grapes under Marketing Order No. 925 (order), and to imported grapes under the table grape import regulation. Any comments received will be considered prior to finalization of this rule.

In accordance with section 8e of the Act, USTR has concurred with the issuance of this interim final rule.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The 2008–2009 shipping season for imported grapes affected by this rule has already begun; (2) the immediate implementation of this rule is necessary for importers to make marketing decisions and to contract in advance for shipping; (3) handlers and importers are aware of this rule; (4) a proposed rule concerning the action taken in this rule was published in the **Federal Register** May 25, 2005 (70 FR 30001); and (5) this rule provides a 60-day comment period and all comments timely received will be considered prior to finalization of this rule.

List of Subjects

7 CFR Part 925

Grapes, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

■ For the reasons set forth in the preamble, 7 CFR parts 925 and 944 are amended as follows:

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

■ 1. The authority citation for 7 CFR parts 925 and 944 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. The introductory text to § 925.304 is revised to read as follows:

§ 925.304 California Desert Grape Regulation 6.

During the period April 10 through July 10 each year, no person shall pack or repack any variety of grapes except Emperor, Almeria, Calmeria, and Ribier varieties, on any Saturday, Sunday, Memorial Day, or the observed Independence Day holiday, unless approved in accordance with paragraph (e) of this section, nor handle any variety of grapes except Emperor, Calmeria, Almeria, and Ribier varieties, unless such grapes meet the requirements specified in this section.

* * * * *

PART 944—FRUITS; IMPORT REGULATIONS

■ 3. In § 944.503, paragraphs (a)(1) introductory text, (a)(1)(ii), and (a)(3) are revised to read as follows:

§ 944.503 Table Grape Import Regulation 4.

(a)(1) Pursuant to section 8e of the Act and Part 944—Fruits, Import Regulations, the importation into the United States of any variety of Vinifera species table grapes, except Emperor, Calmeria, Almeria, and Ribier varieties, is prohibited unless such grapes meet the minimum grade and size requirements specified in 7 CFR 51.884 for U.S. No. 1 table, as set forth in the United States Standards for Grades of Table Grapes (European or Vinifera Type, 7 CFR 51.880 through 51.914), or shall meet all the requirements of U.S. No. 1 Institutional with the exception of the tolerance for bunch size. Such tolerance shall be 33 percent instead of

4 percent as is required to meet U.S. No. 1 Institutional grade. Grapes meeting these quality requirements shall not be marked ''Institutional Pack,'' but may be marked ''DGAC No. 1 Institutional.''

(i) * * *

(ii) Grapes of the Flame Seedless variety shall meet the minimum berry size requirement of ten-sixteenths of an inch (1.5875 centimeters) and shall be considered mature if the juice meets or exceeds 16.5 percent soluble solids, or the juice contains not less than 15 percent soluble solids and the soluble solids are equal to or in excess of 20 parts to every part acid contained in the juice, in accordance with applicable sampling and testing procedures specified in sections 1436.3, 1436.5, 1436.6, 1436.7, 1436.12, and 1436.17 of Article 25 of Title 3: California Code of Regulations (CCR).

* * * * *

(3) All regulated varieties of grapes offered for importation shall be subject to the grape import requirements contained in this section effective April 10 through July 10.

* * * * *

Dated: January 14, 2009.

James E. Link,

Administrator, Agricultural Marketing Service.

[FR Doc. E9–1139 Filed 1–16–09; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9435]

RIN 1545–BH61

Guidance Regarding the Treatment of Stock of a Controlled Corporation Under Section 355(a)(3)(B); Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final and temporary regulations (TD 9435) that were published in the **Federal Register** on Monday, December 15, 2008 (73 FR 75946) providing guidance regarding the distribution of stock of a controlled corporation acquired in a transaction described in section 355(a)(3)(B) of the Internal Revenue Code. This action is necessary in light of amendments to section 355(b). These temporary regulations will affect corporations and their shareholders. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* This correction is effective January 21, 2009, and is applicable on December 15, 2008.

FOR FURTHER INFORMATION CONTACT: Russell P. Subin, (202) 622–7790 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations that are the subject of this document are under section 355 of the Internal Revenue Code.

Need for Correction

As published, final and temporary regulations (TD 9435) contains errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

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

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by revising the entries to read as follows:

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

Section 1.355–2T(g) and (i) are also issued under 26 U.S.C. 355(b)(3)(D). * * *

■ **Par. 2.** Section 1.355–1 is amended by revising the last two sentences of paragraph (a) to read as follows:

§ 1.355–1 Distribution of stock and securities of a controlled corporation.

(a) * * * This section and §§ 1.355–2 through 1.355–4, other than § 1.355–2(g) and (i) and § 1.355–2T, do not reflect the amendments to section 355 made by the Revenue Act of 1987, the Technical and Miscellaneous Revenue Act of 1988, and the Tax Technical Corrections Act of 2007. For the applicability date of §§ 1.355–2T(g), 1.355–5, 1.355–6, and 1.355–7, *see* §§ 1.355–2T(i), 1.355–5(e), 1.355–6(g), and 1.355–7(k), respectively.

* * * * *

■ **Par. 3.** Section 1.355–2T is amended by revising the last sentence of paragraph (i)(1) to read as follows:

§ 1.355–2T Limitations (temporary).

* * * * *

(i) * * *

(1) * * * However, except as provided in paragraph (i)(2) of this section, paragraphs (g)(1) through (g)(5) of this section do not apply to any distribution occurring after December 15, 2008, that is pursuant to a transaction which is—

* * * * *

LaNita Van Dyke,

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

[FR Doc. E9–1120 Filed 1–16–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9435]

RIN 1545–BH61

Guidance Regarding the Treatment of Stock of a Controlled Corporation Under Section 355(a)(3)(B); Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final and temporary regulations.

SUMMARY: This document contains corrections to final and temporary regulations (TD 9435) that were published in the **Federal Register** on Monday, December 15, 2008 (73 FR 75946) providing guidance regarding the distribution of stock of a controlled corporation acquired in a transaction described in section 355(a)(3)(B) of the Internal Revenue Code. This action is necessary in light of amendments to section 355(b). These temporary regulations will affect corporations and their shareholders.

DATES: *Effective Date:* This correction is effective January 21, 2009, and is applicable on December 15, 2008.

FOR FURTHER INFORMATION CONTACT: Russell P. Subin, (202) 622–7790 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations that are the subject of this document are under section 355 of the Internal Revenue Code.

Need for Correction

As published, final and temporary regulations (TD 9435) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

■ Accordingly, the publication of the final and temporary regulations (TD 9435), which was the subject of FR Doc. E8–29544, is corrected as follows:

■ 1. On page 75947, column 1, in the preamble, under the paragraph heading ''Background'', second paragraph of the column, third line from the bottom of the paragraph, the language ''respective corporation is not the'' is corrected to read ''corporation is not the''.

■ 2. On page 75949, column 1, in the preamble, under the paragraph heading ''B. Issuances of Controlled Stock Outside the Dunn Trust or Predecessor Context'', first paragraph, ninth line, the language ''442, (1978–2 CB 143) (distributing'' is corrected to read ''442 (1978–2 CB 143) (distributing''.

■ 3. On page 75949, column 2, in the preamble, under the paragraph heading ''C. Redemptions of Controlled Stock'', second paragraph of the column, twelfth line, the language ''distributing, and generally no additional'' is corrected to read ''distributing and generally no additional''.

■ 4. On page 75949, column 3, in the preamble, under the paragraph heading ''Effective/Applicability Date'', seventh line, the language ''occurring after December 15, 2008 that'' is corrected to read ''occurring after December 15, 2008, that''.

LaNita Van Dyke,

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

[FR Doc. E9–1109 Filed 1–16–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[TD 9440]

RIN 1545–BI39

Employer's Annual Federal Tax Return and Modifications to the Deposit Rules; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final and temporary regulations (TD 9440) that were published in the **Federal Register** on Monday, December 29, 2008, relating to the annual filing of Federal employment tax returns and requirements for employment tax deposits. These temporary regulations relate to sections 6011 and 6302 of the Internal Revenue Code concerning reporting and paying income taxes withheld from wages and reporting and paying taxes under the Federal Insurance Contributions Act (FICA) (collectively, ''employment taxes'').

DATES: *Effective Date:* This correction is effective January 21, 2009, and is applicable on December 29, 2008.

FOR FURTHER INFORMATION CONTACT: Audra Dineen, (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains corrections to final and temporary regulations (TD 9440) that were published in the **Federal Register** on Monday, December 29, 2008 (73 FR 79354) relating to the annual filing of Federal employment tax returns and requirements for employment tax deposits. The final and temporary regulations that are the subject of this document are under sections 6011 and 6302 of the Internal Revenue Code. These temporary regulations generally allow certain employers to file a Form 944, ''Employer's ANNUAL Federal Tax Return'', rather than Form 941, ''Employer's QUARTERLY Federal Tax Return''. In addition to rules related to Form 944, the temporary regulations provide an additional method for employers who file Form 941 to determine whether the amount of accumulated employment taxes is considered de minimis. The portions of this document that are final regulations provide necessary cross-references to the temporary regulations.

Need for Correction

As published, final and temporary regulations (TD 9440) contain errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

Correction of Publication

■ Accordingly, 26 CFR part 31 is corrected by making the following correcting amendments:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

■ **Paragraph 1.** The authority citation for part 31 continues to read, in part, as follows:

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

■ **Par. 2.** Section 31.6302–0T is amended by revising the entry for § 31.6302–1T(d)

Example 6. to read as follows:

§ 31.6302–0T Table of contents (temporary).

* * * * *

§ 31.6302–1T Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992 (temporary).

* * * * *

(d) * * *

Example 6. Extension of time to deposit for employers who filed Form 944 for the preceding year satisfied.

* * * * *

■ **Par. 3.** Section 31.6302–1T is amended by revising the last sentence of paragraph (d)

Example 6. to read as follows:

§ 31.6302–1T Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992 (temporary).

* * * * *

(d) * * *

Example 6. * * * Pursuant to § 31.6302–1T(c)(6), F will be deemed to have timely deposited the employment taxes due for January 2007, and, thus, the IRS will not impose a failure-to-deposit penalty under section 6656 for that month.

* * * * *

LaNita Van Dyke,

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

[FR Doc. E9–1097 Filed 1–16–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2008–0003; T.D. TTB–73; Re: Notice No. 82]

RIN 1513–AB51

Establishment of the Snipes Mountain Viticultural Area (2007R–300P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: This Treasury decision establishes the 4,145-acre ''Snipes Mountain'' viticultural area in Yakima County, Washington. We designate viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

DATES: *Effective Dates:* February 20, 2009.

FOR FURTHER INFORMATION CONTACT: N.A. Sutton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 925 Lakeville St., No. 158, Petaluma, CA 94952; phone 415–271–1254.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act requires that these regulations, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the regulations promulgated under the FAA Act.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) contains the list of approved viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been recognized and defined in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographical origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.3(b) of the TTB regulations requires the petition to include—

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;
- Historical or current evidence that supports setting the boundary of the proposed viticultural area as the petition specifies;
- Evidence relating to the geographical features, such as climate, soils, elevation, and physical features that distinguish the proposed viticultural area from surrounding areas;
- A description of the specific boundary of the proposed viticultural area, based on features found on United States Geological Survey (USGS) maps; and
- A copy of the appropriate USGS map(s) with the proposed viticultural area's boundary prominently marked.

Snipes Mountain Petition

Mr. Todd Newhouse, of the Upland Winery in Outlook, Washington, submitted a petition proposing the establishment of the Snipes Mountain viticultural area on behalf of the grape growers in the Snipes Mountain area. The proposed viticultural area covers 4,145 acres, and currently has 535 acres of commercial vineyards. According to USGS maps that the petitioner provided, Snipes Mountain lies north of the Yakima River, between the towns of Granger and Sunnyside, in Yakima County, Washington. [TTB notes that the proposed viticultural area lies entirely within the Yakima Valley viticultural area (27 CFR 9.69) and also entirely within the larger Columbia Valley viticultural area (27 CFR 9.74).] According to the petitioner, the principal distinguishing features of the proposed viticultural area are Snipes Mountain itself, a singular landform rising from the floor of the Yakima Valley, and its comparatively unique, rocky soils. The proposed viticultural area also includes Harrison Hill, east of Snipes Mountain. Harrison Hill has similar soils, and its topography is contiguous with the elevation lines of Snipes Mountain.

Name Evidence

The petition cites ''The Pacific Northwesterner'' (Fall 1959, reprinted as Essay 7265 on *http://www.HistoryLink.org*) in explaining that in the late 1850s, Ben Snipes built a house at the base of a mountain, later known as Snipes Mountain, and developed an expansive cattle operation. Since the early 1900s, the Snipes Mountain Irrigation District has provided water to the region. According to the USGS Sunnyside quadrangle map, the main water canal, the Snipes Mountain Lateral, lies to the north of Snipes Mountain. The USGS Granger and Sunnyside quadrangle maps identify Snipes Mountain as an elevated landform between the Yakima River to the south and a single railroad line and Interstate 82 to the north.

Boundary Evidence

The petitioner states that growers began establishing vineyards on Snipes Mountain and adjacent Harrison Hill between 1914 and 1917, citing ''The Wine Project: Washington State's Winemaking History'' by R. Irvine and W. Clore (Sketch Publications, 1997). The second oldest cabernet sauvignon vines in Washington State have been growing for some 40 years in vineyards on Harrison Hill. These vines have been producing award-winning wines for 15 years. On Snipes Mountain, the Upland Winery, which operated from 1934 to 1972, is being reestablished as a historic winery. Within the current 535 acres of vineyards in the proposed viticultural area, a total of 25 varietals are grown.

According to the written boundary description and USGS maps provided with the petition, the boundary line of the proposed Snipes Mountain viticultural area lies between the 750- to 820-foot elevation lines, thus encompassing the mountain from those elevations to its peak. The USGS maps show that the proposed viticultural area is on elevated terrain, and comprises vineyards, orchards, roads, trails, a reservoir, intermittent streams, gravel pits, buildings, and a winery. The proposed viticultural area is surrounded by generally flat Yakima Valley terrain

that, in areas, dips to approximately 700 feet in elevation. The Yakima River flows adjacent to the southwestern portion of the proposed viticultural area boundary line before turning to the south. The petitioner notes that at elevations below the 750-foot contour line the valley is flatter, and has ponds and other cold air sinks that are unsuitable for viticulture.

According to the written boundary description and USGS maps, Harrison Hill borders Snipes Mountain in the eastern portion of the proposed Snipes Mountain viticultural area. According to the petitioner, the soils on Harrison Hill are similar to the dominant soils in the rest of the proposed viticultural area. The petitioner explains that the 132 acres on the south-facing slopes of Harrison Hill are suitable for successful viticulture and claims that the vineyards on Harrison Hill ''are the most important acres we grow.'' Other portions of Harrison Hill contain residential developments and are thus not suitable for commercial viticulture.

Distinguishing Features

According to the petitioner, the distinguishing features of the proposed Snipes Mountain viticultural area include an elevated topography that is steep in places and a geologic history that contrasts with that of the surrounding Yakima Valley area. According to USGS and digital maps provided with the petition, Snipes Mountain stands alone in the center of the wide Yakima Valley like the crown of a brimmed hat. The petitioner notes that the Snipes Mountain region comprises the Ellensburg Formation. This formation consists of alluvial outwash, the parent material of the unique soils in the Snipes Mountain region.

Topography

The petitioner describes Snipes Mountain and adjacent Harrison Hill as rising visibly from the Yakima Valley floor. The USGS Sunnyside and Granger maps show that the 1,301-foot pinnacle of Snipes Mountain contrasts with the 680- to 780-foot elevations of the surrounding valley floor. The petitioner notes that about a third of the Yakima Valley viticultural area is level, and cites the digital elevation maps of the Yakima Valley and Snipes Mountain from Washington State 10m Digital Elevation Model data.

According to the petitioner, the north side slopes of Snipes Mountain gradually increase in elevation but the south side slopes are steeper. As shown on USGS maps, the south side slopes increase from 850 to 1,200 feet in elevation over a short distance. The petitioner explains that these steeper slopes are suited to viticulture because they have good air drainage, which helps to prevent spring and fall frost damage to the plants in the vineyards.

Geology and Soils

The petitioner notes that, according to the Washington Division of Geology and Earth Resources, the geology of central Washington consists mainly of a volcanic basalt mantle 10 to 15 million years old (''Late Cenozoic Structure and Stratigraphy of South-Central Washington,'' by S.P. Reidel, N.P. Campbell, K.R. Fecht, and K.A. Lindsey, Bulletin 80, pp. 159–180, 1994). Further study shows that subsequent alluvial events covered portions of the Yakima Valley, creating the Ellensburg Formation (''Sedimentology of proximal volcaniclastics dispersed across an active foldbelt: Ellensburg formation (late Miocene), central Washington,'' by G.A. Smith, Sedimentology 35: 953–997, 1988). The Ellensburg Formation consists of a conglomerate of round, river-washed rocks and coarse sediment; tectonic uplift in the Ellensburg Formation created Snipes Mountain (Reidel *et al.*).

The petitioner describes the soils in the proposed viticultural area based on the Soil Survey of the Yakima County Area, Washington (U.S. Department of Agriculture, Soil Conservation Service, 1985). The petitioner also provides a table that compares soil series in the established Yakima Valley viticultural area with those in the proposed Snipes Mountain viticultural area. This comparison, based on parent material of the soils, shows that the soils in each region formed under differing geological events. The petitioner explains that almost all soils on Snipes Mountain, deposited by an ancient flood, now generally are dry. The soils on the mountain also are older and have more rock fragments than those elsewhere in the Yakima Valley region.

According to the petition, one third of the soils in the Yakima Valley viticultural area formed in alluvium and 30 percent of the soils formed in loess over lacustrine deposits. In contrast, within the proposed Snipes Mountain viticultural area only 3.32 percent of the soils formed in alluvium. These soils are of small extent because tectonic uplift exposed the southwest face of Snipes Mountain, lifting it above the influence of additional alluvial deposits. Warden soils formed in loess over lacustrine deposits, and these soils cover 53 percent of the proposed Snipes Mountain viticultural area. Typically, these soils are on the north- and northeast-facing slopes, in positions where the parent material was in place prior to tectonic uplift. The Harwood-Burke-Wiehl soils comprise 13.6 percent of the soils in the proposed viticultural area, compared to less than 1 percent of the entire Yakima Valley viticultural area.

On Snipes Mountain 82 percent of the soils are classified as Aridisols, which are soils low in organic matter and found in generally dry areas. In the Yakima Valley 47 percent of the soils are classified as Aridisols, but 43 percent are classified as Mollisols, which are soils that have a deep, dark surface horizon and a high organic matter content. Typically, Mollisols are in low lying areas near ground water that supplies moisture to plants ultimately increasing the accumulation of organic matter.

According to the petitioner, vineyards on the south-facing slopes of Harrison Hill have produced highly valued grapes. The soils on Harrison Hill and Snipes Mountain are similar. The steeper, south-facing slopes of Snipes Mountain provide good air drainage to prevent spring and fall frost damage to the grapevines.

Notice of Proposed Rulemaking and Comments Received

TTB published Notice No. 82 regarding the proposed Snipes Mountain viticultural area in the **Federal Register** (73 FR 22883) on April 28, 2008. In that notice, TTB invited comments by June 27, 2008, from all interested persons. We expressed particular interest in receiving comments on whether the proposed area name, Snipes Mountain, would result in a conflict with currently used brand names. We also solicited comments on the sufficiency and accuracy of the name, boundary, climatic, and other required information submitted in support of the petition. We received six comments from individuals in response to that notice. Five comments supported the establishment of the Snipes Mountain viticultural area as originally proposed. One commenter expressed concern ''with confusion that may be caused by the name, Snipes Mountain, with a premium vineyard that is not in the proposed [viticultural area] but is very close to it * * * Snipes Canyon.'' TTB notes that in Notice No. 82 we proposed only the full name of the viticultural area, ''Snipes Mountain,'' as a term of viticultural significance. TTB believes ''Snipes Mountain'' is readily distinguishable from ''Snipes Canyon.'' Further, TTB is not aware of any conflict with existing brand labels that

would occur if the viticultural area is established as proposed.

TTB, with the consent of the petitioner, has made a minor adjustment to the proposed southern boundary of the Snipes Mountain viticultural area. To simplify the boundary description, we have removed from the proposed viticultural area a few acres of non-agricultural land located south of the Union Pacific railroad line in section 27, T10N, R21E, near the town of Granger. We also rewrote other portions of the proposed boundary description for better clarity and conciseness.

TTB Finding

After careful review of the petition and the comments received, TTB finds that the evidence submitted supports the establishment of the proposed viticultural area. Therefore, under the authority of the Federal Alcohol Administration Act and part 4 of our regulations, we establish the ''Snipes Mountain'' viticultural area in Yakima County, Washington, effective 30 days from the publication date of this document.

Boundary Description

See the narrative boundary description of the viticultural area in the regulatory text published at the end of this document.

Maps

The maps for determining the boundary of the viticultural area are listed below in the regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. With the establishment of this viticultural area and its inclusion in part 9 of the TTB regulations, its name, ''Snipes Mountain,'' is recognized under 27 CFR 4.39(i)(3) as a name of viticultural significance. The text of the new regulation clarifies this point by specifying ''Snipes Mountain'' as a term of viticultural significance for purposes of part 4 of the TTB regulations.

Once this final rule becomes effective, wine bottlers using ''Snipes Mountain'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the viticultural area's full name as an appellation of origin.

For a wine to be eligible to use a viticultural area name or other term of viticultural significance as an appellation of origin or in a brand name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name or other term, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with the viticultural area name or other viticulturally significant term and that name or term appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name or other viticulturally significant term appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Accordingly, if a previously approved label uses the name ''Snipes Mountain'' for a wine that does not meet the 85 percent standard, the previously approved label will be subject to revocation, upon the effective date of the establishment of the Snipes Mountain viticultural area.

Different rules apply if a wine has a brand name containing a viticultural area name or other term of viticultural significance that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name is the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, it requires no regulatory assessment.

Drafting Information

N.A. Sutton of the Regulations and Rulings Division drafted this notice.

List of Subjects in 27 CFR Part 9

Wine.

The Regulatory Amendment

■ For the reasons discussed in the preamble, we amend title 27 CFR, chapter 1, part 9, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Subpart C is amended by adding § 9.213 to read as follows:

§ 9.213 Snipes Mountain.

(a) *Name.* The name of the viticultural area described in this section is ''Snipes Mountain''. For purposes of part 4 of this chapter, ''Snipes Mountain'' is a term of viticultural significance.

(b) *Approved maps.* The two United States Geological Survey 1:24,000 scale topographic maps used to determine the boundary of the Snipes Mountain viticultural area are titled:

(1) Sunnyside, Wash., 1965, photo revised 1978; and

(2) Granger, Wash., 1965.

(c) *Boundary.* The Snipes Mountain viticultural area is located in Yakima County, Washington. The boundary of the Snipes Mountain viticultural area is as described below:

(1) The beginning point is on the Sunnyside map, to the southwest of the town of Sunnyside, at the intersection of South Hill Road and the eastern boundary of section 34, T10N, R22E. From the beginning point, proceed south along the eastern boundary of section 34 for less than 0.1 mile to its intersection with the 750-foot elevation line, T10N, R22E; then

(2) Proceed along the 750-foot elevation line, first southeasterly then westerly, to its first intersection with the Union Pacific railroad line in section 31, T10N, R22E; then

(3) Proceed west-northwesterly along the Union Pacific railroad line, crossing onto the Granger map, and continue along the railroad line to its intersection with the northern boundary of section 27, T10N, R21E; then

(4) Proceed north in a straight line for less than 0.1 mile to the line's intersection with the 820-foot elevation line in section 22, T10N, R21E; then

(5) Proceed along the meandering 820-foot elevation line, first northwesterly then easterly, and, returning to the Sunnyside map, continue along the elevation line to its intersection with the northern boundary of section 34, T10N, R22E; then

(6) Proceed east along the northern boundary line of section 34 and then section 35 to its intersection with the 820-foot elevation line, section 35, T10N, R22E; then

(7) Proceed southwesterly along the 820-foot elevation line to its intersection with the eastern boundary of section 34, T10N, R22E; and then

(8) Proceed south along the eastern boundary of section 34 for

approximately 0.2 mile, returning to the point of beginning.

Signed: December 5, 2008.

John J. Manfreda,

Administrator.

Approved: December 19, 2008.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. E9–990 Filed 1–16–09; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2008–0005; T.D. TTB–72; Re: Notice No. 85]

RIN 1513–AB47

Expansion of the Paso Robles Viticultural Area (2008R–073P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: This Treasury decision expands by 2,635 acres the existing 609,673-acre Paso Robles American viticultural area in San Luis Obispo County, California. The expanded Paso Robles viticultural area lies entirely within San Luis Obispo County and the multicounty Central Coast viticultural area. We designate viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

DATES: *Effective Dates:* February 20, 2009.

FOR FURTHER INFORMATION CONTACT: N.A. Sutton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 925 Lakeville St., No. 158, Petaluma, CA 94952; phone 415–271–1254.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act requires that these regulations, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the regulations promulgated under the FAA Act.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) contains the list of approved viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been recognized and defined in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographical origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Petitioners may use the same procedure to request changes involving existing viticultural areas. Section 9.3(b) of the TTB regulations requires the petition to include—

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;
- Historical or current evidence that supports setting the boundary of the proposed viticultural area as the petition specifies;
- Evidence relating to the geographical features, such as climate, soils, elevation, and physical features that distinguish the proposed viticultural area from surrounding areas;
- A description of the specific boundary of the proposed viticultural area, based on features found on the United States Geological Survey (USGS) maps; and
- A copy of the appropriate USGS map(s) with the proposed viticultural area's boundary prominently marked.

Paso Robles Expansion Petition

Background

Previous Petitions

On October 4, 1983, the Bureau of Alcohol, Tobacco and Firearms (ATF) published a final rule, T.D. ATF–148 (48 FR 45239), to establish the ''Paso Robles'' American viticultural area (AVA) in northern San Luis Obispo County, California (see 27 CFR 9.84). As established, the Paso Robles AVA was entirely within the Central Coast AVA (27 CFR 9.75) and, to the west, it bordered the much smaller York Mountain AVA (27 CFR 9.80). In 1983, the Paso Robles AVA contained approximately 5,000 acres of vineyards.

As established, the Paso Robles AVA was defined by the San Luis Obispo-Monterey county line in the north, the Cholame Hills to the east, and the Santa Lucia Mountains to the south and west. According to T.D. ATF–148, the Santa Lucia Mountains largely protect the Paso Robles AVA from the intrusion of marine air and fog from the Pacific Ocean, giving the Paso Robles AVA a drier and warmer summertime climate than regions to the west and south. However, in T.D. ATF–216 establishing the Central Coast AVA, 50 FR 43128 (October 24, 1985), ATF recognized that there was, to a lesser degree, marine influence on the climate in Paso Robles. The Paso Robles AVA also is characterized by day to night temperature changes of 40 to 50 degrees, annual rainfall of 10 to 25 inches, 600 to 1,000 foot elevations, and well-drained, alluvial soils in terrace deposits.

Lacking a feasible way to use physical features, such as ridge lines, to define the boundary of the Paso Robles AVA, the original petitioner largely used a series of township and range lines and point-to-point lines to delineate the AVA's boundary. The southernmost portion of the Paso Robles AVA was delineated to the south by the east-west T29S/T30S township boundary line and to the east by the north-south R13E/R14E range line.

On June 13, 1996, ATF published a final rule, T.D. ATF–377 (61 FR 29952), expanding the Paso Robles AVA along a portion of its western boundary. This expansion added approximately 52,618 acres of land similar to that contained in the original AVA. The expansion added to the AVA seven vineyards containing 235 acres of grapes planted after the 1983 establishment of the Paso Robles AVA. The Paso Robles AVA, as expanded, remained entirely within San Luis Obispo County and the Central Coast AVA, and this westerly expansion

did not extend into the York Mountain AVA or change the AVA's original southern boundary.

Current Southern Expansion Petition

In 2007, the Paso Robles AVA Committee (PRAVAC) submitted a petition to TTB requesting a 2,635-acre expansion of the Paso Robles AVA. The petition states that the PRAVAC represents a broad cross section of the Paso Robles wine industry and notes that its 59 grape grower and winery members collectively own or manage over 10,000 acres of vineyards within the Paso Robles AVA.

The proposed expansion area is immediately south of the current southernmost boundary of the Paso Robles AVA, which boundary is delineated by the T29S/T30S township line, as shown on the 1:250,000-scale USGS San Luis Obispo map used to define the AVA's boundary. As noted in the petition, the Paso Robles AVA's current southernmost boundary line bisects the southern portion of the Santa Margarita Valley, leaving a significant portion of the valley's southern end outside the AVA boundary as currently defined. The proposed expansion would, therefore, bring most of the remainder of the Santa Margarita Valley within the AVA, as shown on the 1:24,000 USGS Lopez Mountain map submitted with the petition. (TTB notes that, while not used to formally define the AVA's boundary in the proposed regulatory text, the Lopez Mountain map provides significantly more geographical detail regarding the expansion area due to its smaller scale.)

The proposed southern expansion also lies totally within San Luis Obispo County and the existing Central Coast AVA, and it would not overlap or otherwise affect any other established or currently proposed new AVA. According to the petition, the distinguishing features of the proposed expansion area, including its geological history, geomorphology, soils, topography, and climate, are similar to those found in the southern region of the original Paso Robles AVA.

Name Evidence

The petition states that the ''Paso Robles'' geographical name applies to the proposed southern expansion of the Paso Robles AVA due to the historic, geographic, commercial, and cultural ties between the Santa Margarita Valley and the Paso Robles region of San Luis Obispo County. These ties resulted from the northward orientation of the valley, which is enclosed to the south and west by the Santa Lucia Mountains. Historically, travel was easier going northward through the valley to the city of Paso Robles than it was going southward over the mountains to the city of San Luis Obispo. The petition also states that, because of the stated historic and other ties, local residents and members of the Paso Robles wine industry have assumed that the entire Santa Margarita Valley was within the original Paso Robles AVA boundary line and have referenced the area as such.

According to the petition, other sources also show the entire Santa Margarita Valley as falling within the Paso Robles region. For example, the Paso Style Living real estate Web site (*http://www.pasostyleliving.com/pages/pasoarea.htm*) describes the Santa Margarita area as ''the Southern edge of Paso wine country.'' A 1928 soil survey map of the Paso Robles area submitted with the petition also shows the entire Santa Margarita Land Grant as being within the Paso Robles region. In addition, the ''1978 General Soil Map of the Paso Robles Area—San Luis Obispo County,'' published by the U.S. Department of Agriculture, Soil Conservation Service, University of California Agricultural Experiment Station, includes the proposed Paso Robles AVA expansion area within the Paso Robles region of the county.

Boundary Evidence

The proposed triangle-shaped expansion of the Paso Robles AVA would move its southernmost point approximately 2.6 miles south to encompass most of that portion of the Santa Margarita Valley currently not included within the AVA. Also, the proposed expansion area would lengthen by the same distance the portion of the eastern boundary commonly shared by the Paso Robles and Central Coast AVAs.

The petition describes the proposed expansion area as part of the ''cohesive geographical unit'' of the Santa Margarita Valley. Nestled between the Santa Lucia Range and the Salinas River, the Santa Margarita Valley lies on both sides of the existing southern boundary line of the Paso Robles AVA. The petition describes the southernmost boundary line of the original Paso Robles AVA, which boundary line follows the T29S/T30S township line and bisects the Santa Margarita Valley, as an ''imaginary, indiscernible boundary in the landscape, not defined by any topographic or other environmental parameters.''

As explained in T.D. ATF–148, the Paso Robles AVA is bounded on the west and south by the Santa Lucia Mountain range. The proposed southern expansion, the petition explains, would more closely align the southernmost boundary of the Paso Robles AVA with the Santa Lucia Range by encompassing most of the portion of the Santa Margarita Valley that is currently outside the AVA. The petition explains that beyond the proposed expansion area to the south is the narrowed terminus of the Santa Margarita Valley, with steep terrain on three sides and inadequate groundwater and warmth to sustain commercial viticulture.

According to the petition, the viticultural history of the Santa Margarita Valley began with the arrival of Spanish missionaries, who, among other things, brought grapes and winemaking to the Paso Robles area over 200 years ago. Near present-day Santa Margarita, the missionaries built the Santa Margarita de Cortona Asistencia in 1787, which functioned as an outpost of the mission located at San Luis Obispo and which served as a chapel, farmstead, and storehouse for grain grown in the valley. See page 39 of the ''History of San Luis Obispo County, California, with Illustrations and Biographical Sketches of its Prominent Men and Pioneers,'' by Myron Angel, Thompson & West, 1883, reprinted by Howell-North Books, 1966, which was included with the petition.

According to the Angel publication, in 1861 the land surrounding the Asistencia site was purchased by Mary and Martin Murphy, who also owned portions of other land grants within the Paso Robles region. Under their ownership, the petition states, the Santa Margarita area developed a strong attachment to the more commercialized Paso Robles area to its north. By 1889, the petition explains, an extension of the Southern Pacific Railroad ran south from Paso Robles along the Salinas River to the small settlement of Santa Margarita. See pages 34 and 75 of ''Rails Across the Ranchos,'' by Loren Nicholson, Valley Publishers, 1993. The USGS San Luis Obispo regional map shows the Southern Pacific Railway running south from the city of Paso Robles across the relatively flat valley to the town of Santa Margarita, where it begins a twisting climb up and over the Santa Lucia Mountains to the city of San Luis Obispo.

In 2000, the petition explains, the Robert Mondavi Winery leased more than 1,000 acres in the southern Santa Margarita Valley for commercial vineyard development. This acreage is bisected by the current southernmost boundary of the Paso Robles AVA. At the time of the petition, vineyards covered 800 of the 1,000 acres, with plantings located on both sides of the

existing Paso Robles AVA boundary line, according to the petition.

Distinguishing Features

The proposed expansion of the Paso Robles AVA relies on the Santa Margarita Valley's uniform topography, climate, soils, geologic history, and geomorphology. These geographical features, the petition notes, are the same throughout the valley, which is currently bisected by the southernmost boundary line of the existing Paso Robles AVA. The Santa Margarita Valley, which makes up the portion of the Salinas River Valley containing Santa Margarita and Rinconada Creeks, extends south from the city of Atascadero, through the town of Santa Margarita, and continues south-southeastward through the proposed expansion area, according to the USGS San Luis Obispo regional map and the petition.

Professor Deborah L. Elliott-Fisk, Ph.D, of the University of California, Davis, an expert on the geography and terroir of California and viticultural area designations, researched and provided the data for the distinguishing features discussed in the petition. According to the petition, Dr. Elliott-Fisk also coordinated the data and analyses supplied by meteorologist Donald Schukraft, Western Weather Group, LLC, and other experts.

Climate

The climate of the Paso Robles AVA as a whole, according to Dr. Elliott-Fisk, has smaller monthly temperature ranges and less continental influence than the inland areas further to the east, but is less influenced by Pacific marine air and fog than the coastal regions to the west due to the blocking effect of the Santa Lucia Mountains. As part of the larger Paso Robles region, the Santa Margarita Valley has climatic conditions similar to the Paso Robles AVA, Dr. Elliott-Fisk notes, and these conditions exist on both sides of the existing southernmost boundary of the AVA, which passes from west to east through the valley. Dr. Elliott-Fisk adds that other climate similarities found within the valley on either side of the existing AVA boundary include cold air drainage, cold air ponding under temperature inversions, and similar frost patterns, especially early in the growing season. Also, annual precipitation in the valley averages 29 inches, while regions to the east are drier and the coastal mountains to the west are wetter.

These climatic similarities also are evidenced by various climate classification systems. For example, the petition states, the global scale climate classification system of Koppen, Geiger and Pohl (1953) labels the great majority of the Paso Robles region as a Mediterranean warm summer climate (Csb), while the region to the east has a Mediterranean hot summer climate (Csa).

Dr. Elliott-Fisk states that the climate of the Santa Margarita Valley is classified as a cool region II climate of approximately 2,900 degree days under the Winkler climate classification system, which is based on the heat accumulation during the growing season. This classification is found on both sides of the existing southernmost Paso Robles AVA boundary. (As a measurement of heat accumulation during the growing season, 1 degree day accumulates for each degree Fahrenheit that a day's mean temperature is above 50 degrees, which is the minimum temperature required for grapevine growth. In the Winkler system, climatic region I has less than 2,500 degree days per year; region II, 2,501 to 3,000; region III, 3,001 to 3,500; region IV, 3,501 to 4,000; and region V, 4,001 or more. See pages 61–64 of ''General Viticulture,'' by Albert J. Winkler, University of California Press, 1974.)

Regarding the southern end of the Santa Margarita Valley that lies beyond the proposed expansion, Dr. Elliott-Fisk explains that the steep topography east, south, and west of the narrow valley floor causes increases in relief precipitation and evening settling of cold, dense air at the valley's terminus. Local farmers, the petition explains, state that air temperatures at the far southern end of the valley are too cold to produce quality wine grapes.

Geology

The geological features that characterize the southern region of the Paso Robles AVA continue across the southernmost boundary line of the viticultural area and are found throughout the Santa Margarita Valley, including the proposed expansion area. Dr. Elliott-Fisk explains that the Salinas River originally formed the Santa Margarita Valley through a process of soil erosion and deposition, while the complex faulting of the Santa Lucia Range formed a graben basin that extends along the valley floor and crosses the existing Paso Robles AVA southernmost boundary line. Later, Dr. Elliott-Fisk notes, the Salinas River carved a new channel to the east through the soft Monterey Formation shales along the Rinconada Fault as the San Andreas Fault zone became more active. Rinconada Creek, a primary tributary of the Salinas River in the Santa Margarita Valley area, then deposited a series of broad alluvial fans and terraces across the older Salinas River alluvial fill, Dr. Elliott-Fisk explains. She notes that these alluvial terraces extend north and south of the current Paso Robles AVA boundary line and exist throughout the proposed expansion area.

To the east, south, and west of the proposed Paso Robles AVA expansion, Dr. Elliott-Fisk explains, the geology of the landscape is unsuitable for commercial production of wine grapes. She states that, to the east, granitic rocks on the mountainsides make the area difficult to farm, and the weathering and failure of near-surface rock make road building difficult. Also, to the south, and at the narrowed southern terminus of the Santa Margarita Valley, Franciscan conglomerate rock underlies the shallow alluvium creating an environment lacking in adequate groundwater. To the west, the landscape includes massive units of the late Cretaceous Franciscan and Great Valley formations, consisting of hard marine sandstones and conglomerates on steep mountain slopes, making the terrain unsuitable for viticulture.

Soils

Similar soils exist on both sides of the current Paso Robles AVA southern boundary line, according to the current USDA soil survey for the Paso Robles Area of San Luis Obispo County (Lindsey, 1978). Climate, parent material, topography, and time, Dr. Elliott-Fisk states, all contribute to the soil type similarities that extend the length of the Santa Margarita Valley. The soils of the Santa Margarita Valley, Dr. Elliott-Fisk explains, include the deep gravelly loam soils of late mid-Quaternary age, grading into shallower clay loam soils against bedrock on the hillsides. Also, younger alluvial deposits dominate the flood plains of the valley's creeks.

The soils and terrain to the south, east, and west of the proposed southern expansion of the Paso Robles AVA are, however, unsuitable for commercial viticulture, Dr. Elliott-Fisk explains. To the south, the soils of the valley floor include clay loams with low water permeability, high water capacity, and moderate shrink-swell potential, while the mountain slopes to the east and west have a shallow topsoil, small rooting zones for grapevines, and an erosion potential, making those areas unsuitable for viticulture.

Evidence Summary

The PRAVAC petition, including Dr. Elliott-Fisk's discussion of the proposed

expansion area's distinguishing features and a detailed letter from vineyard developer and manager Neil Roberts, emphasizes that similar geological, geographical, and climatic conditions extend through the Santa Margarita Valley, which encompasses a portion of the existing Paso Robles AVA as well as the proposed expansion area. The landforms, topography, and geology features that form the Santa Margarita Valley, the petition explains, are similar both north and south of the existing Paso Robles AVA southernmost boundary line. Also, the valley's climate, as reflected by Winkler's degree-day values, and its soil types, as documented in the 1978 USDA soil survey for the Paso Robles Area of San Luis Obispo County, show strong similarities on both sides of the current Paso Robles AVA southernmost boundary line. The petition adds that vineyards are farmed the same way north and south of the current Paso Robles AVA boundary line through the valley and that these vineyards grow the same varietals.

Notice of Proposed Rulemaking and Comments Received

TTB published Notice No. 85 regarding the proposed expansion of the Paso Robles viticultural area in the **Federal Register** (73 FR 40474) on July 15, 2008. In that notice, TTB invited comments by September 15, 2008, from all interested persons. We expressed particular interest in receiving comments concerning the similarity of the proposed expansion area to the currently existing Paso Robles viticultural area.

TTB received eight comments in response to Notice No. 85. Seven of the comments supported the expansion of the Paso Robles viticultural area as proposed. One commenter, Justin Kahler, supported a southern expansion of the Paso Robles viticultural area, but disagreed with the eastern portion of the proposed new boundary line.

Mr. Kahler requested that the proposed expansion of the Paso Robles viticultural area continue eastward approximately 2.5 miles generally along Las Pilitas Road, incorporating sections 6, 5, 4, and 33, Township 30 South and Range 14 East, of the Lopez Mountain and Santa Margarita Lake USGS quadrangle maps. Mr. Kahler stated in his request that the additional expansion area was entirely within the multi-county Central Coast viticultural area. Upon review of Mr. Kahler's request for an expansion larger than originally proposed for the Paso Robles viticultural area, TTB found that the additional area that Mr. Kahler proposed extends eastward beyond the Central Coast viticultural area boundary line. In contrast, the current Paso Robles viticultural area and the southern expansion area covered by the PRAVAC petition are entirely within the Central Coast viticultural area. Moreover, the eastern boundary line of the PRAVAC-proposed southern expansion area shares a portion of, but does not cross over, the eastern boundary line of the Central Coast viticultural area.

TTB notes that in the final rule that established the Central Coast viticultural area, T.D. ATF–216, the ''Geographical Features Which Affect Viticultural Features'' section states that ''the eastern boundary of the Central Coast viticultural area is drawn at the approximate inland limit of the marine influence on climate.'' This finding regarding the Central Coast AVA is relevant because it also addressed the Paso Robles viticultural area within it. T.D. ATF–216 explains that the marine influence traveling south from Monterey Bay, through the Salinas River Valley, reaches the Paso Robles area but to a lesser degree. Thus, the Paso Robles area is still under marine influence and possesses microclimates characteristic of coastal valleys, especially in comparison to areas that are farther inland (such as the area identified by Mr. Kahler in his request to further expand the Paso Robles AVA).

In his comment and request on this proposed rulemaking action, Mr. Kahler did not address the issue that his proposed further expansion area extends beyond the current boundary of the Central Coast viticultural area and outside the determined approximate inland limit of the marine influence on climate. Thus, TTB has concluded, after careful consideration, that it does not have sufficient information to establish the eastward expansion requested by Mr. Kahler in this final rule. Such expansion may be the subject of a future rulemaking action.

TTB Finding

After careful review of the petition and comments received, TTB finds that the evidence submitted supports the expansion of the viticultural area as proposed by the PRAVAC. Therefore, under the authority of the Federal Alcohol Administration Act and part 4 of our regulations, we amend our regulations to expand the Paso Robles viticultural area in San Luis Obispo County, California, effective 30 days from the publication date of this document.

Boundary Description

See the modified narrative boundary description reflecting the expanded viticultural area in the regulatory text amendment published at the end of this document.

Maps

The petitioner provided the required map pertaining to the expansion, and we list it below in the amended regulatory text.

Impact on Current Wine Labels

The expansion of the Paso Robles viticultural area does not affect any currently approved wine labels. The approval of this expansion may allow additional vintners to use ''Paso Robles'' as an appellation of origin on their wine labels. Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with a viticultural area name or with a brand name that includes a viticultural area name or other term identified as being viticulturally significant in part 9 of the TTB regulations, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name or other term, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). Different rules apply if a wine has a brand name containing a viticultural area name or other viticulturally significant term that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name is the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, it requires no regulatory assessment.

Drafting Information

N.A. Sutton of the Regulations and Rulings Division drafted this notice.

List of Subjects in 27 CFR Part 9

Wine.

The Regulatory Amendment

■ For the reasons discussed in the preamble, we amend title 27 CFR, chapter 1, part 9, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Section 9.84 is amended by revising paragraphs (b), (c)(7), and (c)(8), redesignating paragraphs (c)(9) and (c)(10) as (c)(10) and (c)(11), and adding a new paragraph (c)(9). The revisions and addition read as follows:

§ 9.84 Paso Robles.

* * * * *

(b) *Approved Map*. The appropriate map for determining the boundary of the Paso Robles viticultural area is the United States Geological Survey 1:250,000-scale map of San Luis Obispo, California, 1956, revised 1969, shoreline revised and bathymetry added 1979.

(c) *Boundaries*. * * *

* * * * *

(7) Then in an easterly direction along the T.29S. and T.30S. line for approximately 3.1 miles to its intersection with the eastern boundary line of the Los Padres National Forest;

(8) Then in a southeasterly direction along the eastern boundary line of the Los Padres National Forest for approximately 4.1 miles to its intersection with the R.13E. and R.14E. line;

(9) Then in a northerly direction along the R.13E. and R.14E. line for approximately 8.7 miles to its intersection with the T.28S. and T.29S. line;

* * * * *

Dated: December 5, 2008.

John J. Manfreda,

Administrator.

Approved: December 16, 2008.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. E9–994 Filed 1–16–09; 8:45 am]

BILLING CODE 4810–31–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Parts 1601, 1603, 1605, 1610, 1611, 1612, 1614, 1615, 1621 and 1626

RIN 3046–AA86

Change of Address for Headquarters and Washington Field Office

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: This final rule amends existing EEOC regulations by changing two office addresses and one post office box.

DATES: *Effective Date:* January 21, 2009.

FOR FURTHER INFORMATION CONTACT: Thomas J. Schlageter, Assistant Legal Counsel, (202) 663–4668, or Erin N. Norris, Attorney, (202) 663–4876, Office of Legal Counsel, 131 M St., NE., Washington, DC 20507. Copies of this final rule are available in the following alternate formats: Large print, braille, electronic computer disk, and audio-tape. Requests for this notice in an alternative formal should be made to the Publications Center at 1–800–699–3362 (voice), 1–800–800–3302 (TTY), or 703–821–2098 (FAX—this is not a toll free number).

SUPPLEMENTARY INFORMATION: In November and December of 2008, the Commission's Headquarters relocated from 1801 L Street, NW., Washington, DC 20507 to 131 M Street, NE., Washington, DC 20507, and the Commission's Washington Field Office relocated from 1801 L Street, NW., Suite 100, Washington, DC 20507 to 131 M Street, NE., Fourth Floor, Suite 4NW02F, Washington, DC 20507. Telephone numbers for Commission employees have not changed. In addition, the Commission's Office of Federal Operations began using a new post office box effective December 1, 2008: P.O. Box 77960, Washington, DC 20013. The previous post office box address will remain in effect temporarily, but individuals wishing to file appeals, petitions, notice, etc. under 29 CFR Parts 1603 and 1614 with the Office of Federal Operations via mail should begin using the new post office box address now. This Final Rule modifies 29 CFR Parts 1601, 1603, 1605, 1610, 1611, 1612, 1614, 1615, 1621, and 1626 to reflect the change of address.

Regulatory Procedures

Executive Order 12866

This action pertains to agency organization, management or personnel matters and therefore is not a rule within the meaning of section 3(d)(3) of Executive Order 12866.

Paperwork Reduction Act

This regulation contains no new information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

Regulatory Flexibility Act

The Commission 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 because it does not affect any small business entities. The regulation affects only the Equal Employment Opportunity Commission. For this reason, a regulatory flexibility analysis is not required.

Unfunded Mandates Reform Act of 1995

This final rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This action pertains to the Commission's management, personnel and organization and does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a ''rule'' as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 29 CFR Parts 1601, 1603, 1605, 1610, 1611, 1612, 1614, 1615, 1621, 1626

Administrative practice and procedure, Equal Employment Opportunity.

For the Commission.

Dated: January 13, 2009.

Naomi C. Earp,

Chair.

■ Accordingly, the Equal Employment Opportunity Commission amends 29 CFR parts 1601, 1603, 1605, 1610, 1611, 1612, 1614, 1615, 1621, and 1626 as follows:

PART 1601—PROCEDURAL REGULATIONS

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

Authority: 42 U.S.C. 2000e to 2000e–17; 42 U.S.C. 12111 to 12117.

§§ 1601.16, 1601.35, and 1601.92 [Amended]

■ 2. Amend §§ 1601.16(b)(1), 1601.35, and 1601.92 by removing the text ''1801 L Street, NW.'' and adding, in its place, the text ''131 M Street, NE.'' wherever it may occur.

PART 1603—PROCEDURES FOR PREVIOUSLY EXEMPT STATE AND LOCAL GOVERNMENT EMPLOYEE COMPLAINTS OF EMPLOYMENT DISCRIMINATION UNDER SECTION 321 OF THE GOVERNMENT EMPLOYEE RIGHTS ACT OF 1991

■ 3. The authority citation for part 1603 continues to read as follows:

Authority: 42 U.S.C. 2000e–16c.

§ 1603.302 [Amended]

■ Amend § 1603.302(b) by removing the text ''P.O. Box 19848, Washington, DC 20036'' and adding, in its place, the text ''P.O. Box 77960, Washington, DC 20013''.

PART 1605—GUIDELINES ON DISCRIMINATION BECAUSE OF RELIGION

■ 5. The authority citation for part 1605 continues to read as follows:

Authority: Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e *et seq.*

Appendix A to §§ 1605.2 and 1605.3 [Amended]

■ 6. Amend footnote 5 to appendix A to §§ 1605.2 and 1605.3 by removing the text ''2401 E Street NW., Washington, DC 20506'' and adding, in its place, the text ''131 M Street, NE., Washington, DC 20507''.

PART 1610—AVAILABILITY OF RECORDS

■ 7. The authority citation for part 1610 continues to read as follows:

Authority: 42 U.S.C. 2000e–12(a), 5 U.S.C. 552 as amended by Public Law 93–502, Public Law 99–570, and Public Law 105–231; for § 1610.15, non-search or copy portions are issued under 31 U.S.C. 9701.

§§ 1610.4, 1610.7, and 1610.11 [Amended]

■ 8. a. Amend sections 1610.4(a), 1610.7(b), and 1610.11(a) by removing the text ''1801 L Street, NW.'' and adding, in its place, the text ''131 M Street, NE.''

■ b. Amend section 1610.4(c), in the entry for ''Washington Field Office,'' by removing the text ''1801 L Street, NW., Suite 100'' and adding, in its place, the text ''131 M Street, NE., Fourth Floor, Suite 4NW02F''.

PART 1611—PRIVACY ACT REGULATIONS

■ 9. The authority citation for part 1611 continues to read as follows:

Authority: 5 U.S.C. 552a.

§§ 1611.3, 1611.5, and 1611.9 [Amended]

■ 10. Amend sections 1611.3(b)(1), (2), (3), and (4), 1611.5(c), and 1611.9(a) by removing the text ''1801 L Street, NW.'' and adding, in its place, the text ''131 M Street, NE.''

PART 1612—GOVERNMENT IN THE SUNSHINE ACT REGULATIONS

■ 11. The authority citation for part 1612 continues to read as follows:

Authority: 5 U.S.C. 552b, sec. 713, 78 Stat. 265; 42 U.S.C. 2000e–12.

§ 1612.6 [Amended]

■ 12. Amend section 1612.6(b) by removing the text ''2401 E Street, NW., Washington, DC, 20506'' and adding, in its place, the text ''131 M Street, NE., Washington, DC 20507.''

§ 1612.7 [Amended]

■ 13. Amend section 1612.7(a) by removing the text ''1801 L Street, NW.'' and adding, in its place, the text ''131 M Street, NE.''

PART 1614—FEDERAL SECTOR EQUAL EMPLOYMENT OPPORTUNITY

■ 14. The authority citation for part 1614 continues to read as follows:

Authority: 29 U.S.C. 206(d), 633a, 791 and 794a; 42 U.S.C. 2000e–16; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; E.O. 11222, 3 CFR 1964–1965 Comp., p. 306; E.O. 11478, 3 CFR 1969 Comp., p. 133; E.O. 12106, 3 CFR 1978 Comp., p. 263; Reorg. Plan No. 1 of 1978, 3 CFR 1978 Comp., p. 321.

§§ 1614.201, 1614.303, 1614.403 [Amended]

■ 15. Amend sections 1614.201(a), 1614.303(b), and 1614.403(a) by removing the text ''P.O. Box 19848, Washington, DC 20036'' and adding, in its place, the text ''P.O. Box 77960, Washington, DC 20013''.

PART 1615—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

■ 16. The authority citation for part 1615 continues to read as follows:

Authority: 29 U.S.C. 794.

§ 1615.170 [Amended]

■ 17. Amend sections 1615.170(d)(2) and (i) by removing the text ''1801 'L' Street NW.'' and adding, in its place, the text ''131 M Street, NE.''

PART 1621—PROCEDURES—THE EQUAL PAY ACT

■ 18. The authority citation for part 1621 continues to read as follows:

Authority: Secs. 1–19, 52 Stat. 1060, as amended, secs. 10–16, 61 Stat. 84, Public Law 88–38, 77 Stat. 56 (29 U.S.C. 201 *et seq.*); sec. 1, Reorgan. Plan No. 1 of 1978, 43 FR 19807; E.O. 12144, 44 FR 37193.

§ 1621.3 [Amended]

■ 19. Amend section 1621.3(a) by removing the text ''1801 L Street, NW.'' and adding, in its place, the text ''131 M Street, NE.''

PART 1626—PROCEDURES—AGE DISCRIMINATION IN EMPLOYMENT ACT

■ 20. The authority citation for part 1626 continues to read as follows:

Authority: Sec. 9, 81 Stat. 605, 29 U.S.C. 628; sec. 2, Reorgan. Plan No. 1 of 1978, 3 CFR, 1978 Comp., p. 321.

§ 1626.20 [Amended]

■ 21. Amend section 1626.20(a) by removing the text ''1801 L Street NW.'' and adding, in its place, the text ''131 M Street, NE.''

[FR Doc. E9–1166 Filed 1–16–09; 8:45 am]

BILLING CODE 6570–01–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 6, 14, 18, 48, and 75

RIN 1219–AB59

Flame-Resistant Conveyor Belt, Fire Prevention and Detection, and Use of Air from the Belt Entry

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule, corrections.

SUMMARY: This document contains corrections to compliance dates for the final rule published in the **Federal Register** on December 31, 2008 for Flame-Resistant Conveyor Belt, Fire Prevention and Detection, and Use of Air from the Belt Entry (73 FR 80580). In addition, minor typographical errors in the **SUPPLEMENTARY INFORMATION** section, Compliance dates, are also corrected.

DATES: This correction is effective January 21, 2009.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey at *silvey.patricia@dol.gov* (E-mail), (202) 693–9440 (Voice), or (202) 693–9441 (Fax).

This notice corrects errors contained in the Compliance Date section of FR Doc. E8–30639, published on Wednesday, December 31, 2008, beginning on page 80580. The following Corrections should be made:

1. On page 80580, in the first column, the language for item number 3 is corrected to read:

''3. §§ 75.380(d)(7), 75.380(f), 75.381(c)(5), and 75.381(e) by June 30, 2009.''

2. Additionally, MSHA inadvertently omitted compliance dates for four sections of the final rule. Therefore, on the same page, in the same column, new item 6 should be added to read as follows:

''6. Each mine operator required to use an atmospheric monitoring system under § 75.350(b) shall comply with the following sections within 60 days after approval of the mine ventilation plan by the district manager.

1. § 75.350(d)(1),
2. § 75.351(e)(1)(iii),
3. § 75.351(e)(1)(iv), and
4. § 75.352(g).''

Richard E. Stickler,

Acting Assistant Secretary for Mine Safety and Health.

[FR Doc. E9–1087 Filed 1–16–09; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF THE TREASURY

31 CFR Part 31

RIN 1505–AC05

TARP Conflicts of Interest

AGENCY: Departmental Offices, Treasury.

ACTION: Interim rule.

SUMMARY: This interim rule provides guidance on conflicts of interest pursuant to section 108 of the Emergency Economic Stabilization Act of 2008 (EESA), which was enacted on October 3, 2008.

DATES: *Effective Date:* January 21, 2009. *Comment due date:* March 23, 2009.

ADDRESSES: Interested members of the public are invited to submit comments on this interim rule. Comments may be submitted to Treasury by either of the following methods: Submit electronic comments through the federal government e-rulemaking portal, *http://www.regulations.gov,* or send comments in hard copy to the Executive Secretariat, Office of Financial Stability, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

In general, Treasury will post all comments to *http://www.regulations.gov* without change, including any business or personal information provided such as names, addresses, e-mail addresses, or telephone numbers. The Treasury will also make such comments available for public inspection and copying in the Treasury's Library, Room 1428, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. Members of the public can make an appointment to inspect comments by telephoning (202) 622–0990. All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure.

FOR FURTHER INFORMATION CONTACT: For further information regarding this interim rule contact the Troubled Asset Relief Program Chief Compliance Officer, Office of Financial Stability, Department of the Treasury, 1500 Pennsylvania Avenue, Washington, DC, 20220, (202) 622–2000, or *TARP.Compliance@do.treas.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(a) of EESA requires the Secretary of the Treasury to establish a Troubled Asset Relief Program (TARP) to ''purchase, and to make and fund commitments to purchase, troubled assets from any financial institution, on such terms and conditions as are determined by the Secretary, and in accordance with this Act and policies and procedures developed and published by the Secretary.'' Section 120 of EESA provides that the TARP authorities generally terminate on December 31, 2009, unless extended upon certification by the Secretary of the Treasury to Congress, but no later than two years from the date of enactment (October 3, 2008).

Section 108 of EESA authorizes the Secretary to issue regulations or guidelines necessary to address and manage or to prohibit conflicts of interest that may arise in connection with the administration and execution of the EESA authorities. On October 6, 2008, Treasury issued interim guidelines for potential conflicts of interest related to the authorities granted under EESA. This interim rule implements the guidelines by addressing conflicts that may arise during the selection of individuals or entities seeking a contract or financial agency agreement with the Treasury (retained entities), particularly those involved in the acquisition, valuation, management, and disposition of troubled assets. The interim rule also addresses conflicts and other matters that may arise in the course of those services. The interim rule does not address post-employment restrictions on Treasury employees, which we believe are already adequately covered by existing law.

II. This Interim Rule

The Department is promulgating this interim rule in order to implement the interim guidance released on October 6, 2008. The procedures in this rule outline the process for reviewing and addressing actual or potential conflicts of interest among retained entities performing services in conjunction with EESA. The procedures set forth in this interim rule are effective immediately. Upon careful consideration of public comments, a final rule will be issued.

Conflicts of interest may arise under EESA in a variety of situations, such as when retained entities perform similar work for Treasury and private clients. In these situations, retained entities may find that their duty to private clients impairs their objectivity when advising Treasury, or their judgment about the proper use of nonpublic information. Conflicts may also arise from the personal interests of individuals employed by retained entities. To address the potential for organizational and personal conflicts of interest, it may be necessary to restrict the activities of retained entities and key employees, to limit the dissemination of information, and to impose monitoring and reporting requirements. Treasury imposes these measures through its contracts and financial agent agreements, as well as through this interim rule. This interim rule does not substitute any provisions of the Federal Acquisition Regulation and, to the extent the Federal Acquisition Regulation applies to any contracts Treasury has with a retained

entity, this interim rule is in addition to the Federal Acquisition Regulation.

The interim rule addresses conflicts that may arise in connection with contracts and financial agency agreements for services under the TARP, other than administrative services identified by the TARP Chief Compliance Officer. Because some administrative services do not have substantial decision-making authority, they are unlikely to present conflicts of interest and would not warrant the burden imposed by these regulations.

The interim rule addresses organizational conflicts of interest in section 31.211. Before entering an arrangement for services, prospective contractors and financial agents must provide Treasury with sufficient information to evaluate the potential for organizational conflicts of interest and plans to mitigate them. Because the potential for conflicts is greatest when the arrangement relates to the acquisition, valuation, disposition, or management of assets, private entities seeking to perform these services must take special care when disclosing conflicts and designing mitigation plans. Once approved, a conflicts mitigation plan becomes a binding term of the arrangement.

Personal conflicts of interest are covered in section 31.212. The provisions here recognize that, in some cases, managers and employees of retained entities may have personal interests that could impair their objectivity. Conflicts may arise from their financial holdings and those of close family members, as well as from other personal interests. The regulation requires retained entities to obtain information from their managers and key employees and evaluate the potential for conflicts, and to implement monitoring and reporting requirements designed to detect conflicts that might arise during the arrangement. Treasury expects retained entities who assist Treasury with the acquisition, valuation, management, and disposition of troubled assets to have the most stringent programs for detecting and preventing conflicts of interest.

Other provisions in the regulations notify retained entities of restrictions on their conduct while working for Treasury. These provisions are not designed to be comprehensive; they supplement other requirements that may be imposed by contract, financial agency agreement, and other federal laws. Section 31.213 includes restrictions on giving and accepting gifts, making unauthorized promises, and improper uses of government property. Section 31.214 describes general prohibitions applying to retained entities who provide services for the acquisition, valuation, disposition, and management of troubled assets. Section 31.216 prohibits certain communications with Treasury employees that might improperly influence the process of selecting contractors and financial agents. Section 31.217 describes retained entities' duty to keep nonpublic information confidential and requires a certification of compliance in the form of a nondisclosure agreement. A sample nondisclosure agreement is available at www.treas.gov.

In the course of implementing EESA, Treasury may permit its retained entities to use subcontractors (including consultants) to assist them in completing the work. Because subcontractors may have the same potential for conflicts of interest as those entities having a direct relationship with Treasury, these regulations impose requirements on ''retained entities,'' which are defined to include contractors, financial agents, and their subcontractors. We specifically request comments on the practicality of this approach.

Overall, the regulations recognize that the potential for conflicts and measures for mitigating them depend on many factors, such as the type of services, a contractor's or financial agent's size and business structure, and length of the arrangement. Treasury will take these factors into account when reviewing conflict mitigation plans. In rare cases, Treasury may need to waive a potential conflict that cannot be adequately mitigated. Waiver requests will be considered on a case-by-case basis, and granted in writing only when Treasury determines, in its sole discretion, that stronger measures are unnecessary to protect the interests of the Treasury. The standard for considering waivers appears in section 31.215. This section does not affect the rules for waiving contract provisions in the Federal Acquisition Regulations.

Section 31.218 describes some of the measures available to Treasury to enforce these interim regulations. Measures include rejecting work that is tainted by a conflict of interest, terminating the arrangement for default, and in serious cases, referring violations to the United States Department of Justice for criminal prosecution. When Treasury has discretion in selecting or imposing a remedy, it will take into account whether the contractor or financial agent promptly disclosed the problem.

III. Procedural Requirements

Justification for Interim Rulemaking

Under the Office of Federal Procurement Policy Act, 41 U.S.C. 418b, and Federal Acquisition Regulation (FAR) 48 CFR 1.501–3(b), a procurement regulation may take effect prior to notice and comment when there are urgent and compelling circumstances that make prior notice and comment impracticable. Such a procurement regulation must be published in the **Federal Register** and must include a statement that the regulation is temporary pending completion of a minimum 30-day public comment period. Under the Administrative Procedure Act, 5 U.S.C. 553(b)(B), an agency may dispense with notice and comment procedures when the agency finds that good cause exists that prior notice and comment are unnecessary, impracticable, or contrary to the public interest. For the reasons set forth below, a determination has been made that urgent and compelling circumstances and good cause exist that justify the promulgation of this interim rule without prior opportunity for public comment.

This rule is promulgated pursuant to EESA, the purpose of which is to immediately provide authority and facilities that the Secretary of the Treasury can use to restore liquidity and stability to the financial system of the United States. Specifically, this rule implements section 108, which requires the Secretary to develop regulations or guidelines for addressing conflicts of interest that may arise in connection with the administration and execution of the authorities provided under EESA. Because EESA provides such immediate authority to the Secretary to restore liquidity and stability to the financial system, it is essential that the conflicts of interest regulations be issued without delay so that anyone participating in the TARP program will have clear conflicts of interest information as soon as possible. Pursuant to 5 U.S.C. 553(b)(B), the Treasury finds that it would be unnecessary and contrary to the public interest to delay the issuance of this rule pending an opportunity for public comment and good cause exists to dispense with this requirement. For the same reasons, pursuant to 5 U.S.C. 553(d)(3), the Treasury has determined that there is good cause for the interim rule to become effective immediately upon publication. While this regulation is effective immediately upon publication, Treasury is seeking public comment on the regulation and will consider all comments in developing a final rule.

Regulatory Planning and Review

This regulation is a significant regulatory action as defined in 3(f)(4) of Executive Order 12866, as amended. Accordingly this interim final rule has been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, this rule is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C chapter 6).

Paperwork Reduction Act

The information collections contained in the rule have been reviewed and approved by OMB under the Paperwork Reduction Act (44 U.S.C. chapter 35) and assigned OMB control number 1505–0209. Under the Paperwork Reduction Act, an agency may not conduct or sponsor and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

List of Subjects in 31 CFR Part 31

Conflicts of interest, Contracts, Executive compensation, Troubled assets.

■ For the reasons set out in the preamble, Title 31 of the Code of Federal Regulations is amended as follows:

■ 1. Add part 31 to read as follows:

PART 31—TROUBLED ASSET RELIEF PROGRAM

Sec.
31.1 General.
Subpart A—[Reserved]
Subpart B—Conflicts of Interest
31.200 Purpose and scope.
31.201 Definitions.
31.211 Organizational conflicts of interest.
31.212 Personal conflicts of interest.
31.213 General standards.
31.214 Limitations on concurrent activities.
31.215 Grant of Waivers.
31.216 Communications with Treasury employees.
31.217 Confidentiality of information.
31.218 Enforcement.

Authority: 31 U.S.C. 321; Pub. L. 110–343; 122 Stat 3765.

§ 31.1 General.

This Part sets forth regulations to implement and administer the Emergency Economic Stabilization Act of 2008 (Pub. L. 110–343; 122 Stat 3765).

Subpart A—[Reserved]

Subpart B—Conflicts of Interest

§ 31.200 Purpose and scope.

(a) *Purpose.* This regulation sets forth standards to address and manage or to prohibit conflicts of interest that may arise in connection with the administration and execution of the authorities under the Troubled Asset Relief Program (TARP), established under sections 101 and 102 of the Emergency Economic Stabilization Act of 2008 (EESA).

(b) *Scope.* This regulation addresses actual and potential conflicts of interest that may arise from contracts and financial agency agreements between private sector entities and the Treasury for services under the TARP, other than administrative services identified by TARP Chief Compliance Officer.

§ 31.201 Definitions.

As used in this part:

Arrangement means a contract or financial agency agreement between a private sector entity and the Treasury for services under the TARP, other than administrative services identified by the TARP Chief Compliance Officer.

EESA means the Emergency Economic Stabilization Act of 2008.

Key individual means an individual providing services to a private sector entity who participates personally and substantially, through decision, approval, disapproval, recommendation, or the rendering of advice, in the negotiation or performance of, or monitoring for compliance under, the arrangement with the Treasury. For purposes of the definition of key individual, the words ''personally and substantially'' shall have the same meaning and interpretation as such words have in 5 CFR 2635.402(b)(4).

Management official means an individual within a retained entity's organization who has substantial responsibility for the direction and control of the retained entity's policies and operations. With respect to organizations that have a management committee or executive committee that has been given such responsibilities, this means the members of those committees and, if no such committee exists, this means each of the general partners.

Organizational conflict of interest means a situation in which the retained entity has an interest or relationship that could cause a reasonable person with knowledge of the relevant facts to question the retained entity's objectivity or judgment to perform under the arrangement, or its ability to represent the Treasury. Without limiting the scope of this definition, organizational conflicts of interest may include the following situations:

(1) A prior or current arrangement between the Treasury and the retained entity that may give the retained entity an unfair competitive advantage in obtaining a new arrangement with Treasury.

(2) The retained entity is, or represents, a party in litigation against the Treasury relating to activities under the EESA.

(3) The retained entity provides services for Treasury relating to the acquisition, valuation, disposition, or management of troubled assets at the same time it provides those services for itself or others.

(4) The retained entity gains, or stands to gain, an unfair competitive advantage in private business arrangements or investments by using information provided under an arrangement or obtained or developed pursuant to an arrangement with Treasury.

(5) The retained entity is a potential candidate for relief under EESA, is currently participating in an EESA program, or has a financial interest that could be affected by its performance of the arrangement.

Personal conflict of interest means a personal, business, or financial interest of an individual, his or her spouse, minor child, or other family member with whom the individual has a close personal relationship, that could adversely affect the individual's ability to perform under the arrangement, his or her objectivity or judgment in such performance, or his or her ability to represent the interests of the Treasury;

Related entity means the parent company and subsidiaries of a retained entity, any entity holding a controlling interest in the retained entity, and any entity in which the retained entity holds a controlling interest.

Retained entity means the individual or entity seeking an arrangement with the Treasury or having such an arrangement with the Treasury, but does not include special government employees. A ''retained entity'' includes the subcontractors and consultants it hires to perform services under the arrangement.

Special government employee means any employee serving the Treasury with or without compensation for a period not to exceed 130 days during any 365-day period on a full-time or intermittent basis.

Treasury means the United States Department of the Treasury.

Treasury employee means an officer or employee of the Treasury, including

a special government employee, or an employee of any other government agency who is properly acting on behalf of the Treasury.

Troubled assets means residential or commercial mortgages and any securities, obligations, or other instruments that are based on or related to such mortgages, that in each case originated or was issued on or before March 14, 2008; and any other financial instrument that the Secretary of the Treasury has determined, upon transmittal in writing to the appropriate committees of Congress, the purchase of which is necessary to promote financial market stability.

§ 31.211 Organizational conflicts of interest.

(a) *Retained entity's responsibility.* A retained entity working under an arrangement shall not permit an organizational conflict of interest unless the conflict has been disclosed to Treasury under this Section and mitigated under a plan approved by Treasury, or Treasury has waived the conflict. With respect to arrangements for the acquisition, valuation, management, or disposition of troubled assets, the retained entity shall maintain a compliance program designed to detect and prevent violations of federal securities laws and organizational conflicts of interest.

(b) *Information required about the retained entity.* As early as possible before entering an arrangement to perform services for Treasury under the EESA, a retained entity shall provide Treasury with sufficient information to evaluate any organizational conflicts of interest. The information shall include the following:

(1) The retained entity's relationship to any related entities.

(2) The categories of troubled assets owned or controlled by the retained entity and its related entities, if the arrangement relates to the acquisition, valuation, disposition, or management of troubled assets.

(3) Information concerning all other business or financial interests of the retained entity, its proposed subcontractors, or its related entities, which could conflict with the retained entity's obligations under the arrangement with Treasury.

(4) A description of all organizational conflicts of interest and potential conflicts of interest.

(5) A written detailed plan to mitigate all organizational conflicts of interest, along with supporting documents.

(6) Any other information or documentation about the retained entity, its proposed subcontractors, or its related entities that Treasury may request.

(c) *Plans to mitigate organizational conflicts of interest.* The steps necessary to mitigate a conflict may depend on a variety of factors, including the type of conflict, the scope of work under the arrangement, and the organizational structure of the retained entity. Some conflicts may be so substantial and pervasive that they cannot be mitigated. Retained entities should consider the following measures when designing a mitigation plan:

(1) Adopting, implementing, and enforcing appropriate information barriers to prevent unauthorized people from learning nonpublic information relating to the arrangement and isolate key individuals from learning how their performance under the arrangement could affect the financial interests of the retained entity, its clients, and related entities.

(2) Divesting assets that give rise to conflicts of interest.

(3) Terminating or refraining from business relationships that give rise to conflicts of interest.

(4) If consistent with the terms of the arrangement and permitted by Treasury, refraining from performing specific types of work under the arrangement.

(5) Any other steps appropriate under the circumstances.

(d) *Certification required.* When the retained entity provides the information required by paragraph (b) of this section, the retained entity shall certify that the information is complete and accurate in all material respects.

(e) *Determination required.* Prior to entering into any arrangement, the Treasury must conclude that no organizational conflict of interest exists that has not been adequately mitigated, or if a conflict cannot be adequately mitigated, that Treasury has expressly waived it. Once Treasury has approved a conflicts mitigation plan, the plan becomes an enforceable term under the arrangement.

(f) *Subsequent notification.* The retained entity has a continuing obligation to search for and to report any potential organizational conflict of interest. Within five (5) business days after learning of a potential organizational conflict of interest, the retained entity shall disclose the potential conflict of interest in writing to the TARP Chief Compliance Officer. The disclosure shall describe the steps it has taken or proposes to take to mitigate the potential conflict or request a waiver from Treasury.

(g) *Periodic Certification.* No later than one year after the arrangement's effective date, and at least annually thereafter, the retained entity shall certify in writing that it has no organizational conflicts of interest, or explain in detail the extent to which it can certify, and describe the actions is has taken and plans to take to mitigate any conflicts. Treasury may require more frequent certifications, depending on the arrangement

(h) *Retention of information.* A retained entity shall retain the information needed to comply with this section and to support the certifications required by this section for three (3) years following termination or expiration of the arrangement, and shall make that information available to Treasury upon request. Such retained information shall include, but is not limited to, written documentation regarding the factors the retained entity considered in its mitigation plan as well as written documentation addressing the results of the retained entities' periodic review of the mitigation plan.

§ 31.212 Personal conflicts of interest.

(a) *Retained entity's responsibility.* A retained entity shall ensure that all management officials performing work under the arrangement and key individuals have no personal conflicts of interest unless mitigation measures have neutralized the conflict, or Treasury has waived the conflict.

(b) *Information required.* Before management officials and key individuals begin work under an arrangement, a retained entity shall obtain information from each of them in writing about their personal, business, and financial relationships, as well as those of their spouses, minor children, and other family members with whom the individuals have a close personal relationship that would cause a reasonable person with knowledge of the relevant facts to question the individual's ability to perform, his or her objectivity or judgment in such performance, or his or her ability to represent the interests of the Treasury. When the arrangement concerns the acquisition, valuation, management, or disposition of troubled assets, the information shall be no less extensive than that required of certain new federal employees under Office of Government Ethics Form 278. Treasury may extend the time necessary to meet these requirements in urgent and compelling circumstances.

(c) *Disqualification.* The retained entity shall disqualify persons with personal conflicts of interests from performing work pursuant to the arrangement unless mitigation measures have neutralized the conflict to the satisfaction of the TARP Chief

Compliance Officer. The retained entity may seek a waiver from the TARP Chief Compliance Officer to allow an individual with a personal conflict of interest to work under the arrangement.

(d) *Initial Certification.* No later than ten business days after the effective date of the arrangement, the retained entity shall certify to the Treasury that all management officials and key individuals performing services under the arrangement have no personal conflicts of interest, or are subject to a mitigation plan or waiver approved by Treasury. In making this certification, the retained entity may rely on the information obtained pursuant to paragraph (b) of this section, unless the retained entity knows or should have known that the information provided is false or inaccurate. Treasury may extend the certification deadline in urgent and compelling circumstances.

(e) *Periodic Certification.* No later than one year after the arrangement's effective date, and at least annually thereafter, the retained entity shall renew the certification required by paragraph (d) of this section. The retained entity shall provide more frequent certifications to Treasury when requested.

(f) *Retained Entities' Responsibilities.* The retained entity shall adopt and implement procedures designed to discover, monitor, and report personal conflicts of interest on a continuous basis.

(g) *Subsequent notification.* Within five business days after learning of a personal conflict of interest, the retained entity shall notify Treasury of the conflict and describe the steps it has taken and will take in the future to neutralize the conflict.

(h) *Retention of information.* A retained entity shall retain the information needed to comply with this section and to support the certifications required by this section for three years following termination or expiration of the arrangement, and shall make that information available to Treasury upon request.

§ 31.213 General standards.

(a) During the time period in which a retained entity is seeking an arrangement and during the term of any arrangement, a retained entity, its officers and partners, and its employees shall not:

(1) Accept or solicit favors, gifts, or other items of monetary value from any individual or entity whom the retained entity, officer, partner, or employee knows is seeking official action from the Treasury in connection with the arrangement or has interests which may be substantially affected by the performance or nonperformance of duties to the Treasury under the arrangement.

(2) Improperly use or allow the improper use of Treasury property for the personal benefit of any individual or entity other than the Treasury.

(3) Make any unauthorized promise or commitment on behalf of the Treasury.

(b) Any individual who acts for or on behalf of the Treasury pursuant to an arrangement shall comply with 18 U.S.C. 201, which generally prohibits the direct or indirect acceptance by a public official of anything of value in return for being influenced in, or because of, an official act. Violators are subject to criminal penalties.

(c) Any individual or entity who provides information or makes a certification to the Treasury that is relating to services under EESA or required pursuant to 31 CFR Part 31 is subject to 18 U.S.C. 1001, which generally prohibits the making of any false or fraudulent statement to a federal officer. Upon receipt of information indicating that any individual or entity has violated any provision of title 18 of the U.S. Code or other provision of criminal law, Treasury shall refer such information to the Department of Justice and the Special Inspector General provided for under EESA.

(d) A retained entity shall disclose to the Special Inspector General provided for the TARP, or the Treasury Office of the Inspector General, any credible evidence, in connection with the designation, services, or closeout of the arrangement, that a management official, employee, or contractor of the retained entity has committed a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code, or a violation of the civil False Claims Act (31 U.S.C. 3729–3733).

§ 31.214 Limitations on concurrent activities.

Treasury has determined that certain market activities by a retained entity during the arrangement are likely to cause impermissible conflicts of interest. Accordingly, the following restrictions shall apply unless waived pursuant to § 31.215, or Treasury agrees in writing to specific mitigation measures.

(a) If the retained entity assists Treasury in the acquisition, valuation, management, or disposition of specific troubled assets, the retained entity, management officials performing work under the arrangement, and key individuals shall not purchase or offer to purchase such assets from Treasury, or assist anyone else in purchasing or offering to purchase such troubled assets from the Treasury, during the term of its arrangement.

(b) If the retained entity advises Treasury with respect to a program for the purchase of troubled assets, the retained entity, management officials performing work under the arrangement, and key individuals shall not, during the term of the arrangement, sell or offer to sell, or act on behalf of anyone with respect to a sale or offer to sell, any asset to Treasury under the terms of that program.

§ 31.215 Grant of waivers.

The TARP Chief Compliance Officer may waive a requirement under this Part that is not otherwise imposed by law when it is clear from the totality of the circumstances that a waiver is in the government's interest.

§ 31.216 Communications with Treasury employees.

(a) *Prohibitions.* During the course of any process for selecting a retained entity (including any process using non-competitive procedures), a retained entity participating in the process and its representatives shall not:

(1) Directly or indirectly make any offer or promise of future employment or business opportunity to, or engage directly or indirectly in any discussion of future employment or business opportunity with, any Treasury employee with personal or direct responsibility for that procurement.

(2) Offer, give, or promise to offer or give, directly or indirectly, any money, gratuity, or other thing of value to any Treasury employee, except as permitted by Government-Wide Ethics Rules, 5 CFR part 2635.

(3) Solicit or obtain from any Treasury employee, directly or indirectly, any information that is not public and was prepared for use by Treasury for the purpose of evaluating an offer, quotation, or response to enter into an arrangement.

(b) *Certification.* Before a retained entity enters a new arrangement, or accepts a modification to an existing arrangement, the retained entity must certify to the following:

(1) The retained entity is aware of the prohibitions of paragraph (a) of this section and, to the best of its knowledge after making reasonable inquiry, the retained entity has no information concerning a violation or possible violation of paragraph (a) of this section.

(2) Each officer, employee, and representative of the retained entity who participated personally and

substantially in preparing and submitting a bid, offer, proposal, or request for modification of the arrangement has certified that he or she:

(i) Is familiar with and will comply with the requirements of paragraph (a) of this section; and

(ii) Has no information of any violations or possible violations of paragraph (a) of this section, and will report immediately to the retained entity any subsequently gained information concerning a violation or possible violation of paragraph (a) of this section.

§ 31.217 Confidentiality of information.

(a) *Nonpublic information defined.* Any information that Treasury provides to a retained entity under an arrangement, or that the retained entity obtains or develops pursuant to the arrangement, shall be deemed nonpublic until the Treasury determines otherwise in writing, or the information becomes part of the body of public information from a source other than the retained entity.

(b) *Prohibitions.* The retained entity shall not:

(1) Disclose nonpublic information to anyone except as required to perform the retained entity's obligations pursuant to the arrangement, or pursuant to a lawful court order or valid subpoena after giving prior notice to Treasury.

(2) Use or allow the use of any nonpublic information to further any private interest other than as contemplated by the arrangement.

(c) *Retained entity's responsibility.* A retained entity shall take appropriate measures to ensure the confidentiality of nonpublic information and to prevent its inappropriate use. The retained entity shall document these measures in sufficient detail to demonstrate compliance, and shall maintain this documentation for three years after the arrangement has terminated. The retained entity shall notify the TARP Chief Compliance Officer in writing within five business days of detecting a violation of the prohibitions in paragraph (b), above. The security measures required by this paragraph shall include:

(1) Security measures to prevent unauthorized access to facilities and storage containers where nonpublic information is stored.

(2) Security measures to detect and prevent unauthorized access to computer equipment and data storage devices that store or transmit nonpublic information.

(3) Periodic training to ensure that persons receiving nonpublic information know their obligation to maintain its confidentiality and to use it only for purposes contemplated by the arrangement.

(4) Programs to ensure compliance with federal securities laws, including laws relating to insider trading, when the arrangement relates to the acquisition, valuation, management, or disposition of troubled assets.

(5) A certification from each management official performing work under the arrangement and each key individual stating that he or she will comply with the requirements in section 31.217(b). The retained entity shall obtain this certification, in the form of a nondisclosure agreement, before a management official or key individual performs work under the arrangement, and then annually thereafter.

§ 31.218 Enforcement.

(a) Compliance with these rules concerning conflicts of interest is of the utmost importance. In the event a retained entity or any individual or entity providing information pursuant to 31 U.S.C. Part 31 violates any of these rules, Treasury may impose or pursue one or more of the following sanctions:

(1) Rejection of work tainted by an organizational conflict of interest or a personal conflict of interest and denial of payment for that work.

(2) Termination of the arrangement for default.

(3) Debarment of the retained entity for Federal government contracting and/or disqualification of the retained entity from future financial agency agreements.

(4) Imposition of any other remedy available under the terms of the arrangement or at law.

(5) In the event of violation of a criminal statue, referral to the Department of Justice for prosecution of the retained entity and/or its officers or employees. In such cases, the Department of Justice may make direct and derivative use of any statements and information provided by any entity, its representatives and employees or any individual, to the extent permitted by law.

(b) To the extent Treasury has discretion in selecting or imposing a remedy, it will give significant consideration to a retained entity's prompt disclosure of any violation of these rules.

Dated: January 14, 2009.

Neel Kashkari,

Interim Assistant Secretary for Financial Stability.

[FR Doc. E9–1179 Filed 1–15–09; 4:15 pm]

BILLING CODE 4810–25–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AM67

Increase in Rates Payable Under the Survivors' and Dependents' Educational Assistance Program and Other Miscellaneous Issues

AGENCY: Department of Veterans Affairs.

ACTION: Final rule; correction.

SUMMARY: The Department of Veterans Affairs (VA) published a document in the **Federal Register** of December 30, 2008, amending its regulations to reflect increases effective for fiscal years 2005, 2006, 2007, 2008, and 2009. The document contained an error in an amendatory instruction. We inadvertently omitted instruction to the editor to add two new paragraphs to the section. This document corrects that error.

DATES: *Effective Date:* This correction is effective January 21, 2009.

FOR FURTHER INFORMATION CONTACT: Brandye R. Terrell, Regulation Development Team Leader (225C), Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 461–9822.

SUPPLEMENTARY INFORMATION: The VA published a document in the **Federal Register** on December 30, 2008, (73 FR 79645) amending its regulations to reflect increases effective for fiscal years 2005, 2006, 2007, 2008, and 2009, respectively. In FR Doc. E8–31033, published on December 30, 2008, the addition of paragraphs (a)(5) and (a)(6) to § 21.3333 was inadvertently omitted from amendatory instruction 7a. This document corrects that error.

In rule FR Doc. E8–31033 published on December 30, 2008 (73 FR 79645), make the following correction: On page 79651, in the second column, amendatory instruction 7a. should read as follows:

a. Revising paragraphs (a)(1), (a)(2), and (a)(3), and adding paragraphs (a)(4), (a)(5) and (a)(6).

Approved: January 13, 2009.

Gloria P. Armstrong,

Federal Register Liaison Officer.

[FR Doc. E9–1040 Filed 1–16–09; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[EPA–HQ–OAR–2006–0948; FRL–8763–7]

RIN 2060–AN75

Air Quality: Revision to Definition of Volatile Organic Compounds—Exclusion of Propylene Carbonate and Dimethyl Carbonate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action revises EPA's definition of volatile organic compounds (VOCs) for purposes of preparing state implementation plans (SIPs) to attain the national ambient air quality standard for ozone under Title I of the Clean Air Act (Act). This revision adds the compounds propylene carbonate and dimethyl carbonate to the list of compounds which are excluded from the definition of VOC on the basis that these compounds make a negligible contribution to tropospheric ozone formation.

DATES: This final rule is effective on February 20, 2009.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2006–0948. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Docket ID No. EPA–HQ–OAR–2006–0948, EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue, Northwest, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Docket ID No. EPA–HQ–OAR–2006–0948 is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: William L. Johnson, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail code C539–01, Research Triangle Park, NC 27711, telephone (919) 541–5245.; fax number: 919–541–0824; e-mail address: *Johnson.WilliamL@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be an entity affected by this policy change if you use or emit propylene carbonate or dimethyl carbonate. States which have programs to control VOC emissions will also be affected by this change.

Category	Examples of affected entities
Industry ..	Industries that make and use coatings, adhesives, inks or which perform paint stripping or pesticide application.
States	States that control VOC.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware of that could potentially be affected by this action. Other types of entities not listed in the table could also be affected. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section. This action has no substantial direct effects on industry because it does not impose any new mandates on these entities, but, to the contrary, removes two chemical compounds from the regulatory definition of VOC, and therefore from regulation for federal purposes.

B. How is this preamble organized?

The information presented in this preamble is organized as follows:

Outline

I. General Information
  A. Does this action apply to me?
  B. How is this preamble organized?
II. Background
  A. Propylene Carbonate
  B. Dimethyl Carbonate
III. Response to Comments
IV. Final Action
V. Statutory and Executive Order Reviews
  A. Executive Order 12866: Regulatory Planning and Review
  B. Paperwork Reduction Act
  C. Regulatory Flexibility Act
  D. Unfunded Mandates Reform Act
  E. Executive Order 13132: Federalism
  F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
  H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
  I. National Technology Transfer Advancement Act
  J. Executive Order 12848: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
  K. Congressional Review Act

II. Background

Tropospheric ozone, commonly known as smog, occurs when VOCs and nitrogen oxides (NO_X) react in the atmosphere. Because of the harmful health effects of ozone, EPA and state governments limit the amount of VOCs and NO_X that can be released into the atmosphere. The VOCs are those organic compounds of carbon which form ozone through atmospheric photochemical reactions. Different VOCs have different levels of reactivity—that is, they do not react to form ozone at the same speed or do not form ozone to the same extent. Some VOCs react slowly, and changes in their emissions have limited effects on local or regional ozone pollution episodes. It has been EPA's policy that organic compounds with a negligible level of reactivity should be excluded from the regulatory definition of VOC, so as to focus VOC control efforts on compounds that do significantly increase ozone concentrations. The EPA also believes that exempting such compounds creates an incentive for industry to use negligibly reactive compounds in place of more highly reactive compounds that are regulated as VOCs. The EPA lists these negligibly reactive compounds in its regulations (at 40 CFR 51.100(s)) and excludes them from the definition of VOCs.

Since 1977, EPA has used the reactivity of ethane as the threshold for determining negligible reactivity. Compounds that are less reactive than, or equally reactive to, ethane under the assumed conditions may be deemed negligibly reactive. Compounds that are more reactive than ethane continue to be considered reactive VOCs and therefore subject to control requirements. The selection of ethane as the threshold compound was based on a series of smog chamber experiments that underlay the 1977 policy.

In the past, EPA has considered three different metrics to compare the reactivity of a specific compound to that of ethane: (i) The reaction rate constant with the hydroxyl radical (known as k_{OH}), (ii) maximum incremental reactivities (MIR) expressed on a reactivity per gram basis, and (iii) MIR expressed on a reactivity per mole basis. Table 1 presents these three reactivity metrics for ethane and for the two compounds discussed in this rule. Differences between these three metrics are discussed below.

TABLE 1—REACTIVITIES OF ETHANE AND COMPOUNDS CONSIDERED FOR EXEMPTION

Compound	k_{OH} (cm^3/molecule-sec)	MIR (g O_3/mole VOC)	MIR (g O_3/gramVOC)
Ethane	2.4×10^{-13}	8.12	0.27
Propylene carbonate	6.9×10^{-13}	27.56	0.27
Dimethyl carbonate	3.49×10^{-13}	5.04	0.056

Notes:

1. k_{OH} value for ethane is from: R. Atkinson., D. L. Baulch, R. A. Cox, J. N. Crowley, R. F. Hampson, Jr., R. G. Hynes, M. E. Jenkin, J. A. Kerr, M. J. Rossi and J. Troe (2004), Summary of Evaluated Kinetic and Photochemical Data for Atmospheric Chemistry

2. k_{OH} value for propylene carbonate is reported in: W.P.L. Carter, D. Luo, I.L. Malkina, E.C. Tuazon, S.M. Aschmann, and R. Atkinson (July 8, 1996), ''Investigation of the Atmospheric Ozone Formation Potential of t-butyl Alcohol, N-Methyl Pyrrolidinone and Propylene Carbonate.'' University of California—Riverside. *ftp://ftp.cert.ucr.edu/pub/carter/pubs/arcorpt.pdf.*

3. k_{OH} value for dimethyl carbonate is reported in: Y. Katrib, G. Deiber, P. Mirabel, S. LeCalve, C. George, A. Mellouki, and G. Le Bras (2002), ''Atmospheric loss processes of dimethyl and diethyl carbonate,'' J. Atmos. Chem., 43: 151–174.

4. All maximum incremental reactivities or MIR (g O_3/g VOC) values are from: W. P. L. Carter, ''Development of the SAPRC–07 Chemical Mechanism and Updated Ozone Reactivity Scales,'' Appendix B, July 7, 2008. This may be found at *http://www.engr.ucr.edu/~carter/SAPRC/saprc07.pdf.* These values have been revised slightly from those given in the proposal notice (72 FR 55717).

5. MIR (g O_3/mole VOC) values were calculated from the MIR (g O_3/g VOC) values by determining the number of moles per gram of the relevant organic compound.

The k_{OH} is the reaction rate constant of the compound with the OH radical in the air. This reaction is typically the first step in a series of chemical reactions by which a compound breaks down in the air and participates in the ozone forming process. If this step is slow, the compound will likely not form ozone at a very fast rate. The k_{OH} values have long been used by EPA as a measure of photochemical reactivity and ozone forming activity, and they have been the basis for most of EPA's previous exclusions of negligibly reactive compounds. The k_{OH} metric is inherently molar, i.e., it measures the rate at which molecules react.

The MIR values, both by mole and by mass, are more recently developed measures of photochemical reactivity derived from a computer-based photochemical model. These measures consider the complete ozone forming activity of a compound, not merely the first reaction step. Further explanation of the MIR metric can be found in: W. P. L. Carter, ''Development of Ozone Reactivity Scales for Volatile Organic Compositions,'' Journal of the Air & Waste Management Association, Vol 44, 881–899, July 1994.

The MIR values are usually expressed either as grams of ozone formed per mole of VOC (molar basis) or as grams of ozone formed per gram of VOC (mass basis). For comparing the reactivities of two compounds, using the molar MIR values considers an equal number of molecules of the two compounds. Alternatively, using the mass MIR values compares an equal mass of the two compounds, which will involve different numbers of molecules, depending on the relative molecular weights. The molar MIR comparison is consistent with the original smog chamber experiments, which compared equal molar concentrations of individual VOCs, that underlie the original selection of ethane as the threshold compound. It is also consistent with previous reactivity determinations based on inherently molar k_{OH} values. The mass MIR comparison is consistent with how MIR values and other reactivity metrics are applied in reactivity-based emission limits, specifically the California Air Resources Board rule for aerosol coatings (see *http://www.arb.ca.gov/consprod/regs/apt.pdf*).

Given the relatively low molecular weight of ethane, use of the mass basis tends to result in more VOCs falling into the ''negligibly reactive'' class versus the molar basis. This means that, in some cases, a compound might be considered less reactive than ethane and eligible for VOC exemption under the mass basis but not under the molar basis. One of the compounds considered in this action falls into this situation, where the molar MIR value is greater than that of ethane, but the mass MIR value is less than or equal to that of ethane. This compound is propylene carbonate.

The EPA has considered the choice between a molar or mass basis for the comparison to ethane in past rulemakings and guidance. The design of the VOC exemption policy, including the choice between a mass and mole basis, has been critiqued in the published literature.[1] Most recently, in ''Interim Guidance on Control of Volatile Organic Compounds in Ozone State Implementation Plans'' published on September 13, 2005 (70 FR 54046), EPA stated:

> ''* * * a comparison to ethane on a mass basis strikes the right balance between a threshold that is low enough to capture compounds that significantly affect ozone concentrations and a threshold that is high enough to exempt some compounds that may usefully substitute for more highly reactive compounds. * * * When reviewing compounds that have been suggested for VOC exempt status, EPA will continue to compare them to ethane using k_{OH} expressed on a molar basis and MIR values expressed on a mass basis.''

Relying on a comparison of mass MIR values consistent with this guidance, EPA proposed to revise its definition of VOC at 40 CFR 51.100(s) to add propylene carbonate and dimethyl carbonate to the list of compounds that are exempt because they are negligibly reactive since they are equal to or less reactive than ethane on a mass basis. For propylene carbonate, EPA invited comment on the alternative use of a molar basis for the comparison of these compounds to ethane.

The technical rationale for recommending an exemption for each of the individual compounds is given below:

A. Propylene Carbonate

Huntsman Corporation submitted a petition to EPA on July 27, 1999, requesting that propylene carbonate be exempted from VOC control based on its low reactivity relative to ethane.

Propylene carbonate (CAS registry number 108–32–7) is an odorless non-viscous clear liquid with a low vapor pressure (0.023 mm Hg at 20(C) and low evaporation rate compared to many other commonly used organic solvents. It has been used in cosmetics, as an adhesive component in food packaging, as a solvent for plasticizers and synthetic fibers and polymers, and as a solvent for aerial pesticide application.

[1] Basil Dimitriades, ''Scientific Basis of an Improved EPA Policy on Control of Organic Emissions for Ambient Ozone Reduction.'' Journal of the Air & Waste Management Association, 49:831–838, July 1999.

Huntsman submitted several pieces of information to support its petition, all of which have been added to the docket for this action. One of these pieces of information was ''Investigation of the Atmospheric Ozone Formation Potential of t-butyl Alcohol, N-Methyl Pyrrolidinone and Propylene Carbonate'' by William P. L. Carter, Dongmin Luo, Irina L. Malkina, Ernesto C. Tuazon, Sara M. Aschmann, and Roger Atkinson, University of California at Riverside, July 8, 1996. Table 8 of that reference lists the MIR for propylene carbonate (on a gram basis) as 1.43 times higher than that of ethane. However, in Table 1 above, EPA has shown a 2007 MIR value that was taken from more recent 2007 data from Dr. Carter's Web site. This 2007 MIR value is lower than that of ethane on a mass basis.

From the data in Table 1, it can be seen that propylene carbonate has a higher k_{OH} value than ethane, meaning that it initially reacts more quickly in the atmosphere than ethane. A molecule of propylene carbonate is also more reactive than a molecule of ethane, as shown by the molar MIR (g O_3/mole VOC) values, since equal numbers of moles have equal numbers of molecules. However, a gram of propylene carbonate is less reactive, or creates less ozone on the day of its emission to the atmosphere, than a gram of ethane. This is because propylene carbonate has a molecular weight (102), which is over three times that of ethane (30), thus requiring less than a third the number of molecules of propylene carbonate to weigh a gram than the number of molecules of ethane needed to weigh a gram.

Based on the mass MIR (g O_3/g VOC) value for propylene carbonate being equal to or less than that of ethane, EPA finds that propylene carbonate is ''negligibly reactive'' and therefore exempt for the regulatory definition of VOC at 40 CFR 51.100(s). EPA took comments on whether the comparison of propylene carbonate to ethane should instead be made on the basis of the molar MIR (g O_3/mole VOC) value. None of the comments received during the public comment period opposed using the g O_3/g VOC basis. In fact, the comments which addressed that issue supported the use of the MIR on a g O_3/g VOC basis for granting exemptions.

B. Dimethyl Carbonate

The EPA received a petition from Kowa America Corporation on July 29, 2004 seeking an exemption from the regulatory definition of VOC for dimethyl carbonate. This petition asserted that dimethyl carbonate (DMC) is less photochemically reactive than ethane and asked for the exemption on that basis.

Dimethyl carbonate (CAS registry number 616–38–6) may be used as a solvent in paints and coatings. The petitioner anticipated that it might be used in waterborne paints and adhesives because it is partially water soluble. It is also used as a methylation and carbonylation agent in organic synthesis. It can be used as a fuel additive.

In support of its petition, the petitioner presented articles which give k_{OH} and MIR values for the compound. These articles have been placed in the docket.

As shown in Table 1, DMC has a greater k_{OH} value than ethane, which indicates that DMC will likely initially react more quickly in the atmosphere. However, the MIR values for DMC calculated on either a mass or mole basis are less than that of ethane, which indicates lower reactivity overall. Based on these data, EPA finds that DMC is ''negligibly reactive'' and therefore exempt from the regulatory definition of VOC at 40 CFR 51.100(s). Because both the mass and molar MIR values of DMC are less than those of ethane, this chemical meets EPA's exemption criteria under either MIR metric.

III. Response to Comments

EPA proposed these actions on October 1, 2007 (72 FR 55717) and took public comment on the proposal. Here is a summary of the comments received during the public comment period and EPA's response. There was no request for a public hearing on the proposal and none was held.

There were four comment letters submitted to the docket during the public comment period. One comment letter was from an individual. Two were from chemical companies. One comment letter was from a trade association. The comments are summarized below.

Comment: The Web site reference for the latest MIR values contained an error. The site which was listed as *http://pah.cert.ucr.edu/carter/SAPRC/scales07.xls* should have been *http://pah.cert.ucr.edu/~carter/SAPRC/scales07.xls*.

Response: We left out the ~ sign in the Web address which made it incorrect. The latest MIR data which is used in this final rule may be found in Appendix B of the July 7, 2008 report by William P. L. Carter ''Development of the SAPRC–07 Chemical Mechanism and Updated Ozone Reactivity Scales.'' This report may be found at *http://www.engr.ucr.edu/~carter/SAPRC/saprc07.pdf*.

Comment: One commenter corrected certain technical information about the evaporation rate of dimethyl carbonate which was listed in the docket.

Response: This correction is noted, but this minor change did not impact whether or not EPA should finalize the exemption petition.

Comment: One commenter supported the use of the latest MIR values for making VOC exemption determinations. There were no comments opposing the use of the latest MIR values.

Response: EPA acknowledged recent MIR values which were made public shortly before the proposal to grant VOC exemption to propylene carbonate and dimethyl carbonate, but based the proposal on older MIR values which had been previously published. EPA is using the latest MIR values for this final rule.[2] The use of the newer MIR values does not change the conclusion about the VOC exemption of propylene carbonate and dimethyl carbonate.

Comment: The two industry commenters, and the trade association comment letter each expressed support for the VOC exemption of propylene carbonate and dimethyl carbonate.

Response: EPA acknowledges this support and notes that there were no comments opposing these exemptions.

Comment: Three commenters opposed separate tracking and reporting for propylene carbonate and dimethyl carbonate. Two of these commenters also expressed opposition for separate tracking for any VOC exempt compounds.

Response: Although the rule preamble encourages record keeping for propylene carbonate and dimethyl carbonate, there is no requirement for this in the rule itself. Record keeping for other exempt compounds is not the subject of this rulemaking, so comments about that are not relevant to this action.

Comment: Three of the commenters support the use of the mass-based MIR approach versus the mole-based approach. One of the commenters submitted as part of his comments a November 15, 1999 letter written by William P.L. Carter supporting the use of impact per mass as an appropriate basis for comparing ozone reactivities when making VOC exemption decisions. This Carter letter had previously been submitted to EPA as part of the tertiary butyl acetate VOC exemption rule making (69 FR 69298).

[2] The MIR values used for this rule may be found in Appendix B of the July 7, 2008 report by William P.L. Carter ''Development of the SAPRC–07 Chemical Mechanism and Updated Ozone Reactivity Scales.'' This report may be found at *http://www.engr.ucr.edu/carter/SAPRC/saprc07.pdf* or in the docket for this rule.

There were no comments opposing the use of the mass-based MIR approach.

Response: EPA specifically requested comment on this subject for propylene carbonate since the mole based MIR value for that compound is higher than that of ethane and using the mole based MIR value would not allow the exemption for propylene carbonate. Because there were no comments opposed to the use of the mass based approach, EPA is proceeding to grant these exemptions on a mass based MIR basis in keeping with the September 13, 2005 interim guidance on control of volatile organic compounds in ozone state implementation plans which says ''EPA will continue to compare them [i.e., compounds] to ethane using k_{OH} expressed on a molar basis and MIR values expressed on a mass basis.''

Comment: One commenter, who was the petitioner for dimethyl carbonate, said that the company recommended exposure limit of 200 ppm time weighted average 8 hour for dimethyl carbonate is identical to that of methyl acetate, an existing VOC exempt solvent. This commenter also said that methyl acetate like DMC has the potential for hydrolyzing to form methanol in the body and therefore they would be similar in their toxicity profiles and safety handling requirements. The commenter also denied a statement in Hawley's Condensed Chemical Dictionary that DMC is both toxic by inhalation and a strong irritant.

Response: In the proposal, EPA said ''While EPA does not have information to suggest that the proposed exemptions could increase health risks due to possible toxicity of the exempted compounds, we invite the public to submit comments and additional information relevant to this issue.'' The comments here are the only comments EPA received regarding health effects of these compounds. These comments have not led EPA to identify unusual health risks from the compounds.

IV. Final Action

This action is based on EPA's review of the material in Docket ID No. EPA–HQ–OAR–2006–0948. The EPA hereby amends its definition of VOC at 40 CFR 51.100(s) to exclude propylene carbonate and dimethyl carbonate from the regulatory definition of VOC for use in ozone SIPs and ozone controls for purposes of attaining the ozone national ambient air quality standard.

The revised definition will also apply for purposes of any federal implementation plan for ozone nonattainment areas (*see* e.g., 40 CFR 52.741(a)(3)). States are not obligated to exclude from control as a VOC those compounds that EPA has found to be negligibly reactive. However, if this action is made final, states should not include these compounds in their VOC emissions inventories for determining reasonable further progress under the Act (*e.g.*, section 182(b)(1)) and may not take credit for controlling these compounds in their ozone control strategy.

Excluding a compound from the regulatory definition of VOC may lead to changes in the amount of the exempt compound used and the types of applications in which the exempt compound is used. Although the final rule has no mandatory reporting requirements, EPA urges states to continue to inventory the emissions of these compounds for use in photochemical modeling.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

B. Paperwork Reduction Act

This action does not impose any new information collection burden under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). This action is deregulatory in nature and removes requirements rather than adds requirements. The regulation is a rule change that revises a definition of volatile organic compound and imposes no record keeping or reporting requirements.

C. Regulatory Flexibility Act

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

For purposes of assessing the impacts of this action on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final action on small entities, I certify that this rule will not have a significant economic impact on a substantial number of small entities. This rule will not impose any requirements on small entities. This rule concerns only the definition of VOC and does not directly regulate any entities. The RFA analysis does not consider impacts on entities which the action in question does not regulate. See *Motor & Equipment Manufacturers Ass'n* v. *Nichols,* 142 F. 3d 449, 467 (D.C. Cir. 1998); *United Distribution Cos.* v. *FERC,* 88 F. 3d 1105, 1170 (D.C. Cir. 1996), cert. denied, 520 U.S. 1224 (1997). Pursuant to the provision of 5 U.S.C. 605(b), I hereby certify that the rule will not have an impact on small entities.

D. Unfunded Mandates Reform Act

This action contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, and tribal governments and the private sector. Since this rule is deregulatory in nature and does not impose a mandate upon any source, this rule is not estimated to result in the expenditure by state, local and tribal governments or the private sector of $100 million in any 1 year. Therefore, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments. This action is also not subject to the requirements of section 203 of the UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. As discussed above, this final rule does not impose any new requirements on small governments.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in

the Executive Order to include regulations that have ''substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have federalism implications. It will not have substantial direct effects on the state, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule concerns only the definition of VOC. Thus, Executive Order 13132 does not apply to this rule.

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

This rule does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It will not have substantial direct effects on tribal governments, 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 in Executive Order 13175. This action does not have any direct effects on Indian Tribes. Thus, Executive Order 13175 does not apply to this rule.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This final rule is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involved technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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

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

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The final rule amendment is deregulatory and does allow relaxation of the control measures on sources. However, this is not expected to lead to increased ozone formation since the compounds being exempted have been determined to have negligible photochemical reactivity.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States, Section 804 exempts form section 801 the following types of rules: (1) Rules of particular application; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties, 5 U.S.C. 804(3). The EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability to manufacturers and users of these specific exempt chemical compounds. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). Therefore, this rule will be effective on February 20, 2009.

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 13, 2009.

Stephen L. Johnson,

Administrator.

■ For reasons set forth in the preamble, part 51 of chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

■ 1. The authority citation for Part 51, Subpart F, continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7412, 7413, 7414, 7470–7479, 7501–7508, 7601, and 7602.

§ 51.100 [Amended]

■ 2. Section 51.100 is amended at the end of paragraph (s)(1) introductory text by removing the words ''and perfluorocarbon compounds which fall into these classes:'' and adding in their place a semi-colon and the words ''propylene carbonate; dimethyl carbonate; and perfluorocarbon compounds which fall into these classes:''.

[FR Doc. E9–1150 Filed 1–16–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2008–0862; FRL–8763–5]

Finding of Failure To Submit a Required State Implementation Plan Revision for 1-Hour Ozone Standard, California—San Joaquin Valley—Reasonably Available Control Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finding that California has failed to submit, for the San Joaquin Valley extreme 1-hour ozone nonattainment area, a State Implementation Plan (SIP) revision required by Clean Air Act (CAA) sections 172(c)(1), 182(b)(2) and 182(f). These CAA sections require that SIPs provide for the implementation of reasonably available control technology on major stationary sources of volatile organic compounds (VOC) and oxides of nitrogen (NO_X) as well as certain other sources. Under the CAA, this finding triggers the 18-month time clock for mandatory application of sanctions and 2-year time clock for a federal implementation plan.

DATES: *Effective Date:* This rule is effective on January 21, 2009.

ADDRESSES: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region 9, 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 Regional Office location (*e.g.*, copyrighted material). 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: Andrew Steckel, EPA Region IX, (415) 947–4115, *steckel.andrew@epa.gov.*

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

I. Background

A. The San Joaquin Valley's 1-Hour Ozone Classification and Planning Requirements

The San Joaquin Valley 1-hour ozone nonattainment area (SJV) includes the following counties in California's central valley: San Joaquin, Stanislaus, Merced, Madera, Fresno, Kings, Tulare, and part of Kern. 40 CFR 81.305. When the CAA was amended in 1990, each area of the country that was designated nonattainment for the 1-hour ozone national ambient air quality standard (NAAQS), including the SJV, was classified by operation of law as ''marginal,'' ''moderate,'' ''serious,'' ''severe'' or ''extreme'' depending on the severity of the area's air quality problem. CAA sections 107(d)(1)(C) and 181(a). Each successive classification carries with it increasingly stringent requirements that build on the previous classification's requirements.

Based on its air quality during the 1987–1989 period, the SJV was initially classified as serious with an attainment date of no later than November 15, 1999. See 56 FR 56694 (November 6, 1991) and CAA section 181(a)(1). On November 8, 2001, the SJV was reclassified as severe (effective December 10, 2001) for failure to attain the 1-hour ozone standard by the serious area attainment date. 66 FR 56476. CAA section 181(a) and (b)(2).

On January 9, 2004, California requested that EPA reclassify the SJV from severe to extreme for the 1-hour ozone standard under the Act's voluntary reclassification provisions in section 181(b)(3). See letter from Catherine Witherspoon, ARB, to Wayne Nastri, EPA, January 9, 2004. On April 16, 2004, we granted the State's request. 69 FR 20550. In that action, we required the State to submit by November 15, 2004 an extreme area plan for the SJV [1] that provides for the attainment of the 1-hour ozone standard as expeditiously as practicable, but no later than November 15, 2010. We also stated that the plan must meet the specific provisions of CAA section 182(e). Under section 182(e), extreme area plans are required to meet the requirements for severe area plans and the additional requirements for extreme areas.[2]

Among these requirements are the provisions for the implementation of reasonably available control technology (RACT) in sections 172(c)(1) and 182(b)(2). At a minimum, the CAA requires RACT for major VOC sources and for VOC source categories for which EPA has issued Control Techniques Guideline (CTG) documents. For extreme areas, such as the SJV, CAA section 182(e) defines a major source as a stationary source that emits or has the potential to emit 10 tons per year of VOC. CAA section 182(f) requires that RACT also apply to major stationary sources of NO_X.

B. The San Joaquin Valley's 1-Hour Ozone RACT Provisions

The SJV Air Pollution Control District (SJVAPCD or the District) adopted the ''Extreme Ozone Attainment Demonstration Plan'' on October 8, 2004 and amended it on October 20, 2005 to, among other things, substitute for the original chapter a new ''Chapter 4: Control Strategy'' which includes the 1-hour ozone RACT provisions. The State submitted the plan and amendment on November 15, 2004 and March 6, 2006, respectively. See letters from Catherine Witherspoon, ARB, to Wayne Nastri, EPA, November 15, 2004 and March 6, 2006. The plan and amendment, collectively, will be referred to as the ''2004 SIP'' in this rule.

Section 4.2.5 of the 2004 SIP identified four specific source categories where further analysis and new or modified rules might be needed to meet the RACT requirements for sources down to the 10 tpy emissions level. The District concluded that only these categories would need additional work because its existing rules were already sufficiently stringent. As discussed below, the State withdrew the RACT provisions of the 2004 SIP in September, 2008.[3]

C. The San Joaquin Valley's 8-Hour Ozone Classification and Anti-Backsliding Requirements

In an April 30, 2004 final rule, EPA designated and classified areas of the country under the more protective 8-hour ozone standard codified in 40 CFR 50.10. The SJV was designated nonattainment and classified under title 1, part D, subpart 2 of the CAA as serious for the 8-hour standard. 69 FR 23858. On the same date, EPA also issued a final rule entitled ''Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 1'' (Phase 1 Rule). 69 FR 23951. Among other matters, this rule revoked the 1-hour ozone standard in the SJV (as well as in most other areas of the country), effective June 15, 2005. See 40 CFR 50.9(b); 69 FR 23951, 23996 and 70 FR 44470 (August 3, 2005). The Phase 1 Rule also set forth anti-backsliding principles to ensure continued progress toward attainment of the 8-hour ozone standard by

[1] There are several tribal areas in the SJV. Because California has not been approved to administer any CAA programs in Indian country, the requirement to submit a revised SIP did not include these tribal areas.

[2] The CAA specifically excludes certain serious area requirements from the extreme area requirements, *e.g.*, the section 182(c)(6), (7) and (8) provisions for new source review.

[3] On October 16, 2008 we proposed to approve the balance of the 2004 SIP as well as additional documents comprising the State's 1-hour ozone plan for the SJV. See 73 FR 61381.

identifying which 1-hour ozone requirements remain applicable after revocation of that standard. One of the requirements retained, and thus continues to apply to the SJV, is the requirement to implement RACT. See 40 CFR 51.905(a)(1)(i) and 51.900(f)(1).[4]

On November 29, 2005, EPA issued the ''Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2'' (Phase 2 Rule). 70 FR 71612. For areas classified under subpart 2, such as the SJV, the Phase 2 rule required submittal of a RACT SIP for the 8-hour standard by September 15, 2006. See 40 CFR 51.912(a). It also required submittal for subpart 2 areas of full attainment and rate of progress plans by June 15, 2007. See 40 CFR 51.908(a) and 51.910(a).

D. The San Joaquin Valley's 8-Hour Ozone RACT SIP

The District adopted on August 17, 2006 and the State submitted as a SIP revision on January 31, 2007, an 8-hour ozone RACT demonstration addressing sources down to the 25 tpy level. See letter from Catherine Witherspoon, ARB, to Deborah Jordan, EPA, January 31, 2007. SJVAPCD also requested a voluntary reclassification to extreme for the 8-hour standard as allowed by CAA section 181(b)(3) and 40 CFR 51.903(b). On November 16, 2007, California submitted the District's 2007 8-hour ozone plan. See letter from James Goldstene, ARB, to Wayne Nastri, EPA. The State also concurred with the District's request for a voluntary reclassification to extreme. Once granted, the major source threshold under the 8-hour standard will drop to 10 tpy of either VOC or NO_X and thus be the same for both the 1-hour and 8-hour ozone standards.[5]

In September 2008, the District began a comprehensive reevaluation of its rules to determine their compliance with the RACT requirements. This reevaluation is in part to address issues that EPA has raised regarding the District's 2006 8-hour ozone RACT SIP and in part to assure that the rules cover sources in the SJV down to the extreme area major source threshold of 10 tpy. See letter from Andrew Steckel, EPA, to George Heinen, SJVAPCD, May 6, 2008. The District's intent is to take any needed rule revisions to its Board for adoption by Spring, 2009. See letter from Deborah Jordan, EPA, to Seyed Sadredin, SJVAPCD, September 9, 2008.

E. Withdrawal of the 1-Hour Ozone RACT Provisions

On September 5, 2008, the State formally withdrew the RACT portion of the 2004 SIP, specifically section 4.2.5, indicating that the District would satisfy its continuing RACT obligation for the 1-hour ozone standard with a revised 8-hour ozone RACT SIP that it is currently developing. Letter from James N. Goldstene, ARB, to Wayne Nastri, EPA, with enclosures, September 5, 2008. As stated above, we have proposed approval of the balance of the SIP revisions submitted by the State to address the 1-hour ozone standard for the SJV. See 73 FR 61381.

II. Final Action

A. Finding of Failure To Submit Required SIP Revision

As a result of the withdrawal of section 4.2.5 of the 2004 SIP, we are today making a finding that California has failed to submit a SIP revision providing for the implementation of RACT as required by CAA sections 172(c)(1), 182(b)(2) and 182(f) in the San Joaquin Valley extreme 1-hour ozone nonattainment area.

If California does not submit a complete plan revision, including all required RACT rules and a supporting RACT demonstration, to meet CAA sections 172(c)(1), 182(b)(2) and 182(f) within 18 months of the effective date of today's finding, the offset sanction identified in CAA section 179(b) will be applied in the affected area. Section 179(b) and 40 CFR 52.31. If the State has still not made a complete submittal 6 months after the offset sanction is imposed, then the highway funding sanction will apply in the affected area, in accordance with 40 CFR 52.31.[6] The State can end these sanction clocks or lift any imposed sanctions by making a complete submittal addressing the RACT requirements for the San Joaquin Valley 1-hour ozone extreme area.

In addition to the sanctions, CAA section 110(c)(1) provides that EPA must promulgate a federal implementation plan addressing the 1-hour ozone RACT requirements in the SJV no later than 2 years after today's finding unless we approve the State's RACT submittal within that time.

B. Effective Date under the Administrative Procedures Act

Today's action will be effective on January 21, 2009. Under the Administrative Procedures Act (APA), 5 U.S.C. 553(d)(3), an agency rulemaking may take effect before 30 days after the date of publication in the **Federal Register** if an agency has good cause to specify an earlier effective date. This action concerns a required CAA submittal that is already overdue. We have previously cautioned California that the SIP submittal was overdue and that we were considering taking this action. In addition, this action simply starts a ''clock'' that will not result in sanctions against the State for 18 months, and that the State may ''turn off'' by making a complete SIP submittal. These reasons support an effective date prior to 30 days after the date of publication.

C. Notice-and-Comment Under the Administrative Procedures Act

This is a final action that is not subject to the notice-and-comment requirements of the APA, 5 U.S.C. 533(b). EPA believes that because of the limited time provided by the CAA to make findings of failure to submit, Congress did not intend such findings to be subject to notice-and-comment rulemaking. However, to the extent such findings are subject to notice-and-comment rulemaking, we invoke the good cause exception pursuant to the APA, 5 U.S.C. 553(b)(3)(B). Notice and comment are unnecessary because no EPA judgment is involved in making a non-substantive finding of failure to submit SIPs required by the CAA. Furthermore, notice and comment would be contrary to the public interest because it would divert EPA resources from the critical substantive review of complete SIPs. See 58 FR 51270, 51272, note 17 (October 1, 1993); 59 FR 39832, 39853 (August 4, 1994).

V. Administrative Requirements

A. Executive Orders

This final action is not a ''significant regulatory action'' as defined in Executive Order 12866 ''Regulatory Planning and Review'' (58 FR 51735

[4] These provisions were not affected by the decision of the U.S. Court of Appeals for the District of Columbia Circuit vacating portions of EPA's Phase 1 Rule. See *South Coast Air Quality Management Dist.* v. *EPA*, 472 F.3d 882 (D.C. Cir. 2006) as clarified in *South Coast Air Quality Management Dist.* v. *EPA*, 489 F.3d 1295 (D.C. Cir. 2007).

[5] Under CAA section 181(b)(3), we must grant a state's voluntary request to ''bump up'' an ozone nonattainment area in that state to a higher classification. The bump-up is effective only after EPA publishes a rule in the **Federal Register** formally granting the request. We are in the process of preparing that rule.

[6] In a 1994 rulemaking, EPA established the Agency's selection of the sequence of these two sanctions: The offset sanction under section 179(b)(2) shall apply at 18 months, followed 6 months later by the highway sanction under section 179(b)(1) of the Act. EPA does not choose to deviate from this presumptive sequence in this instance. For more details on the timing and implementation of the sanctions, see 59 FR 39832 (August 4, 1994), promulgating 40 CFR 52.31, ''Selection of sequence of mandatory sanctions for findings made pursuant to section 179 of the Clean Air Act.''

(October 4, 1993)) and therefore not subject to review under this Executive Order.

This final action is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

This final action 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 as defined in Executive Order 12866 and because we have no reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

This final action is not subject to Executive Order 13132, ''Federalism'' (64 FR 43255 (August 10, 1999)). It will not have substantial direct effects on the State, on the relationship between the national government and the State, or on the distribution of power and responsibilities among the various levels of government. The CAA established the scheme whereby states take the lead in developing plans to meet the NAAQS and the Federal Government acts as a backstop where states fail to take the required actions. This rule will not modify the relationship of the State and EPA for purposes of developing programs to implement the NAAQS.

This final action is not subject to Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249 (November 6, 2000)). It will not have substantial direct effects on tribal governments, 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.

B. Federal Acts

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

This final rule is not subject to the RFA because it was not subject to notice and comment rulemaking under the APA or any other statute. In addition we have invoked the ''good cause'' exception to notice and comment rulemaking under 5 U.S.C. 553(b) for this rule.

Under section 202 of the Unfunded Mandates Reform Act of 1995, we must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Today's action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. The CAA provision discussed in this rule requires states to submit SIPs, and this rule merely provides a finding that California has not met that requirement. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (15 U.S.C. 272) directs EPA to use ''voluntary consensus standards'' (VCS) in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards that are developed or adopted by VCS bodies. This action does not involve technical standards; therefore, we did not consider the use of any VCS.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2) and will be effective January 21, 2009.

C. Petitions for Judicial Review

Under CAA section 307(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 23, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review 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 CAA section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovermental relations, Ozone, Volatile organic compounds.

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

Dated: January 8, 2009.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. E9–1107 Filed 1–16–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[DA 08–2125]

Amendment of the Commission's Rules, Concerning Commission Organization, Practice and Procedure, Frequency Allocations and Radio Treaty Matters; General Rules and Regulations, Tariffs, Miscellaneous Rules Relating to Common Carriers, Radio Broadcast Services, and Stations in the Maritime Services

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: In this document, we correct an inadvertent error by adding the text of two previously removed rules concerning attachment of charges and payment of charges, and correcting the typographical errors previously published.

DATES: Effective January 21, 2009.

FOR FURTHER INFORMATION CONTACT: Warren Firschein, Office of Managing Director at (202) 418–0844.

SUPPLEMENTARY INFORMATION: This is a summary of the FCC's Erratum, DA 08–2125, released on September 19, 2008.

On January 25, 2008, the Managing Director released an *Order,* DA 08–122, in the above-captioned proceeding and it was published in the **Federal Register** at 73 FR 9017, February 19, 2008. This Erratum corrects an inadvertent error by reinserting two rules that were eliminated and correcting typographical errors in the Appendix. Accordingly, this Erratum corrects the final regulations by revising these sections of the Order as indicated below.

Note: All references to §§ 1.1110 through §§ 1.1119 in the Commission's rules, which are now renumbered as §§ 1.1112 through

§§ 1.1121, are amended to reflect these changes.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

Anthony J. Dale,

Managing Director.

■ Accordingly, 47 CFR part 1 is corrected by making the following correcting amendments:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 303(r), and 309.

■ 2. Re-designate §§ 1.1110 through §§ 1.1119 as §§ 1.1112 through §§ 1.1121, respectively.

■ 3. Add § 1.1110 to read as follows:

§ 1.1110 Attachment of charges.

The charges required to accompany a request for the Commission's regulatory services listed in §§ 1.1102 through 1.1109 of this subpart will not be refundable to the applicant irrespective of the Commission's disposition of that request. Return or refund of charges will be made only in certain limited instances as set out at § 1.1115 of this subpart.

■ 4. Add § 1.1111 to read as follows:

§ 1.1111 Payment of charges.

(a) The schedule of fees for applications and other filings (Bureau/Office Fee Filing Guides) lists those applications and other filings that must be accompanied by an FCC Form 159, Remittance Advice' or the electronic version of the form, FCC Form 159–E, one of the forms that is automatically generated when an applicant accesses the Commission's on-line filing and payment process.

(b) Applicants may access the Commission's on-line filing (*http://www.fcc.gov/e-file.html*) and fee payment program by accessing (*http://www.fcc.gov/feefiler.html*). Applicants who use the on-line process will be directed to the appropriate electronic application and payment forms for completion and submission of the required application(s) and payment information.

(c) Applications and other filings that are not submitted in accordance with these instructions will be returned as unprocessable.

Note to paragraph (c): This requirement for the simultaneous submission of fee forms with applications or other filings does not apply to the payment of fees for which the Commission has established a billing process. *See* § 1.1121 of this subpart.

(d) Applications returned to applicants for additional information or corrections will not require an additional fee when resubmitted, unless the additional information results in an increase of the original fee amount. Those applications not requiring an additional fee should be resubmitted directly to the Bureau/Office requesting the additional information. The original fee will be forfeited if the additional information or corrections are not resubmitted to the appropriate Bureau/Office by the prescribed deadline. A forfeited application fee will not be refunded. If an additional fee is required, the original fee will be returned and the application must be resubmitted with a new remittance in the amount of the required fee to the Commission's lockbox bank. Applicants should attach a copy of the Commission's request for additional or corrected information to their resubmission.

(1) If the Bureau/Office staff discovers within 30 days after the resubmission that the required fee was not submitted, the application will be dismissed.

(2) If after 30 days the Bureau/Office staff discovers the required fee has not been paid, the application will be retained and a 25 percent late fee will be assessed on the deficient amount even if the Commission has completed its action on the application. Any Commission actions taken prior to timely payment of these charges are contingent and subject to recession.

(e) Should the staff change the status of an application, resulting in an increase in the fee due, the applicant will be billed for the remainder under the conditions established by § 1.1118(b) of the rules.

Note to paragraph (e): Due to the statutory requirements applicable to tariff filings, the procedures for handling tariff filings may vary from the procedures set out in the rules.

■ 5. Amend newly re-designated § 1.1112 by revising paragraph (a)(2) to read as follows:

§ 1.1112 Form of payment.

(a) * * *

(2) It is the responsibility of the payer to insure that any electronic payment is made in the manner required by the Commission. Failure to comply with the Commission's procedures will result in the return of the application or other filing.

* * * * *

■ 6. Amend newly re-designated § 1.1113 by revising paragraphs (a) and (c) to read as follows:

§ 1.1113 Filing locations.

(a) Except as noted in this section, applications and other filings, with attached fees and FCC Form 159, must be submitted to the locations and addresses set forth in §§ 1.1102 through 1.1109.

(1) Tariff filings shall be filed with the Secretary, Federal Communications Commission, Washington DC 20554. On the same day, the filer should submit a copy of the cover letter, the FCC Form 159, and the appropriate fee to the Commission's lockbox bank at the address established in § 1.1105.

(2) Bills for collection will be paid at the Commission's lockbox bank at the address of the appropriate service as established in §§ 1.1102 through 1.1109, as set forth on the bill sent by the Commission. Payments must be accompanied by the bill sent by the Commission. Payments must be accompanied by the bill to ensure proper credit.

(3) Petitions for reconsideration or applications for review of fee decisions pursuant to § 1.1119(b) of this subpart must be accompanied by the required fee for the application or other filing being considered or reviewed.

(4) Applicants claiming an exemption from a fee requirement for an application or other filing under 47 U.S.C. 158(d)(1) or § 1.1116 of this subpart shall file their applications in the appropriate location as set forth in the rules for the service for which they are applying, except that request for waiver accompanied by a tentative fee payment should be filed at the Commission's lockbox bank at the address for the appropriate service set forth in §§ 1.1102 through 1.1109.

* * * * *

(c) Fees for applications and other filings pertaining to the Wireless Radio Services that are submitted electronically via ULS may be paid electronically or sent to the Commission's lock box bank manually. When paying manually, applicants must include the application file number (assigned by the ULS electronic filing system on FCC Form 159) and submit such number with the payment in order for the Commission to verify that the payment was made. Manual payments must be received no later than ten (10) days after receipt of the application on ULS or the application will be dismissed. Payment received more than ten (10) days after electronic filing of an application on a Bureau/Office

electronic filing system (e.g., ULS) will be forfeited (see §§ 1.934 and 1.1111.)

* * * * *

■ 7. In newly re-designated § 1.1114, add and reserve paragraph (b)(1)(ii).

■ 8. In newly re-designated § 1.1115, revise paragraph (a)(1) to read as follows:

§ 1.1115 Return or refund of charges.

(a) * * *

(1) When no fee is required for the application or other filing. (*see* § 1.1111).

* * * * *

■ 9. In newly re-designated § 1.1116, revise the introductory text to read as follows:

§ 1.1116 General exemptions to charges.

No fee established in §§ 1.1102 through 1.1109 of this subpart, unless otherwise qualified herein, shall be required for:

* * * * *

■ 10. In newly re-designated § 1.1117, revise paragraph (a) introductory text to read as follows:

§ 1.1117 Adjustments to charges.

(a) The Schedule of Charges established by §§ 1.1102 through 1.1109 of this subpart shall be reviewed by the Commission on October 1, 1999 and every two years thereafter, and adjustments made, if any, will be reflected in the next publication of Schedule of Charges.

* * * * *

■ 11. In newly re-designated § 1.1118, revise paragraph (a) introductory text and paragraph (d) to read as follows:

§ 1.1118 Penalty for late or insufficient payments.

(a) Filings subject to fees and accompanied by defective fee submissions will be dismissed under § 1.1111 (d) of this subpart where the defect is discovered by the Commission's staff within 30 calendar days from the receipt of the application or filing by the Commission.

* * * * *

(d) Failure to submit fees, following notice to the applicant of failure to submit the required fee, is subject to collection of the fee, including interest thereon, any associated penalties, and the full cost of collection to the Federal government pursuant to the provisions of the Debt Collection Improvement Act of 1996 (DCIA), Public Law 104–134, 110 Stat. 1321, 1358 (Apr. 26, 1996), codified at 31 U.S.C. 3711 *et seq. See* 47 CFR 1.1901 through 1.1952. The debt collection processes described above may proceed concurrently with any other sanction in this paragraph.

■ 12. In newly re-designed § 1.1119, revise paragraphs (c) introductory text and (e) to read as follows:

§ 1.1119 Petitions and applications for review.

* * * * *

(c) Petitions for waivers, deferrals, fee determinations, reconsiderations and applications for review will be acted upon by the Managing Director with the concurrence of the General Counsel. All such filings within the scope of the fee rules shall be filed as a separate pleading and clearly marked to the attention of the Managing Director. Any such request that is not filed as a separate pleading will not be considered by the Commission. Requests for deferral of a fee payment for financial hardship must be accompanied by supporting documentation.

* * * * *

(e) Applicants seeking waivers must submit the request for waiver with the application or filing, required fee and FCC Form 159, or a request for deferral. A petition for waiver and/or deferral of payment must be submitted to the Office of the Managing Director as specified in paragraph (c) of this section. Waiver requests that do not include these materials will be dismissed in accordance with § 1.1111 of this subpart. Submitted fees will be returned if a waiver is granted. The Commission will not be responsible for delays in acting upon these requests.

* * * * *

■ 13. In newly re-designated § 1.1120, revise paragraph (a) to read as follows:

§ 1.1120 Error claims.

(a) Applicants who wish to challenge a staff determination of an insufficient fee or delinquent debt may do so in writing. A challenge to a determination that a party is delinquent in paying the full application fee must be accompanied by suitable proof that the fee had been paid or waived (or deferred from payment during the period in question), or by the required application payment and any assessment penalty payment (*see* § 1.1118) of this subpart). Failure to comply with these procedures will result in dismissal of the challenge. These claims should be addressed to the Federal Communications Commission, Attention: Financial Operations, 445 12th St., SW., Washington, DC 20554 or e-mailed to *ARINQUIRIES@fcc.gov.*

* * * * *

■ 14. In newly re-designated § 1.1121, revise paragraph (b) to read as follows:

§ 1.1121 Billing procedures.

* * * * *

(b) In these cases, the appropriate fee will be determined by the Commission and the filer will be billed for that fee. The bill will set forth the amount to be paid, the date on which payment is due, and the address to which the payment should be submitted. *See also* § 1.1113 of this subpart.

[FR Doc. E9–1137 Filed 1–16–09; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 080721859–81514–02]

RIN 0648–AX01

Fisheries of the Exclusive Economic Zone Off Alaska, Groundfish of the Gulf of Alaska

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

ACTION: Final rule.

SUMMARY: NMFS issues a regulatory amendment to exempt fishermen using dinglebar fishing gear in federal waters of the Gulf of Alaska from the requirement to carry a vessel monitoring system (VMS). This action is necessary because the risk of damage posed to protected corals in the Gulf of Alaska by the dinglebar gear fishery is minor and insufficient to justify the costs of VMS. This action is intended to promote the goals and objectives of the Magnuson–Stevens Fishery Conservation and Management Act, the Fishery Management Plan for Groundfish of the Gulf of Alaska, and other applicable law.

DATES: Effective February 20, 2009.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) and the Initial Regulatory Flexibility Analysis (IRFA) prepared for this action may be obtained from the Alaska Region website at *http://alaskafisheries.noaa.gov*. Printed copies can be obtained from the Alaska Region NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Ellen Sebastian.

FOR FURTHER INFORMATION CONTACT: Ben Muse, 907–586–7234.

SUPPLEMENTARY INFORMATION: Groundfish fisheries in the Gulf of

Alaska (GOA) are managed under the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson–Stevens Fishery Conservation and Management Act (Magnuson–Stevens Act). Regulations implementing the FMP appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The FMP designates essential fish habitat and habitat areas of particular concern (HAPCs) in the Gulf of Alaska. HAPCs are areas within essential fish habitat that are of particular ecological importance to the long–term sustainability of managed species, are of a rare type, or are especially susceptible to degradation or development. The Council may designate specific sites as HAPCs and may develop management measures to protect habitat features within them. In order to protect HAPCs, certain habitat protection areas and habitat conservation zones have been designated. A habitat protection area is an area of special, rare habitat features where fishing activities that may adversely affect the habitat are restricted.

Two HAPCs are designated in the Fairweather Grounds and one HAPC is designated near Cape Ommaney in the Gulf of Alaska. Within these HAPCs, five Coral Habitat Protection Areas were identified where high concentrations of sensitive corals occur. Fishing is restricted only in the Coral Habitat Protection Areas, not the entire HAPC. The Coral Habitat Protection Areas cover a total area of 13.5 square nautical miles and were established to protect sensitive and slow–growing corals (*Primnoa* species) that provide a rare and important habitat type for rockfish and other species.

Management measures restrict fishing activity within the five GOA Coral Habitat Protection Areas. Anchoring and the use of bottom contact gear by any federally permitted fishing vessel in these five areas are prohibited. Anchoring and fishing with bottom contact gear adversely affect coral habitat by breaking and injuring the coral and disturbing the substrates to which corals attach. Colonies of *Primnoa* species are easily damaged or dislodged from the seafloor if contacted by fishing gear and recovery after disturbance is likely to take decades. NOAA Fisheries Office for Law Enforcement uses vessel monitoring systems (VMS) to enforce the anchoring and fishing with bottom contact gear prohibitions in the Coral Habitat Protection Areas.

Bottom contact fishing gear includes nonpelagic trawl, dredge, dinglebar, pot, and hook–and–line gear. Nonpelagic trawl, dredge, and dinglebar gear are considered mobile bottom contact fishing gear. Dinglebar gear is similar to salmon troll gear with the addition of a heavy metal bar that keeps the hooks close to the seafloor. Of the types of mobile bottom contact fishing gear, only dinglebar gear is used off the coast of Southeast Alaska in the State of Alaska–managed fishery for lingcod.

Although lingcod is not managed under the FMP, if a vessel catches and retains any groundfish managed under the FMP in the exclusive economic zone off Alaska, it also is considered to be fishing for groundfish, and therefore must carry a Federal Fishing Permit. Certain species of rockfish are required to be retained under the FMP. Rockfish are common bycatch in the state–managed dinglebar fishery for lingcod, and therefore these vessels are subject to the requirements of the FMP and must carry a Federal Fishing Permit. All federally permitted vessels with mobile bottom contact gear onboard are subject to VMS requirements (50 CFR 679.7(a)(22)). Consequently, vessels fishing for lingcod with dinglebar gear also must carry a transmitting VMS onboard.

Vessel monitoring systems allow NMFS to enforce regulations over a large area. VMS requirements went into effect June 28, 2006 (71 FR 36694), for all vessels fishing in the GOA and using mobile bottom contact fishing gear. Vessels participating in the dinglebar fishery for lingcod in federal waters of Southeast Alaska first used VMS units in 2007.

Information about the GOA dinglebar fishery for lingcod is available from two sources: VMS data from 2007, and logbook data submitted to the Alaska Department of Fish and Game. Logbook data are self–reported by fishermen and estimate the area, average depth, and other characteristics of the fishing operation. These reports are subjective and are not routinely cross–checked with VMS or other data.

Logbook data indicate that fishing depths may have limited overlap with the depths where sensitive corals occur. In general, *Primnoa* species in the HAPCs are found deeper than 70 fathoms. Most of the area within the Coral Habitat Protection Areas is deeper than 80 fathoms (86.1 to 100 percent across the five areas). Ninety–six percent of the logbook reports from 1998–2002 indicate fishing at average depths of less than 80 fathoms, and 80 percent at depths less than 50 fathoms, whereas only four percent reported fishing at an average depth deeper than 80 fathoms. Between 2003 and 2007, all fishing was reported at depths averaging less than 80 fathoms, and only two percent of the observations fished between 70 and 80 fathoms. During this same period, 93 percent of the logbook reports indicated fishing at depths shallower than 50 fathoms. These data suggest that fishing in recent years has occurred at shallower depths. On the assumption that the reported depths are averages, some fishing took place at depths greater than these reported values. Precise fishing depth data are unavailable.

VMS units were required for the first time in this fishery in 2007. Landings records and VMS data indicate that only eight vessels participated in the dinglebar fishery for lingcod in federal waters off Southeast Alaska in 2007 and participation in the fishery has been declining over the past 10 years. All these vessels carried VMS units as a requirement for participation in the fishery. The VMS data show that in 2007 fishery participants did not fish in the GOA Coral Habitat Protection Areas and very little fishing activity occurred in the Cape Ommaney area.

NMFS also correlated VMS data with information about bottom substrates in the HAPCs. This analysis revealed that the dinglebar fishery for lingcod targets a different substrate type (folded sandstone) than the substrates that typically support *Primnoa* species corals (bedrock and boulders). Small pinnacles in the areas of high coral concentrations are also a likely deterrent to fishing in those areas with dinglebar gear.

In June 2008, the Council adopted its preferred alternative to exempt fishermen using dinglebar gear from the VMS requirement. After reviewing the analysis, the Council concluded that any risk of illegal fishing and damage to corals in the restricted areas of the Cape Ommaney and Fairweather Grounds HAPCs were insufficient to justify monitoring by VMS, given the cost imposed on lingcod fishermen, the small scale of the fishery (in terms of number of participants, duration, size of vessels, and revenues generated), and the limited spatial overlap of the fishery with restricted areas of the HAPCs.

The total cost for acquisition and installation of a VMS unit is estimated at $2,068 per vessel. The Pacific States Marine Fish Commission reimburses a portion of the initial cost to the vessel owner. Although this offsets a large part of the vessel owner's costs, the reimbursement is still a social cost. Annual maintenance and operation costs are estimated at $630. A full

discussion of the costs of VMS is provided in the RIR for this action (see **ADDRESSES**). The Council reiterated its previous decision that the need for VMS monitoring should be evaluated on a case–by–case basis for individual fisheries. Consequently, the VMS exemption in this action applies specifically to dinglebar gear with respect to the five Coral Habitat Protection Areas currently identified in the GOA. Should the Council identify new GOA HAPCs in the future, the need for VMS monitoring for all gear types will be examined with respect to those areas. This action will not exempt vessels using dinglebar gear for other fisheries from VMS requirements. Likewise, this action will not exempt vessels fishing for lingcod with other gear types from the VMS requirement.

This action exempts vessels that use dinglebar gear from the VMS requirements at §§ 679.7(a)(22) and 679.28(f)(6)(iii) by revising the text in these paragraphs to specify that the VMS requirement only applies to two types of mobile bottom contact gear, non–pelagic trawl gear and dredge gear, not dinglebar gear. This change would not remove dinglebar gear from the definition of mobile bottom contact gear.

A proposed rule for this action was published October 3, 2008 (73 FR 57585), and the comment period ended November 3, 2008. No comments were received. No changes were made to the final rule from the proposed rule.

Classification

Pursuant to sections 304(b)(1)(A) and 305(d) of the Magnuson–Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the FMP, other provisions of the Magnuson–Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared a FRFA as required by section 604 of the Regulatory Flexibility Act. The FRFA describes the economic impact this final rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows.

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) to accompany the proposed rule. The proposed rule described the IRFA. Copies of the IRFA and the FRFA are available from NMFS (see **ADDRESSES**). No comments were received on the IRFA or the economic effects of the proposed rule.

The objective of this action is to prevent damage to corals from the use of dinglebar gear while ensuring that regulations are applied without imposing undue costs on the fishermen using dinglebar gear. Evidence suggests that the dinglebar fishery for lingcod does not overlap with areas where sensitive coral species occur, so the VMS requirements are an unnecessary burden to a small fleet. This action would directly regulate all vessels with Federal Fishing Permits carrying dinglebar gear in the exclusive economic zone off Alaska. All such vessels are considered ''small entities'' for purposes of the RFA. NMFS has identified eight to twelve small entities that would be affected by this proposed rule. All of the directly regulated individuals would be expected to benefit from this action relative to the status quo alternative because they would not be required to purchase and maintain VMS units in order to participate in the lingcod fishery.

NMFS has not identified a significant alternative to the proposed action that would meet the objectives of the action and would have a smaller adverse impact on directly regulated small entities. The objectives of the action were to avoid damage to protected habitat without imposing undue burdens on fishermen using dinglebar gear. The proposed rule completely relieves the financial burden of the VMS. No other significant alternative would have a smaller impact on directly regulated small entities. The Council considered an alternative that would have had the effect of lifting the restriction on fishing by dinglebar vessels within the protected habitat as well as the VMS requirement. However, the Council rejected this alternative without further analysis because its intent was not to lift restrictions on fishing by a specific gear type that might impact bottom habitat, but to lift an enforcement measure if that measure imposed costs disproportionate to its efficacy.

There are no new reporting, recordkeeping, or other compliance requirements associated with this rule. No federal rules that duplicate, overlap, or conflict with the action were identified in the analysis.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules.

The preamble to this final rule serves as the small entity compliance guide. This action does not require any additional compliance from small entities that is not described in the preamble. Copies of this final rule are available from NMFS (see **ADDRESSES**).

List of Subjects in 50 CFR Part 679

Alaska, Fisheries.

Dated: January 13, 2009.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, NMFS amends 50 CFR part 679 as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; and 3631 *et seq.*; Pub. L. 108–447.

■ 2. In § 679.7, paragraph (a)(22) is revised to read as follows:

§ 679.7 Prohibitions.

* * * * *

(a) * * *

(22) *VMS for non–pelagic trawl and dredge gear vessels in the GOA.* Operate a federally permitted vessel in the GOA with non–pelagic trawl or dredge gear onboard without an operable VMS and without complying with the requirements at § 679.28.

* * * * *

■ 3. In § 679.28, paragraph (f)(6)(iii) is revised to read as follows:

§ 679.28 Equipment and operational requirements.

* * * * *

(f) * * *

(6) * * *

(iii) You operate a vessel required to be federally permitted with non–pelagic trawl or dredge gear onboard in reporting areas located in the GOA or operate a federally permitted vessel with non–pelagic trawl or dredge gear onboard in adjacent State waters; or

* * * * *

[FR Doc. E9–1119 Filed 1–16–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106671–8010–02]

RIN 0648–XM77

Fisheries of the Exclusive Economic Zone Off Alaska; Chiniak Gully Research Area for Vessels Using Trawl Gear

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

ACTION: Temporary rule.

SUMMARY: NMFS is rescinding the trawl closure in the Chiniak Gully Research Area. This action is necessary to allow vessels using trawl gear to participate in directed fishing for groundfish in the Chiniak Gully Research Area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 1, 2009, through 1200 hrs, A.l.t., September 20, 2009.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

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

The Chiniak Gully Research Area is closed to vessels using trawl gear from August 1 to a date no later than September 20 under regulations at § 679.22(b)(6)(ii)(A). This closure is in support of a research project to evaluate the effects of commercial fishing on pollock distribution and abundance, as part of a comprehensive investigation of Stellar sea lion and commercial fishery interactions.

The regulations at § 679.22(b)(6)(ii)(B) provide that the Regional Administrator, Alaska Region, NMFS, (Regional Administrator) shall rescind the trawl closure if relevant research activities will not be conducted. The Regional Administrator has determined that research activities will not be conducted in 2009 in the Chiniak Gully Research Area. Therefore, the Regional Administrator is rescinding the trawl closure of the Chiniak Gully Research Area. All other closures remain in full force and effect.

Classification

Pursuant to 5 U.S.C. 553 (b)(B), the Assistant Administrator for Fisheries, NOAA (AA) finds good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment is unnecessary. Notice and comment is unnecessary because the rescission of the trawl closure is non-discretionary; pursuant to § 679.22(b)(6)(ii)(B), the Regional Administrator has no choice but to rescind the trawl closure once it is determined that research activities will not be conducted in the area.

Pursuant to 5 U.S.C. 553(d)(1), this rule is not subject to the 30-day delay in effective date requirement of 5 U.S.C. 553(d) since the rule relieves a restriction.

This action has been determined to be not significant for purposes of Executive Order 12866.

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

Dated: January 14, 2009.

Emily H. Menashes

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

[FR Doc. E9–1093 Filed 1–16–09; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 74, No. 12
Wednesday, January 21, 2009

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

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2008–BT–TP–0007]

RIN 1904–AB77

Energy Conservation Program: Test Procedures for Fluorescent Lamp Ballasts in Standby Mode

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.

ACTION: Notice of proposed rulemaking and public meeting.

SUMMARY: The U.S. Department of Energy (DOE) is proposing amendments to its test procedures for fluorescent lamp ballasts under the Energy Policy and Conservation Act. These amendments address the measurement of energy consumption of fluorescent lamp ballasts in the standby and off modes. DOE is also announcing a public meeting to receive comment on the issues presented in this notice.

DATES: DOE will hold a public meeting on February 2, 2009 beginning at 10:30 a.m. in Washington, DC. DOE must receive requests to speak at the meeting before 4 p.m., January 26, 2009. DOE must receive a signed original and an electronic copy of statements to be given at the public meeting before 4 p.m., January 26, 2009.

DOE will accept comments, data, and information regarding this notice of proposed rulemaking (NOPR) before or after the public meeting, but no later than April 6, 2009. See Section V, ''Public Participation,'' of this NOPR for details.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue, SW., Washington, DC 20585–0121. To attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945. Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures, requiring a 30-day advance notice. If a foreign national wishes to participate in the workshop, please inform DOE of this fact as soon as possible by contacting Ms. Brenda Edwards at (202) 586–2945 so that the necessary procedures can be completed.

Any comments submitted must identify the NOPR on Test Procedures for Fluorescent Lamp Ballasts in Standby Mode, and provide the docket number EERE–2008–BT–TP–0007 and/or Regulation Identifier Number (RIN) 1904–AB77. Comments may be submitted using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: Ballasts_Standby.Rulemaking@hq.doe.gov*. Include the docket number EERE–2008–BT–TP–0007 and/or RIN 1904–AB77 in the subject line of the message.
- *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed paper original.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024. Telephone: (202) 586–2945. Please submit one signed paper original.

For detailed instructions on submitting comments and additional information on the rulemaking process, see Section V, ''Public Participation,'' of this document.

Docket: For access to the docket to read background documents or comments received, visit the U.S. Department of Energy, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at (202) 586–2945 for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Mrs. Linda Graves, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–1851. E-mail: *Linda.Graves@ee.doe.gov*. In the Office of the General Counsel, contact Ms. Francine Pinto, U.S. Department of Energy, Office of the General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone: (202) 586–9507. E-mail: *Francine.Pinto@hq.doe.gov*.

For additional information on how to submit or review public comments and on how to participate in the public meeting, contact Ms. Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. E-mail: *Brenda.Edwards@ee.doe.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Authority and Background
II. Summary of the Proposal
III. Discussion
A. Definitions
1. Active Mode
2. Standby Mode
3. Off Mode
B. Scope of Applicability
1. Types of Ballasts Covered
2. Effective Date
3. Relationship to Other Rulemakings
C. Proposed Approach
1. Overview of Test Procedure
2. Definitions
3. Test Conditions
4. Test Method and Measurements
5. Test Procedure Measurements and Burden
IV. Regulatory Review
A. Executive Order 12866
B. National Environmental Policy Act
C. Regulatory Flexibility Act
D. Paperwork Reduction Act
E. Unfunded Mandates Reform Act of 1995
F. Treasury and General Government Appropriations Act, 1999
G. Executive Order 13132
H. Executive Order 12988
I. Treasury and General Government Appropriations Act, 2001
J. Executive Order 13211
K. Executive Order 12630
L. Section 32 of the Federal Energy Administration Act of 1974
V. Public Participation
A. Attendance at Public Meeting
B. Procedure for Submitting Requests To Speak
C. Conduct of Public Meeting
D. Submission of Comments
E. Issues on Which DOE Seeks Comment
VI. Approval of the Office of the Secretary

I. Authority and Background

Title III of the Energy Policy and Conservation Act (42 U.S.C. 6291 *et*

seq.; EPCA or the Act) sets forth a variety of provisions designed to improve energy efficiency. Part A of Title III (42 U.S.C. 6291–6309) establishes the ''Energy Conservation Program for Consumer Products Other Than Automobiles,'' which covers consumer products and certain commercial products (all of which are referred to below as ''covered products''), including fluorescent lamp ballasts (ballasts). (42 U.S.C. 6291(1)–(2) and 6292(a)(13)).

Under the Act, the overall program consists essentially of the following parts: Testing, labeling, and Federal energy conservation standards. The testing requirements consist of test procedures, prescribed under EPCA, that manufacturers of covered products must use as the basis for certifying to the U.S. Department of Energy (DOE) that their products comply with EPCA energy conservation standards and for representing the energy efficiency of their products.

Section 323 of EPCA (42 U.S.C. 6293) sets forth generally applicable criteria and procedures for DOE's adoption and amendment of such test procedures. It states, for example, that ''[a]ny test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use, * * * or estimated annual operating cost of a covered product during a representative average use cycle or period of use, as determined by the Secretary [of Energy], and shall not be unduly burdensome to conduct.'' (42 U.S.C. 6293(b)(3)) In addition, if DOE determines that a test procedure should be prescribed or amended, it must publish proposed test procedures and offer the public an opportunity to present oral and written data, views, and arguments with respect to such procedures with a comment period no less than 60 days and not to exceed 270 days. (42 U.S.C. 6293(b)(2)) Finally, in any rulemaking to amend a test procedure, DOE must determine ''to what extent, if any, the proposed test procedure would alter the measured energy efficiency * * * of any covered product as determined under the existing test procedure.'' (42 U.S.C. 6293(e)(1)) If DOE determines that the amended test procedure would alter the measured efficiency of a covered product, DOE must amend the applicable energy conservation standard accordingly. (42 U.S.C. 6293(e)(2))

For ballasts, the test procedures must be ''in accord with ANSI Standard C82.2–1984 or other test procedures determined appropriate by the Secretary.'' (42 U.S.C. 6293(b)(5)) DOE's existing test procedures for ballasts, which it adopted pursuant to the above provisions, appear at Title 10 of the Code of Federal Regulations (CFR) part 430, subpart B, appendix Q (''Uniform Test Method for Measuring the Energy Consumption of Fluorescent Lamp Ballasts'').

The Energy Independence and Security Act of 2007 (Pub. L. 110–140; EISA) was enacted December 19, 2007, and contains numerous amendments to EPCA. These include a requirement that for each covered product for which DOE's current test procedures do not fully account for standby mode and off mode energy consumption, DOE must amend the test procedures to include standby mode and off mode energy consumption into the overall energy efficiency, energy consumption, or other energy descriptor for that product, or, if that is technically infeasible, DOE must prescribe a separate standby mode and off mode energy use test procedure if technically feasible. (EPCA section 325(gg)(2)(A); 42 U.S.C. 6295(gg)(2)(A)) Any such amendment must consider the most current versions of International Electrotechnical Commission Standards 62301 and 62087. *Id.* For fluorescent lamp ballasts, EPCA section 325(gg)(2)(B)(ii) requires that DOE prescribe any such amendment to the test procedure for fluorescent lamp ballasts by March 31, 2009. (42 U.S.C. 6295(gg)(2)(B)(ii)) DOE is issuing this notice pursuant to this requirement.

In a separate rulemaking proceeding, DOE is considering energy conservation standards for fluorescent lamp ballasts (docket number EERE–2007–BT–STD–0016; hereinafter referred to as the ''ballast standards rulemaking''). DOE initiated that rulemaking by publishing a **Federal Register** notice announcing a public meeting and availability of the framework document (''Energy Efficiency Program for Consumer Products: Public Meeting and Availability of the Framework Document for Fluorescent Lamp Ballasts,'') on January 22, 2008. 73 FR 3653. One of the issues DOE raised for comment in the ballast standards rulemaking framework document related to DOE's obligation to develop a test procedure that measures the energy consumed by fluorescent lamp ballasts in standby mode and off mode. Specifically, item two from the framework document reads:

> Item 2. DOE welcomes comment on the standby power provisions from EISA 2007 and issues arising therefrom, including: (a) How DOE should modify its test procedure for fluorescent lamp ballasts; (b) Which covered fluorescent lamp ballasts are subject to standby mode and off mode energy use?; and (c) How DOE should take standby mode and off mode energy consumption into its analysis for the energy conservation standard?

On February 6, 2008, DOE held a public meeting in Washington, DC, to discuss the framework document for the fluorescent lamp ballast energy conservation standards rulemaking. Attendees discussed the issue of measuring standby mode and off mode. In addition, DOE received one written comment concerning standby mode and off mode testing during the comment period for the framework document. (National Electrical Manufacturers Association (NEMA), No. 11 at pp. 1–2) [1] All comments on the ballast standards rulemaking regarding the measurement of standby mode and off mode energy consumption are discussed in section III of this notice.

Finally, the amendments contained in section 310(3) of EISA insert new subsection (gg) into section 325 of EPCA, and in part directs that any final rule establishing or revising a standard for a covered product, adopted after July 1, 2010, shall incorporate standby mode and off mode energy use into a single amended new standard. (EPCA section 325(gg); 42 U.S.C. 6295(gg)(3)(A)) This new section applies to the ballast standards rulemaking (EERE–2007–BT–STD–0016), scheduled to be completed in 2011. However, pursuant to new section 325(gg)(2)(C) of EPCA (42 U.S.C. 6295(gg)(2)(C)), the amendments proposed for the test procedure will not apply to the existing energy conservation standards for fluorescent lamp ballasts. Instead, today's proposed test procedure is laying the groundwork for DOE to measure and take into consideration energy consumed in standby mode and off mode following the establishment of amended ballast standards in a future rulemaking.

II. Summary of the Proposal

This notice of proposed rulemaking (NOPR) proposes to modify DOE's current test procedures for fluorescent lamp ballasts in order to address the statutory requirement to expand test

[1] ''NEMA, No. 11 at p. 1–2'' refers to (1) a statement that was submitted by the National Electrical Manufacturers Association and is recorded in the Resource Room of the Building Technologies Program in the docket under ''Energy Conservation Program: Test Procedures for Fluorescent Lamp Ballasts in Standby Mode,'' Docket Number EERE–2008–BT–TP–0007, as comment number 11; and (2) a passage that appears on page 1 and 2 of that statement. Elsewhere in this notice, there are citations to the public meeting transcript, such as: (Public Meeting Transcript, No. 9 at pp. 68–69). In this citation, the transcrit is recorded in the same docket as the ninth entry; and the stakeholder statement cited appearing on pages 68–69.

procedures to incorporate a measure of standby mode and off mode energy consumption.

In the context of fluorescent lamp ballasts, DOE reviewed the definitions of standby mode and off mode contained in EPCA section 325(gg)(1). (42 U.S.C. 6295(gg)(1)) DOE found that while it was possible for fluorescent lamp ballasts to operate in standby mode, the off mode condition does not apply to fluorescent lamp ballasts, because it addresses a mode of energy use in which fluorescent lamp ballasts do not operate. For this reason, today's notice proposes a test method for measuring power consumed in standby mode (see section III.C) and provides an opportunity for the public to comment on DOE's rationale for why off mode does not apply (see section III.A.3).[2]

After studying the market of commercially available fluorescent ballasts and the definition of standby mode, DOE is proposing to interpret this mode as only applying to certain ballasts under certain operating conditions. DOE believes standby mode only applies to ballasts that are active components of lighting control systems, meaning the ballasts incorporate electronics that can receive a signal from a control system, and can respond to that signal by adjusting light output. These ballasts enter standby mode when the ballast is instructed to reduce lamp light output to zero percent (*i.e.*, providing no active mode function). In this situation, the ballast is connected to a main power source and offers a user-oriented feature by facilitating the activation or deactivation of its main function (*i.e.*, operating the lamp to produce light) by remote switch, or internal sensor (*i.e.*, the control system). (42 U.S.C. 6295(gg)(1)(A)(iii)) If, on the other hand, these same ballasts were dimmed to a level less than full output but greater than zero percent, they could not be in standby mode because they would be providing a ballast's main function (*i.e.*, operating a lamp to produce light). (42 U.S.C. 6295(gg)(1)(A)(i))

The amendments proposed in this notice are based on provisions contained and adapted from the current ANSI testing standard, ANSI Standard C82.2–2002. It should be noted that DOE's existing test procedure for fluorescent lamp ballasts[3] measures the input power for active mode using ANSI Standard C82.2–1984. However, the amendments proposed in this notice are based on measuring input power for the standby mode test procedure using the current ANSI testing standard, ANSI Standard C82.2–2002. In addition, DOE believes that the only difference between the two test procedures relates to the interference of testing instrumentation. Specifically, DOE believes the input power measurement of C82.2–2002 reduces the interference of instrumentation on the input power measurement as compared to C82.2–1984. However, DOE also believes that because modern instrumentation does not significantly interfere with input power measurements, the differences between the input power measurements of the two test procedures are negligible.

DOE is not proposing to update the fluorescent lamp ballast active mode test procedure references of ANSI Standard C82.2–1984 contained in appendix Q to subpart B of part 430 because DOE is considering revising the fluorescent lamp ballast active mode test procedure in a subsequent rulemaking as discussed in the framework document[4] and at the public meeting. (Public Meeting Transcript, No. 9 at pp. 11–12 and 69–78) Thus, the amendments proposed in today's notice only append provisions to sections 1, 2 and 3 of appendix Q to subpart B of part 430 to address new definitions, test conditions, and methods for measuring standby mode power consumption. Today's proposal does not affect the existing test procedure or energy conservation standards in place for fluorescent lamp ballasts, because DOE does not currently regulate standby mode power consumption of fluorescent lamp ballasts.

EPCA also requires that DOE determine to what extent, if any, the proposed test procedure would alter the measured energy efficiency. (42 U.S.C. 6293(e)(1)) DOE notes that the test procedure amendments proposed in this notice would not change the measure of the ballast efficacy factor, the metric on which the current energy conservation standard is based. Thus, the measure of this proposed test procedure would not alter the measured fluorescent lamp ballast energy efficiency.

As amended, EPCA provides that amendments to the test procedures to include standby mode and off mode energy consumption shall not be used to determine compliance with previously established standards. (42 U.S.C. 6295(gg)(2)(C)) Thus, the proposed inclusion of a standby mode test procedure in today's notice will not affect a manufacturer's ability to demonstrate compliance with the existing energy conservation standards for fluorescent lamp ballasts. Indeed, the standby mode test procedure need not be performed to determine compliance with the statutory energy conservation standards for fluorescent lamp ballasts because the existing statutory standards do not account for standby mode power consumption. The Department's test procedures for measuring standby mode would become effective, in terms of adoption into the Code of Federal Regulations, 30 days after the date of publication in the **Federal Register** of the final rule in this test procedures rulemaking.

DOE proposes this test procedure to assist in its evaluation of fluorescent lamp ballast standby mode energy consumption as part of its ballast standards rulemaking which may establish future energy conservation standards for ballasts. DOE intends to consider standby mode energy consumption in that rulemaking, to comply with the EPCA requirement that DOE incorporate standby mode into a single amended or new standard, pursuant to EPCA section 325(gg)(2)(A); (42 U.S.C. 6295(gg)(2)(A)). If DOE adopts energy conservation standards for standby mode in that rulemaking, manufacturers would be required to use the test procedures' standby mode provisions to demonstrate compliance on the effective date of a final rule establishing amended standards for fluorescent lamp ballasts. The introductory sentence in proposed subsection 2.2 of appendix Q to subpart B of part 430 would be removed in a notice of final rulemaking establishing amended standards for fluorescent lamp ballasts.

[2] DOE first raised this issue in its framework document, published for the energy conservation standards rulemaking on fluorescent lamp ballasts. The framework document at page 4 stated that ''[f]luorescent lamp ballast[s] never meet the definition of 'off mode.' '' DOE continued by stating that off mode, as defined by EISA, does not apply to ballasts. A copy of the framework document published in January 2008 is available at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/ballast_framework_011408.pdf.*

The publication of this framework document was announced in the **Federal Register** at 73 FR 3653.

[3] DOE's current test procedure for fluorescent lamp ballasts is contained in appendix Q to subpart B of part 430—''Uniform Test Method for Measuring the Energy Consumption of Fluorescent Lamp Ballasts.''

[4] The discussion concerning revising the test procedure for fluorescent lamp ballasts occurs on pages 7 through 9 of the framework document. A copy of the framework document published in January 2008 is available at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/ballast_framework_011408.pdf.*

The publication of this framework document was announced in the **Federal Register** at 73 FR 3653.

III. Discussion

A. Definitions

EPCA section 325(gg) lists definitions for three modes of energy consumption that are applicable to a broad set of consumer products and commercial equipment, including fluorescent lamp ballasts. (42 U.S.C. 6295(gg)(1)(A)) The EPCA definitions of active mode, standby mode, and off mode are discussed in this section, and their applicability to fluorescent lamp ballasts is addressed.

1. Active Mode

Although DOE is not directed to adopt a test procedure for active mode in section 325(gg) of EPCA, a review of the definition of active mode and DOE's interpretation of its meaning is necessary to clarify the definition of off mode, which uses the term active mode.

EPCA section 325(gg)(1)(A)(i) defines active mode as ''the condition in which an energy-using product—(I) is connected to a main power source; (II) has been activated; and (III) provides 1 or more main functions.'' (42 U.S.C. 6295(gg)(1)(A)(i)) Focusing on the third part of this definition, DOE believes that the main function of a fluorescent lamp ballast is to operate one or more fluorescent lamps. DOE understands that there are many different types of ballasts, but the *main function* common to all of them is that they are designed to operate fluorescent lamps. Therefore, DOE interprets the term active mode to mean a ballast that is operating one or more fluorescent lamps (*i.e.*, providing and regulating current). DOE does not discriminate between dimmable and non-dimmable ballasts when considering active mode; rather DOE interprets active mode as being applicable to any amount of rated system light output (*i.e.*, greater than zero percent of the rated system light output). Non-dimmable ballasts would operate the lamp or lamps in active mode at 100 percent of the rated system light output. Dimmable ballasts can vary the system light output. For dimmable ballasts, DOE interprets greater than zero percent of rated system light output to be active mode. This is because the main function of a ballast is to operate a fluorescent lamp. Whether the light output is any percentage greater than zero of the rated system light output, the ballast is operating the lamp. DOE invites comment on this interpretation of active mode.

2. Standby Mode

EPCA section 325(gg)(1)(A)(iii) defines standby mode as ''the condition in which an energy-using product—(I) is connected to a main power source; and (II) offers 1 or more of the following user-oriented or protective functions: (aa) To facilitate the activation or deactivation of other functions (including active mode) by remote switch (including remote control), internal sensor, or timer. (bb) Continuous functions, including information or status displays (including clocks) or sensor-based functions.'' (42 U.S.C. 6295(gg)(1)(A)(iii)) Two key aspects of this definition relate to fluorescent lamp ballasts: (1) Connected to a main power source and (2) offering the activation or deactivation of other functions by remote switch or internal sensor.

The definition of standby mode in part requires that ballasts be connected to their main power source. (42 U.S.C. 6295(gg)(1)(A)(iii)) This ''connected'' requirement effectively removes the majority of ballasts from having standby mode energy consumption because most ballasts are operated with on-off switches, motion sensors, circuit breakers, or other relays that disconnect main power to switch off the ballast. Once the main power source is disconnected from the ballast, the ballast ceases to operate the lamps (*i.e.*, the system light output falls to zero), and the ballast consumes no energy. The National Electrical Manufacturers Association (NEMA) touches on this point in its written comments in response to the framework document for the ballast standards rulemaking. NEMA stated that the ''vast majority'' of fluorescent lamp ballasts do not consume power when they are switched off. NEMA finds it is unclear whether these ballasts would have a standby mode, given the definition in the statute. (NEMA, No. 11 at p. 2) DOE agrees with this comment, and believes that those ballasts that are controlled by disconnecting the main power source from the ballast never operate in standby mode.

The definition of standby mode also in part contains an element that standby mode applies to energy-using products that facilitate the activation or deactivation of other functions by remote switch, internal sensor, or timer. (42 U.S.C. 6295(gg)(1)(A)(iii)(II)(aa)) DOE interprets this condition as applying only to ballasts that are designed to operate in, or function as, a lighting control system where auxiliary control devices send signals to the ballast. An example of this ballast would be a ballast that incorporates a digital addressable lighting interface (DALI). A ballast that incorporates a lighting interface like DALI (whether dimming or not) has an electronic circuit enabling the ballast to communicate with, and receive instructions from, the lighting interface (*e.g.*, DALI) system. These instructions could tell the ballast to go into active mode or to adjust the light output to zero-percent output. In this latter condition, the ballast is no longer producing any light from the fluorescent lamps (*i.e.*, no longer in active mode). Thus, at zero light output, the ballast is standing by, connected to a main power source while it awaits instructions from the lighting control system to initiate an arc and produce light again.

NEMA indicated in its comments that ballasts that are part of a lighting control system (*e.g.*, digitally addressable dimming ballasts) would be the only candidates for operating in standby mode. (NEMA, No. 11 at p. 2) As described above, DOE agrees with this comment from NEMA that standby mode, as defined by the statute, exists for ballasts that operate on a lighting control system which individually addresses the ballast and offers remote activation or deactivation functions. In fact, the only fluorescent lamp ballasts DOE is aware of that meet the statutory requirements for standby mode are those ballasts that are an active component of a lighting control system. DOE invites further comment from stakeholders on its interpretation of standby mode for fluorescent lamp ballasts.

3. Off Mode

EPCA section 325(gg)(1)(A)(ii) defines off mode as ''the condition in which an energy-using product—(I) is connected to a main power source; and (II) is not providing any standby or active mode function.'' (42 U.S.C. 6295(gg)(1)(A)(ii)) DOE considered this definition in the context of fluorescent lamp ballasts and believes that off mode does not apply to any fluorescent lamp ballast (*i.e.*, dimmable or non-dimmable) because off mode describes a condition that commercially available ballasts do not attain.

The definition of off mode requires that ballasts be connected to a main power source and not provide any standby or active mode function. (42 U.S.C. 6295(gg)(1)(A)(ii)) DOE does not believe it is possible for ballasts to meet these criteria. As described above, active mode encompasses conditions in which the ballast operates a lamp or lamps to produce greater than zero percent of the rated system light output. Standby mode applies to the situation in which the ballast is connected to a main power source and is not operating a lamp or lamps (*i.e.*, the lamps have zero percent light output). Therefore, when

connected to a main power source, the functions provided in standby mode and active mode already encompass every possible level of ballast operation, from zero to greater than zero percent of system rated light output. There is no condition in which the ballast is connected to the main power source and it is not already accounted for in either active mode or standby mode. For this reason, ballasts fail to meet the second requirement of the EPCA definition of off mode, that it is not providing any standby or active mode function. (42 U.S.C. 6295(gg)(1)(A)(ii)(II))

Furthermore, the power consumption measurement of the ballast in standby mode already captures the device in its lowest power-consuming condition. This means that in standby mode, the ballast is connected to a main power source but is not providing any output to the lamps (*i.e.*, zero percent light output). Disconnecting the ballast from the main power source by a switch, for example, would bring the ballast to a lower state of energy use (*i.e.*, zero percent power consumption), and would fail to meet the first criterion of the off-mode definition, that the ballast be connected to a main power source. (42 U.S.C. 6295(gg)(1)(A)(ii)(I))

For some products, DOE is interpreting off mode as a condition in which the user may choose to operate a manual switch mounted on the device to enable off mode, which would represent the lowest energy state. However this condition does not apply to ballasts, and DOE is not aware of any ballasts manufactured with a manual switch mounted on the housing. Instead, ballasts are usually inaccessible to end-users, and do not incorporate manual switches or other features that users may operate to affect the mode of the ballast. Thus, the lowest energy state of a fluorescent lamp ballast is that which is measured in standby mode, which by definition cannot also constitute off mode.

For all of the reasons discussed above, DOE is unable to identify a situation in which a ballast would be in off mode. Therefore, DOE is proposing in today's notice that off mode be considered inapplicable to fluorescent lamp ballasts. Should circumstances change in the future, DOE may choose to revisit this interpretation and propose a test method for measuring off mode. DOE invites comment on its proposal not to incorporate a test method for measuring off mode energy consumption for ballasts at this time.

B. Scope of Applicability

1. Types of Ballasts Covered

DOE's coverage authority extends beyond those ballasts for which it has set standards. According to the definition set forth in 42 U.S.C. 6291(29)(A), ''[t]he term 'fluorescent lamp ballast' means a device which is used to start and operate fluorescent lamps by providing a starting voltage and current and limiting the current during normal operation.'' This definition is broad, and encompasses many types of ballasts that are then later excluded from standards, such as dimming ballasts. (42 U.S.C. 6295(g)(6); 42 U.S.C. 6295(g)(8)(C)) That DOE does not have energy conservation standards in place for certain types of ballasts does not prevent DOE from considering these ballasts in the context of standby mode.

NEMA commented that it believes that dimming ballasts (and therefore digitally addressable dimming ballasts) are outside the scope of DOE's energy conservation standards rulemaking. (NEMA, No. 11 at p. 2 and Public Meeting Transcript, No. 9 at pp. 68–69) To establish a test procedure that measures standby mode power consumption, DOE finds no reason to exclude dimming ballasts from consideration. NEMA is correct that ballasts designed for dimming to 50 percent or less of their maximum output are not currently subject to DOE's current energy conservation standards. See 10 CFR 430.32(m)(2)(i). However, there is no statutory definition or other guidance directing DOE to exclude dimming ballasts from consideration under an energy conservation standards rulemaking that is evaluating fluorescent lamp ballasts. Indeed, fluorescent lamp ballasts as defined in section 321 of EPCA include all fluorescent ballasts designed to start and operate lamps, and EPCA does not differentiate between or exclude either steady-state or dimming ballasts. (42 U.S.C. 6291(29)(A)) DOE will formally address this comment from NEMA in its energy conservation standards rulemaking, but for the purposes of this test procedure to measure standby mode power consumption, DOE is considering dimming ballasts as part of its scope of coverage.

As discussed in section III.A.2 of this notice, DOE is considering standby mode as only applying to ballasts that incorporate some kind of lighting control system interface, as DOE believes these ballasts are the only ballasts that satisfy the EPCA definition of standby mode in that they are ''connected to a main power source'' and ''facilitate the activation or deactivation of other functions (including active mode) by remote switch (including remote control), internal sensor, or timer.'' (42 U.S.C. 6295(gg)(1)(A)(iii)) DOE understands that these ballasts are designed with circuitry that adds new features, including intelligent operation. As discussed above, one example of these ballasts would be a DALI-enabled ballast. DALI-enabled ballasts have internal circuitry that is fundamentally part of the ballast design that remains active and consumes energy, even when the ballast is not driving any lamps. DOE is unaware of any other types of ballasts that would have standby mode power consumption.

In addition, as discussed in section III.A.2, NEMA commented that digitally addressable dimming ballasts are the only candidates that might be considered subject to standby mode power consumption. (NEMA, No. 11 at p. 2) DOE agrees in part with this comment, noting that at this time, ballasts that incorporate some type of circuitry enabling them to operate on a lighting control system are the only ballasts that consume power when not operating fluorescent lamps and thus are the only ballasts to which standby mode applies. DOE notes, however, that it is technically feasible for both dimming ballasts and non-dimming ballasts to have standby mode power consumption if they are capable of being used as part of a lighting control system.

In summary, this test procedure would be applicable to any ''fluorescent lamp ballast'' as defined in section 321 of EPCA (42 U.S.C. 6291(29)(A)). Based on today's market, DOE believes that the ballasts subject to standby mode power measurements would be those that incorporate some electronic circuit enabling the ballast to communicate with and be part of a lighting control system. DOE also recognizes that standby mode can apply both to dimming ballasts and non-dimming ballasts. DOE invites comment on its proposal to interpret the scope of applicability of this test procedure to apply to all fluorescent lamp ballasts that incorporate an electronic circuit enabling the ballast to communicate with and be part of a lighting control system.

2. Effective Date

EPCA section 325(gg)(2)(B) requires that DOE complete development of this test procedure addressing standby mode and off mode for fluorescent lamp ballasts (*i.e.*, publish a final rule) by March 31, 2009. (42 U.S.C. 6295(gg)(2)(B)(ii)) DOE intends to meet this statutory deadline. The final rule of

this test procedure will become effective 30 days after its publication in the **Federal Register**. It should be noted that DOE does not currently have any energy conservation standards pertaining to standby mode (or off mode) power consumption and this rulemaking will not affect the ballast efficacy factor, the measure of energy conservation on which the current energy conservation standard is based. Therefore, this rule would not change how manufacturers measure and establish compliance with DOE's existing energy conservation standards for fluorescent lamp ballasts.

EPCA requires DOE to consider standby mode and off mode for all energy conservation final rules issued after July 1, 2010. (42 U.S.C. 6295(gg)(3)(A)) DOE initiated an energy conservation standard rulemaking for fluorescent lamp ballasts on January 22, 2008 with the publication of a framework document. 73 FR 3653. Because the final energy conservation standard rule is scheduled to be issued in June 2011 [5], after July 1, 2010, DOE must consider adopting standby and off mode energy conservation standards during that rulemaking. If energy conservation standards for standby mode are adopted in that rulemaking proceeding, manufacturers would be required to use the standby mode test procedure to demonstrate compliance of products manufactured after standby power energy conservation standards take effect. Any new energy conservation standard promulgated under that rulemaking would take effect five years after the effective date of the previous amended rule but only if that date is not within 3 years after the publication of the fluorescent ballast standards rulemaking final rule in June 2011. (42 U.S.C. 6295(g)(7)(C))

3. Relationship to Other Rulemakings

DOE is conducting two additional rulemakings on fluorescent lamp ballasts. As previously mentioned, DOE initiated a ballast energy conservation standards rulemaking in January 2008, which will evaluate whether to amend the standards in place for fluorescent lamp ballasts, including whether to add standby mode. That rulemaking will also consider extending coverage and standards to additional fluorescent lamp ballasts.

The other rulemaking is a test procedure rulemaking concerning fluorescent lamp ballast active mode power consumption, scheduled to start in 2009, in which DOE will consider updating the references to industry standards (found in appendix Q to subpart B of 10 CFR part 430) to current versions of the industry standards. In today's standby mode power consumption test procedure NOPR, DOE is proposing to adopt the most current versions of the industry testing standards for measuring standby power by referencing ANSI Standard C82.2–2002. This will result in testing requirements that are different from the current active mode power consumption test procedure, which references ANSI Standard C82.2–1984.

C. Proposed Approach

1. Overview of Test Procedure

EPCA section 325(gg)(2)(A) in part directs DOE to establish test procedures to include standby mode, ''taking into consideration the most current versions of Standards 62301 and 62087 of the International Electrotechnical Commission * * *'' (42 U.S.C. 6295(gg)(2)(A)) IEC Standard 62087 applies only to audio, video, and related equipment, but not to lighting equipment. Thus, IEC Standard 62087 does not apply to this rulemaking, and DOE developed today's proposed rule consistent with procedures outlined in IEC Standard 62301 which applies generally to household electrical appliances. To develop a test method that would be familiar to fluorescent ballast manufacturers, DOE referenced language and methodologies presented in ANSI Standard C82.2–2002 (''For Lamp Ballasts—Method of Measurement of Fluorescent Lamp Ballasts'').

Today's proposed test procedure for measuring standby power consumption consists of the following steps: (1) A signal is sent to the ballast instructing it to reduce light output to zero percent; (2) the main input power to the ballast is measured; and (3) the power from the control signal path is measured in one of three ways, depending on how the signal from the control system is delivered to the ballast.

In sections 2 through 4 that follow, DOE discusses the language being proposed for insertion into section 1 of appendix Q to subpart B of 10 CFR part 430 (hereinafter, ''appendix Q'').

2. Definitions

Section 1 of appendix Q provides definitions for terms used in the test procedure for fluorescent lamp ballasts. The list of terms was organized alphabetically, but one term was out of place. In addition, DOE needs to insert six new terms to accommodate terminology used in the new test procedure being proposed today. The six new terms are as follows: AC control signal, ANSI Standard C82.2–2002, DC control signal, PLC control signal, standby power, and wireless control signal.

The definition for AC control signal states that it is ''an alternating current (AC) signal that is supplied to the ballast using additional wiring for the purpose of controlling the ballast and putting the ballast in standby mode.'' Some lighting control systems operate by communicating with the ballasts over a separate wiring system using an AC voltage. DOE was unable to locate a definition for AC control signal in IEC Standard 62301 or ANSI Standard C82.2–2002. Therefore, DOE drafted this definition of an AC control signal to enhance the clarity and understanding of its proposed test procedure—specifically that an AC control signal is a signal supplied to the ballast over a discrete wiring system for the purpose of ballast control. In today's test procedure, DOE proposes to measure the power consumed by the ballast through the control signal wiring system.

The definition for ANSI Standard C82.2–2002 is based on the wording of the existing definition of ANSI Standard C82.2–1984 in appendix Q.

The definition of DC control signal states that it is ''a direct current (DC) signal that is supplied to the ballast using additional wiring for the purpose of controlling the ballast and putting the ballast in standby mode.'' Some lighting control systems operate by communicating with the ballasts over a separate wiring system using DC voltage. DOE was unable to locate a definition for a DC control signal in IEC Standard 62301 or ANSI Standard C82.2–2002. Therefore, DOE drafted this definition of a DC control signal to enhance the clarity and understanding of its proposed test procedure—specifically that a DC control signal is a signal supplied to the ballast over a discrete wiring system for the purpose of ballast control. In today's test procedure, DOE proposes to measure the power consumed by the ballast through the control signal wiring system.

The definition of PLC control signal states that it is ''a power line carrier (PLC) signal that is supplied to the ballast using the input ballast wiring for the purpose of controlling the ballast and putting the ballast in standby mode.'' Some lighting control systems

[5] The framework document at page 11 states that this rulemaking is scheduled to complete in June 2011. A copy of the framework document published in January 2008 is available at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/ballast_framework_011408.pdf.*

The publication of this framework document was announced in the **Federal Register** at 73 FR 3653.

operate by communicating with the ballasts over the existing power lines that constitute the main power connection. DOE was unable to locate a definition for a PLC control signal in IEC Standard 62301 or ANSI Standard C82.2–2002. Therefore, DOE drafted this definition of a PLC control signal to enhance the clarity and understanding of its proposed test procedure—specifically that a PLC control signal is a signal supplied to the ballast over its input ballast wiring for the purpose of controlling the ballast. In today's test procedure, DOE proposes to measure the power consumed by the ballast through the PLC control signal.

The definition of standby mode was provided in EPCA section 325(gg)(1)(A)(iii). (42 U.S.C. 6295(gg)(1)(A)(iii)) In today's notice, DOE proposes to incorporate this EPCA definition into appendix Q.

The definition of wireless control signal states that it is ''a wireless signal that is radiated to and received by the ballast for the purpose of controlling the ballast and putting the ballast in standby mode.'' Some lighting control systems operate by communicating with the ballasts over a wireless system, much like a wireless computer network. DOE was unable to locate a definition for a wireless control signal in IEC Standard 62301 or ANSI Standard C82.2–2002. Therefore, DOE drafted this definition of a wireless control signal to enhance the clarity and understanding of its proposed test procedure—specifically that a wireless control signal is a signal radiated from the lighting control system to the ballast for the purpose of controlling the ballast.

DOE invites stakeholder comment on these six new definitions being proposed for incorporation into section 1 of appendix Q.

3. Test Conditions

Section 2 of appendix Q provides the required test conditions for measuring the performance of fluorescent lamp ballasts. DOE proposes to modify section 2 to establish new test conditions only for the measurement of standby mode energy consumption, and thereby not affect the existing test conditions required for measuring the ballast efficacy factor in the current fluorescent lamp ballast test procedure. In other words, section 2 is proposed to be subdivided into two subsections, 2.1 and 2.2. Subsection 2.1 will contain the same requirements as section 2 does now, based on the test conditions contained in ANSI Standard C82.2–1984, for the purpose of measuring the ballast efficacy factor. Subsection 2.2 will be structured in the same way as subsection 2.1; however, it will be for the purpose of measuring power consumed in standby mode.

DOE also proposes to correct the acronym used in existing section 2 for the American National Standard Institute, which is shown as ''ANIS'' instead of ''ANSI'' and to be consistent with other parts of the statute, refer to section 430.22 entitled ''Reference Sources'' for information on obtaining ANSI C82.2–1984. For clarity, all of section 2.1 is shown in the rule language section of this NOPR as proposed new language, although the only actual changes to section 2.1 are the acronym correction, the reference to section 430.22, and the addition of a sentence that reads: ''The test conditions described in this subsection (2.1) are applicable to subsections 3.3 and 3.4 of section 3, Test Method and Measurements.''

DOE is concerned about having two different industry-referenced documents for test conditions. However, DOE notes that this is a temporary problem because, as previously mentioned, DOE will conduct a separate test procedure rulemaking on the existing fluorescent lamp ballast test procedure. In that future rulemaking, DOE will evaluate and consider updating the referenced industry standards in newly created subsection 2.1, and potentially recombine subsections 2.1 and 2.2 into one section 2.

DOE invites stakeholder comments on this proposal for handling the different test conditions associated with the existing and proposed new test procedure for measuring energy consumption in standby mode.

4. Test Method and Measurements

Section 3 of appendix Q provides the test method and measurements associated with the fluorescent lamp ballast test procedure. This section references requirements for instrumentation and all the steps a technician must follow when measuring the performance of the ballast. In today's notice, DOE does not propose to change any of the existing requirements or steps associated with testing for determining the ballast efficacy factor. Instead, DOE proposes to append new steps, at the end of section 3, which describe the procedure that must be followed for measuring power consumed during standby mode.

In subsection 3.1, DOE proposes to append a new sentence to the end of the existing sentence, which indicates that the testing for standby mode must be done in accordance with ANSI Standard C82.2–2002. Specifically, the proposed new sentence reads: ''The test method for measuring standby mode energy consumption of fluorescent lamp ballasts shall be done in accordance with ANSI Standard C82.2–2002.'' As with the test condition issue in section 2 of appendix Q, this proposed statement would create a bifurcated test setup, requiring technicians to conduct part of the testing on a fluorescent lamp ballast using one set of conditions and then change those conditions for a second set of measurements. However, as stated earlier, the test procedure for measuring standby mode is on an accelerated schedule and must be completed by March 2009, because of the requirements of EPCA section 325(gg). (42 U.S.C. 6295(gg)) In addition, DOE intends to initiate another ballast test procedure rulemaking within one year that would consider harmonizing the test conditions and referenced industry standards. While today's proposed test procedure would become effective 30 days after publication of the final rule, manufacturers would not use this test procedure to demonstrate compliance with any efficiency standard unless or until DOE establishes efficiency standards in the fluorescent ballast standards final rule, which is scheduled to be completed in 2011. 73 FR at 3654. Any new energy conservation standards promulgated under that rulemaking would take effect five years after the effective date of the previous amended rule but only if that date is not within 3 years after the publication of the fluorescent ballast standards rulemaking final rule in 2011. (42 U.S.C. 6295(g)(7)(C))

In subsection 3.5, DOE proposes to insert the test method for measuring standby mode power. In this subsection, DOE directs the technician to send a signal to the ballast under test, instructing the ballast to have zero light output using the appropriate ballast communication protocol or system for that ballast. Next, the technician will measure the input power (in watts) to the ballast in accordance with ANSI Standard C82.2–2002. Finally, the technician will measure the power from the ballast control signal path using a method for an AC control signal path, a DC control signal path, or a power line carrier (PLC) control signal path, depending on the type of path that the ballast employs.

The measurement of input power to the ballast from the main electricity supply is based on the approach in ANSI Standard C82.2–2002, section 13. This measurement parallels the approach DOE followed in subsection 3.3.1 of the existing test procedure for fluorescent lamp ballasts, in which manufacturers are directed to measure

the input power (watts) to the ballast in accordance with ANSI Standard C82.2–1984, section 3.2.1(3) and section 4. The requirements of ANSI Standard C82.2–1984 have been combined into section 13 in ANSI Standard C82.2–2002. Thus, the test measurements of ballast input power are required to be done in accordance with the appropriate sections of the industry test method.

In subsection 3.5.3 of the proposed test procedure, DOE directs manufacturers to address measurement of control signal power. As DOE understands it, there are four possible ways of delivering a control signal to a fluorescent lamp ballast: (1) A dedicated AC control signal wire, (2) a dedicated DC control signal wire, (3) a power line carrier (PLC) control signal over the main supply input wires, and (4) a wireless control signal. DOE is interested in measuring the power consumed by the lighting control signal, and therefore proposes three methods for measuring that power, depending on which type of system is being used. DOE is not concerned with the power supplied to a ballast using the fourth approach, the wireless signal, because DOE estimates that the power supplied to a ballast using a wireless signal is well below 1.0 watt. The three circuit diagrams direct the technician to measure the control signal power using either a wattmeter (for the AC control signal wiring and the PLC control signal) or a voltmeter and ammeter (for the DC control signal). DOE incorporates three circuit diagrams in sections 3.5.3.1, 3.5.3.2, and 3.5.3.3 to clearly present the intended method of measurement for each type of control system communication protocol.

DOE invites stakeholder comments on the proposed method for measuring the power consumed by the control signal while the ballast is in standby mode.

5. Test Procedure Measurements and Burden

Once manufacturers have taken the two measurements—namely, the main input power and the control signal power in standby mode—DOE does not tell manufacturers how to combine these values or use them in equations. Instead, DOE intends to study how best to use these two measurements of standby mode power consumption in its rulemaking to evaluate energy conservation standards for fluorescent lamp ballasts, initiated in January 2008. 73 FR 3653. DOE invites stakeholders to comment on any recommended approaches to combining these two measurements into one metric in the energy conservation standards rulemaking.

Finally, the test procedure proposed today for measuring standby mode power consumption, as required by EPCA section 325(gg), is designed to produce results that measure power consumption in an accurate and repeatable manner, and should not be unduly burdensome on manufacturers to conduct. The test procedure is consistent with IEC Standard 62301 and follows testing approaches used in ANSI Standard C82.2–2002. DOE invites stakeholders to comment on the issue of burden, including whether there are any other ways DOE could secure the same accuracy and repeatability while reducing the burden.

IV. Regulatory Review

A. Executive Order 12866

Today's proposed rule is not a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB).

B. National Environmental Policy Act

In this proposed rule, DOE proposes test procedure amendments that it expects will be used to develop and implement future energy conservation standards for ballasts. DOE has determined that this proposed rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*; NEPA) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this proposed rule would amend existing test procedures without affecting the amount, quality, or distribution of energy usage, and, therefore, will not result in any environmental impacts. Thus, this rulemaking is covered by Categorical Exclusion A5 under 10 CFR part 1021, subpart D, which applies to a rulemaking interpreting or amending an existing rule that does not change the environmental effect of the rule being amended. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site, *http://www.gc.doe.gov.*

DOE reviewed today's proposed rule under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. As part of this rulemaking, DOE examined the existing compliance costs manufacturers already bear and compared them to the revised compliance costs, based on today's proposed revisions to the test procedure. While it is true that manufacturers making any public representation of the standby power consumption of their ballasts would be required to use this test procedure, DOE does not find that the burden imposed by the revisions proposed in this document would result in any significant increase in testing or compliance costs. Rather, the technician is required to make one additional measurement using a test setup that is already commonly used in the industry for measuring ballast power consumption. In addition, as stated in today's notice, standby mode only applies to a very small subset of fluorescent lamp ballasts (*i.e.*, those enabled to operate on lighting control systems), and therefore the vast majority of ballasts sold would not be affected by today's standard. On this basis, DOE tentatively concludes and certifies that this proposed rule would have no significant impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

D. Paperwork Reduction Act

This rulemaking will impose no new information collection or recordkeeping requirements. Manufacturers already collect test information and maintain records on regulated fluorescent lamp ballasts based on the certification and reporting requirements approved by

OMB (OMB Control Number 1910–1400). Accordingly, OMB clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. For proposed regulatory actions likely to result in a rule that may cause expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires Federal agencies to publish estimates of the resulting costs, benefits, and other effects on the national economy (2 U.S.C. 1532(a), (b)). UMRA also requires Federal agencies to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate.'' UMRA also requires an agency plan for giving notice and opportunity for timely input to small governments that may be affected before establishing a requirement that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. (This policy is also available at *http://www.gc.doe.gov*). Today's proposed rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

F. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277; 5 U.S.C. 601 note) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being. Today's proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is unnecessary to prepare a Family Policymaking Assessment.

G. Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required under Executive Order 13132.

H. Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996) imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

I. Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (Pub. L. 106–554; 44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

K. Executive Order 12630

Pursuant to Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 15, 1988) DOE has determined that this rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

L. Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977 (15 U.S.C. 788; FEAA) Section 32 essentially provides in part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition. The proposed rule incorporates testing methods contained in the following commercial standards: ANSI Standard C82.2–2002, ''American National Standard for Lamp Ballasts—Method of Measurement of Fluorescent Lamp Ballasts, 2002.'' The Department has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the FEAA, (*i.e.*, that they were developed in a manner that fully provides for public participation, comment, and review). DOE will consult with the Attorney General and the Chairman of the FTC concerning the impact of these test procedures on competition, prior to prescribing a final rule.

V. Public Participation

A. Attendance at Public Meeting

The time, date and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this NOPR. To attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945. As explained in the **ADDRESSES** section, foreign nationals visiting DOE headquarters are subject to advance security screening procedures.

B. Procedure for Submitting Requests To Speak

Any person who has an interest in the topics addressed in this notice, or who is a representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the public meeting. Such persons may hand-deliver requests to speak to the address shown in the **ADDRESSES** section at the beginning of this notice between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Requests may also be sent by mail or e-mail to: Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, or *Brenda.Edwards@ee.doe.gov.* Persons who wish to speak should include in their request a computer diskette or CD in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

DOE requests that those persons who are scheduled to speak submit a copy of their statements at least one week prior to the public meeting. DOE may permit any person who cannot supply an advance copy of this statement to participate, if that person has made alternative arrangements with the Building Technologies Program in advance. When necessary, the request to give an oral presentation should ask for such alternative arrangements.

C. Conduct of Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also employ a professional facilitator to aid discussion. The public meeting will be conducted in an informal, conference style. The meeting will not be a judicial or evidentiary public hearing, but DOE will conduct it in accordance with 5 U.S.C. 553 and section 336 of EPCA (42 U.S.C. 6306). There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws.

DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. A court reporter will record the proceedings and prepare a transcript.

At the public meeting, DOE will present summaries of comments received before the public meeting, allow time for presentations by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant may present a prepared general statement (within time limits determined by DOE) before the discussion of specific topics. Other participants may comment briefly on any general statements. At the end of the prepared statements on each specific topic, participants may clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions from DOE and other participants. DOE representatives may also ask questions about other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of procedures needed for the proper conduct of the public meeting.

DOE will make the entire record of this proposed rulemaking, including the transcript from the public meeting, available for inspection at the U.S. Department of Energy, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The official transcript will also be posted on the Webpage at *http://www.eere.energy.gov/buildings/appliance_standards/residential/fluorescent_lamp_ballasts.html*. Anyone may purchase a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding the proposed rule no later than the date provided at the beginning of this notice. Comments, data, and information submitted to DOE's e-mail address for this rulemaking should be provided in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format. Stakeholders should avoid the use of special characters or any form of encryption, and wherever possible, comments should include the electronic signature of the author. Absent an electronic signature, comments submitted electronically must be followed and authenticated by submitting a signed original paper document to the address provided at the beginning of this notice. Comments, data, and information submitted to DOE via mail or hand delivery/courier should include one signed original paper copy. No telefacsimiles (faxes) will be accepted.

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: one copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include (1) A description of the items; (2) whether

and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) a date upon which such information might lose its confidential nature due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

E. Issues on Which DOE Seeks Comment

Although comments are welcome on all aspects of this rulemaking, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

1. DOE invites stakeholders to comment on its interpretation of the application of the terms active mode, standby mode, and off mode to fluorescent lamp ballasts, as defined in EPCA section 325(gg). In particular, DOE invites stakeholders to comment on its preliminary conclusion that off mode does not apply to fluorescent lamp ballasts at this time, and therefore is not included as part of this test procedure. See section III.A.

2. DOE invites stakeholders to comment on how it is proposing to interpret the scope of applicability to this test procedure to apply to all fluorescent lamp ballasts that incorporate an electronic circuit enabling the ballast to communicate with and be part of a lighting control system. Although all ballasts are subject to the test procedure, only these types would be subject to standby mode power consumption. See section III.B.1

3. DOE invites stakeholder comments on the definitions for the six new terms added to section 1 of appendix Q to subpart B of 10 CFR part 430: AC control signal, ANSI Standard C82.2–2002, DC control signal, PLC control signal, standby mode, and wireless control signal. See section III.C.2.

4. DOE invites stakeholder comments on its proposal to retain the testing conditions in place (based on ANSI Standard C82.2–1984) for the current test procedure and yet to propose to adopt new test conditions (based on ANSI Standard C82.2–2002) for the proposed standby mode power measurements. See section III.C.3.

5. DOE invites stakeholder comments on the test method and measurements proposed for subsection 3.5 of appendix Q to subpart B of 10 CFR part 430. This subsection provides the step-by-step procedure and circuit diagrams necessary for measuring the power (in watts) consumed by the main power input to the ballast and the control signal (if any). See section III.C.4.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation test procedures, Household appliances, Imports, Incorporation by reference.

Issued in Washington, DC on January 8, 2009.

John F. Mizroch,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE is proposing to amend part 430 of Chapter II of Title 10, Code of Federal Regulations as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

2. Section 430.22 is amended by adding new paragraphs (b)(1)9. and (b)(1)10. to read as follows:

§ 430.22 Reference Sources.

* * * * *

(b)(1) * * *

9. ANSI Standard C82.2–1984, ''American National Standard for Fluorescent Lamp Ballasts—Method of Measurement, 1984''

10. ANSI Standard C82.2–2002, ''American National Standard for Lamp Ballasts—Method of Measurement of Fluorescent Lamp Ballasts, 2002''

* * * * *

3. Section 430.23 is amended by redesignating paragraph (q)(4) as paragraph (q)(5) and adding a new paragraph (q)(4) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(q) *Fluorescent Lamp Ballasts.* * * *

(4) Standby power consumption of certain fluorescent lamp ballasts shall be measured in accordance with section 3.5 of appendix Q to Subpart B of Part 430.

* * * * *

4. Appendix Q to Subpart B of Part 430 is amended:

a. In section 1, Definitions, by:

1. Redesignating sections 1.12, 1.13, 1.14, and 1.15 to sections 1.17, 1.18, 1.19, and 1.20 respectively.

2. Redesignating sections 1.7, 1.8, 1.9, 1.10, and 1.11 to sections 1.11, 1.12, 1.13, 1.14, and 1.15 respectively.

3. Redesignating section 1.3 to section 1.7.

4. Redesignating section 1.16 to 1.3 and adding a new section 1.16.

5. Redesignating section 1.4 to section 1.8 and adding a new section 1.4.

6. Redesignating section 1.5 to section 1.9.

7. Redesignating section 1.6 to section 1.10, and adding a new section 1.6.

8. Redesignating section 1.2 to section 1.5.

9. Redesignating section 1.1 to section 1.2, and adding a new section 1.1.

10. Adding new sections 1.21 and 1.22.

b. By revising section 2;

c. By revising section 3.1 and adding new sections 3.5, 3.5.1, 3.5.2, 3.5.3, 3.5.3.1, 3.5.3.2, 3.5.3.3, and 3.5.3.4.

These revisions and additions read as follows:

Appendix Q to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Fluorescent Lamp Ballasts

1. *Definitions.*

1.1 *AC control signal* means an alternating current (AC) signal that is supplied to the ballast using additional wiring for the purpose of controlling the ballast and putting the ballast in standby mode.

* * * * *

1.4 *ANSI Standard C82.2–2002* means the test standard published by the American National Standard Institute (ANSI), titled ''American National Standard for Lamp Ballasts—Method of Measurement of Fluorescent Lamp Ballasts, 2002,'' and designated as ANSI Standard C82.2–2002.

* * * * *

1.6 *DC control signal* means a direct current (DC) signal that is supplied to the ballast using additional wiring for the purpose of controlling the ballast and putting the ballast in standby mode.

* * * * *

1.16 *PLC control signal* means a power line carrier (PLC) signal that is supplied to the ballast using the input ballast wiring for the purpose of controlling the ballast and putting the ballast in standby mode.

* * * * *

1.21 *Standby mode* means the condition in which an energy-using product—(a) is connected to a main power source; and (b) offers one or more of the following user-oriented or protective functions: (i) To facilitate the activation or deactivation of other functions (including active mode) by remote switch (including remote control), internal sensor, or timer. (ii) Continuous

functions, including information or status displays (including clocks) or sensor-based functions.

1.22 *Wireless control signal* means a wireless signal that is radiated to and received by the ballast for the purpose of controlling the ballast and putting the ballast in standby mode.

2. *Test conditions.*

2.1 *Measurement of Electric Supply and Light Output.*

The test conditions for testing fluorescent lamp ballasts shall be done in accordance with the American National Standard Institute (ANSI) Standard C82.2–1984, ''American National Standard for Fluorescent Lamp Ballasts—Methods of Measurement,'' approved October 21, 1983. See § 430.22 for information on the availability of this material. Any subsequent amendment to this standard by the standard-setting organization will not affect the DOE test procedures unless and until amended by DOE. The test conditions are described in sections 4, 5, 6, 7, and 21 of ANSI Standard C82.2–1984. The test conditions described in this subsection (2.1) are applicable to subsections 3.3 and 3.4 of section 3, Test Method and Measurements.

2.2 *Measurement of Standby Mode Power.* The measurement of standby mode power need not be performed to determine compliance with energy conservation standards for fluorescent lamp ballasts established prior to [EFFECTIVE DATE OF TEST PROCEDURE FINAL RULE].

The test conditions for testing fluorescent lamp ballasts shall be done in accordance with the American National Standard Institute (ANSI) Standard C82.2–2002, ''American National Standard for Fluorescent Lamp Ballasts—Methods of Measurement,'' approved June 6, 2002. See § 430.22 for information on the availability of this material. Any subsequent amendment to this standard by the standard-setting organization will not affect the DOE test procedures unless and until amended by DOE. The test conditions for measuring standby power are described in sections 5, 7, and 8 of ANSI Standard C82.2–2002. The test conditions described in this subsection (2.2) are applicable to subsection 3.5 of section 3, Test Method and Measurements.

3. *Test Method and Measurements.*

3.1 The test method for testing fluorescent lamp ballasts shall be done in accordance with ANSI Standard C82.2–1984. The test method for measuring standby mode energy consumption of fluorescent lamp ballasts shall be done in accordance with ANSI Standard C82.2–2002.

* * * * *

3.5 *Standby Mode Power Measurement.*

3.5.1. Send a signal to the ballast instructing it to have zero light output using the appropriate ballast communication protocol or system for the ballast being tested.

3.5.2 *Input Power.* Measure the input power (watts) to the ballast in accordance with ANSI Standard C82.2–2002, section 13.

3.5.3 *Control Signal Power.* The power from the control signal path will be measured using one of the methods described below.

3.5.3.1 *AC Control Signal.* Measure the AC control signal power (watts), using a wattmeter (W), connected to the ballast in accordance with the circuit shown in Figure 1.

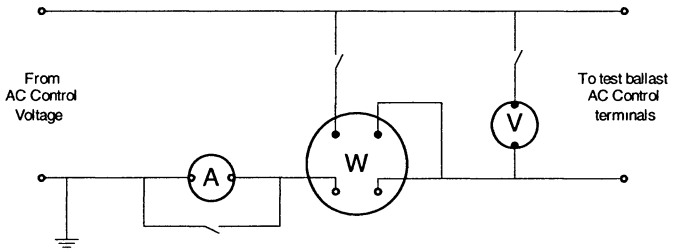

Figure 1: Circuit for measuring AC Control Signal Power in Standby Mode

3.5.3.2 *DC Control Signal.* Measure the DC control signal voltage, using a voltmeter (V), and current, using an ammeter (A), connected to the ballast in accordance with the circuit shown in Figure 2. The DC control signal power is calculated by multiplying the DC control signal voltage and the DC control signal current.

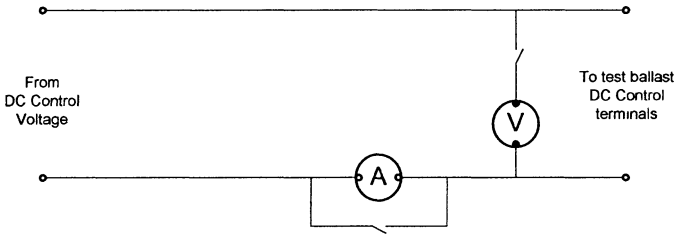

Figure 2: Circuit for measuring DC Control Signal Power in Standby Mode

3.5.3.3 *Power Line Carrier (PLC) Control Signal.* Measure the PLC control signal power (watts), using a wattmeter (W), connected to the ballast in accordance with the circuit shown in Figure 3. The wattmeter must have a frequency response that is at least 10 times higher than the PLC being measured in order to measure the PLC signal correctly. The wattmeter must also be high-pass filtered to filter out power at 60 Hertz.

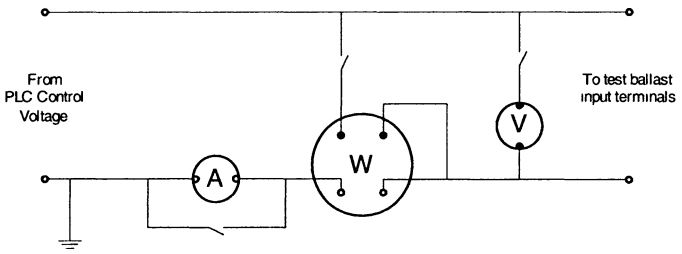

Figure 3: Circuit for measuring PLC Control Signal Power in Standby Mode

3.5.3.4 *Wireless Control Signal.* The power supplied to a ballast using a wireless signal is not easily measured, but is estimated to be well below 1.0 watt. Therefore, the wireless control signal power is not measured as part of this test procedure.

[FR Doc. E9–948 Filed 1–16–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25173; Directorate Identifier 2006–NE–24–AD]

RIN 2120–AA64

Airworthiness Directives; McCauley Propeller Systems Propeller Models B5JFR36C1101/114GCA–0, C5JFR36C1102/L114GCA–0, B5JFR36C1103/114HCA–0, and C5JFR36C1104/L114HCA–0

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for McCauley Propeller Systems propeller models B5JFR36C1101/114GCA–0, C5JFR36C1102/L114GCA–0, B5JFR36C1103/114HCA–0, and C5JFR36C1104/L114HCA–0. That AD currently requires initial and repetitive fluorescent penetrant inspections (FPI) and eddy current inspections (ECI) of propeller blades for cracks, and if any crack indications are found, removing the blade from service. That AD also mandates a life limit for the blades. This proposed AD would require the same inspections, add a visual inspection, and would further reduce the propeller blade life limit. This proposed AD would also require removing blades with more than 10,000 operating hours time-since-new (TSN), before further flight. This proposed AD would also require removal from service of all the propeller blades and the propeller hub if one or more propeller blades have been found cracked on a propeller assembly. This proposed AD would also require removing from service all C–5963 split retainers. This proposed AD results from 8 reports of propeller blades found cracked since May of 2006. We are proposing this AD to detect cracks in the propeller blade that could cause failure and separation of the propeller blade and loss of control of the airplane.

DATES: We must receive any comments on this proposed AD by March 23, 2009.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *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:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Contact McCauley Propeller Systems, 5800 E. Pawnee, Wichita, KS 67218, telephone (800) 621–7767, for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Jeff Janusz, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, Small Airplane Directorate, 1801 Airport Road, Room 100, Wichita, KS 67209; e-mail: *jeff.janusz@faa.gov;* telephone: (316) 946–4148; fax: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2006–25173; Directorate Identifier 2006–NE–24–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Examining the AD Docket

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

Discussion

The FAA proposes to amend 14 CFR part 39 by superseding AD 2008–08–01, Amendment 39–15453 (73 FR 19971, April 14, 2008). That AD requires initial and repetitive FPI and ECI of propeller blades for cracks, and if any crack indications are found, removing the blade from service. That AD also

mandates a life limit for the blades. That condition, if not corrected, could result in failure and separation of the propeller blade and loss of control of the airplane.

Actions Since AD 2008–08–01 Was Issued

Since that AD was issued, propeller blades have cracked below the current 10,000 hour TSN life limit of the propeller blade. The cracks have all been found in the blade retention groove, near the ledge where the split retainers seat, on or near the shot peened area of the propeller blade retention groove. All cracked propeller blades have been found on propeller assemblies that are installed on Jetstream 41 airplanes operated by South African Airlink. All propeller blades that have been found cracked are part number L114HCA, which are installed in the propeller assembly on the No. 2 (right-side) engine. This propeller rotates counter-clockwise when viewed from the rear, on the Jetstream 41 airplane. To date, there have been no other field reports of the same condition as described above, or occurrences of propeller blade failure and separation attributed to this particular unsafe condition. We have not yet determined if the blade cracking is the result of a design issue, an operational issue, or a combination of the two.

Relevant Service Information

We have reviewed and approved the technical contents of McCauley Propellers Alert Service Bulletin (ASB) No. ASB255A, dated October 6, 2008. That ASB:

- Describes procedures for an FPI and ECI of propeller blades for cracks;
- Describes procedures for a visual inspection of the blade shank for a step condition;
- Reduces the propeller blade life limit to 3,500 hours TSN;
- Removes from service all the propeller blades and the propeller hub if one or more propeller blades have been found cracked on a propeller assembly; and
- Removes from service all C–5963 split retainers.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. For that reason, we are proposing this AD, which would require an FPI and ECI of propeller blades for cracks, would visually inspect the blade shank for a step condition, and would reduce the propeller blade life limit to 3,500 hours TSN. This proposed AD would also require removing blades with more than 10,000 operating hours TSN, before further flight. This proposed AD would also require removal from service of all the propeller blades and the propeller hub if one or more propeller blades have been found cracked on a propeller assembly. This proposed AD would also require removing from service all C–5963 split retainers at time of next inspection. The proposed AD would require that you do these actions using the service information described previously.

Interim Action

These actions are interim actions and we may take further rulemaking actions in the future.

Costs of Compliance

We estimate that this proposed AD would affect 8 propeller assemblies installed on airplanes of U.S. registry. We estimate that it would take about 44 work-hours per propeller to perform the proposed required actions, and that the average labor rate is $80 per work-hour. Required parts would cost about $260 per propeller, if no cracks are found. We estimate that one propeller will fail the blade inspection required by this proposed AD, and the propeller replacement cost would be about $67,067. Prorated life lost for the propeller assembly would cost about $39,043 per propeller. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $370,608.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–15453 (73 FR 19971, April 14, 2008) and by adding a new airworthiness directive to read as follows:

McCauley Propeller Systems : Docket No. FAA–2006–25173; Directorate Identifier 2006–NE–24–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by March 23, 2009.

Affected ADs

(b) This AD supersedes AD 2008–08–01, Amendment 39–15453.

Applicability

(c) This AD applies to McCauley Propeller Systems propeller models B5JFR36C1101/114GCA–0, C5JFR36C1102/L114GCA–0,

B5JFR36C1103/114HCA–0, and C5JFR36C1104/L114HCA–0. These propellers are installed on BAE Systems (Operations) Limited Jetstream Model 4100 and 4101 series airplanes (Jetstream 41).

Unsafe Condition

(d) This AD results from 8 reports of propeller blades found cracked since May of 2006. We are issuing this AD to detect cracks in the propeller blade that could cause failure and separation of the propeller blade and loss of control of the airplane.

Compliance

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

Life Limit Reduction

(f) For propeller blades with more than 10,000 operating hours time-since-new (TSN) on the effective date of this AD, remove the propeller blades before further flight.

(g) For propeller blades with more than 3,000 operating hours TSN on the effective date of this AD, remove the propeller blades within the next 500 operating hours.

(h) For propeller blades with 3,000 or fewer operating hours TSN on the effective date of this AD, remove the propeller blades upon reaching 3,500 operating hours TSN.

Removal From Service of Propeller Blades and Hubs From Propeller Assemblies That Already Had One or More Cracked Propeller Blades

(i) Remove the serial number (SN) propeller blades and the hubs listed in Table 1 of this AD from service, using the inspection compliance schedule in Table 2 of this AD. These blades and hubs were installed on propeller assemblies that already had one or more propeller blades removed due to cracking, but at that time those blades and hubs were not required to be removed from service. Table 1 only represents propeller assemblies that were reported to have cracked blades. There may be other propeller assemblies affected that we have not received reports on.

TABLE 1—PROPELLER BLADE AND HUB SNS REQUIRING REMOVAL FROM SERVICE AT NEXT INSPECTION

Hub SN	Blade SNs
023062	XH31043, XH31131, XE31002, XH31025, XI31014.

TABLE 1—PROPELLER BLADE AND HUB SNS REQUIRING REMOVAL FROM SERVICE AT NEXT INSPECTION—Continued

Hub SN	Blade SNs
040296	YA31058, YA31055, YB31084, YB31088, YB31090.
041016	XB31009, XB31073, XA31071, XA31063, WK31013.
051193	XH31018, XH31077, XH31081, XL31008, XL31043.
040282	XG31015, XG31016, XH31113, XH31117, XI31017.
051204	XI31049, XH31140, XH31129, XH31084, XH31074.
051194	WF31010, WD31032, WF31002, WF31029, WF31078.

Propeller Blade Inspection

(j) Perform a fluorescent penetrant inspection and eddy current inspection of the propeller blades, and a visual inspection for ''step condition'' of the blade shank. Use the Equipment Required and Accomplishment Instructions of McCauley Propellers Alert Service Bulletin (ASB) No. ASB255A, dated October 6, 2008, and the compliance schedule in Table 2 of this AD:

TABLE 2—INSPECTION COMPLIANCE SCHEDULE

If on the effective date of this AD, the propeller blade:	Then inspect the propeller blade:
(1) Has more than 2,400 operating hours TSN, time-since-last inspection (TSLI), or time-since-overhaul (TSO) and has been inspected using AD 2008–08–01 or McCauley Propellers ASB No. ASB255, dated January 8, 2007 within the past 2,400 operating hours.	Upon reaching 2,500 operating hours TSLI. See TSLI definition paragraph (o) of this AD.
(2) Has more than 2,400 operating hours TSN, TSLI, or TSO and has not been inspected using AD 2008–08–01 or McCauley Propellers ASB No. ASB255, dated January 8, 2007 within the past 2,400 operating hours.	Within the next 100 operating hours time-in-service.
(3) Has 2,400 or fewer operating hours TSN, TSLI, or TSO	Upon reaching 2,500 operating hours TSN, TSLI, or TSO.

Propellers Failing Blade Inspection

(k) Remove from service all of the propeller blades, and the propeller hub, if one or more propeller blades are found cracked on a propeller assembly. Propeller blades and the propeller hub of a propeller assembly that has one or more cracked propeller blades, are no longer eligible for installation in any configuration. Do not install them in any configuration on any airframe.

(l) Remove from service all propeller blades that exhibit a blade shank ''step condition'' of 0.005-inch or greater. Blades removed from service are no longer eligible for installation in any configuration. Do not install them in any configuration on any airframe.

Removal of C–5963 Split Retainers From Service

(m) Remove from service all C–5963 split retainers at the time of blade inspection specified in paragraph (i) of this AD. C–5963 split retainers removed from service are no longer eligible for installation in any configuration. Do not install them in any configuration on any airframe.

(n) After the effective date of this AD, propeller assemblies with C–5963 split retainers, are prohibited from installation on any airframe.

Definition

(o) For the purpose of this AD, TSLI refers only to inspections performed using AD 2008–08–01 or McCauley ASB No. ASB255, dated January 8, 2007.

Reporting Requirements

(p) Within 10 calendar days of the inspection, use the Reporting Form in McCauley ASB No. ASB255A, to report all inspection findings to the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, KS 67209, Attention: Jeff Janusz; telephone (316) 946–4148; fax (316) 946–4107; e-mail: *jeff.janusz@faa.gov*.

(q) Include any photographs, and any other information related to the means of detection of the crack, and the history of the propeller and blades.

(r) The Office of Management and Budget (OMB) has approved the reporting requirements and assigned OMB control number 2120–0056.

Alternative Methods of Compliance

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

Special Flight Permits

(t) Under 39.23, we are limiting the availability of special flight permits for this AD. Special flight permits are available only if:

(1) The operator has not seen signs of external oil leakage from the hub; and

(2) The operator has not observed abnormal propeller vibration or abnormal engine vibration; and

(3) The operator has not observed any other abnormal operation from the propeller; and

(4) The operator has not made earlier reports of abnormal propeller vibration, abnormal engine vibration, or other abnormal propeller operations that have not been addressed.

Related Information

(u) Contact Jeff Janusz, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, Small Airplane Directorate, 1801 Airport Road, Room 100, Wichita, KS 67209; e-mail: *jeff.janusz@faa.gov*; telephone: (316) 946–4148; fax: (316) 946–4107, for more information about this AD.

Issued in Burlington, Massachusetts, on January 12, 2009.

Peter A. White,

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

[FR Doc. E9–1028 Filed 1–16–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–1170; Airspace Docket No. 08–AEA–27]

Proposed Amendment of the Atlantic Low Offshore Airspace Area; East Coast United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the altitude floor of the Atlantic Low Offshore Airspace Area, located off the east coast of the United States (U.S.). The FAA is proposing to lower the floor of the area from 5,500 feet above mean sea level (MSL) to 1,700 feet MSL. This action would provide additional altitudes for air traffic control to vector aircraft on arrival to Atlantic City, NJ, ensuring the safety of aircraft and the efficient use of airspace within the National Airspace System.

DATES: Comments must be received on or before March 9, 2009.

ADDRESSES: Send comments on the proposal to the U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; telephone: (202) 366–9826. You must identify the docket number FAA–2008–1170 and Airspace Docket No. 08–AEA–27 at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov.*

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2008–1170 and Airspace Docket No. 08–AEA–27) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenter's wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2008–1170 and Airspace Docket No. 08–AEA–27.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

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

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to modify the designated altitude floor of the Atlantic Low Offshore Airspace Area. The proposed change would lower the floor of the area from 5,500 feet MSL to 1,700 feet MSL. Currently, Air Traffic Control (ATC) cannot vector arriving aircraft below 5,500 feet MSL while operating within the Atlantic Low Offshore Airspace Area. The proposed change would provide additional controlled airspace so that ATC could use lower altitudes while vectoring aircraft on arrival to Atlantic City, NJ. The change would increase ATC system efficiency and reduce complexity at Atlantic City.

Offshore airspace areas are published in paragraph 6007, of FAA Order 7400.9S signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The offshore airspace area listed in this document will be published subsequently in the Order.

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

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

describes in more detail the scope of the agency's authority.

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

ICAO Considerations

As part of this proposal relates to navigable airspace outside the United States, this notice is submitted in accordance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

The application of International Standards and Recommended Practices by the FAA, Office of System Operations Airspace and AIM, Airspace & Rules Group, in areas outside the United States domestic airspace, is governed by the Convention on International Civil Aviation. Specifically, the FAA is governed by Article 12 and Annex 11, which pertain to the establishment of necessary air navigational facilities and services to promote the safe, orderly, and expeditious flow of civil air traffic. The purpose of Article 12 and Annex 11 is to ensure that civil aircraft operations on international air routes are performed under uniform conditions.

The International Standards and Recommended Practices in Annex 11 apply to airspace under the jurisdiction of a contracting state, derived from ICAO. Annex 11 provisions apply when air traffic services are provided and a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting this responsibility may apply the International Standards and Recommended Practices that are consistent with standards and practices utilized in its domestic jurisdiction.

In accordance with Article 3 of the Convention, state-owned aircraft are exempt from the Standards and Recommended Practices of Annex 11. The United States is a contracting state to the Convention. Article 3(d) of the Convention provides that participating state aircraft will be operated in international airspace with due regard for the safety of civil aircraft. Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008, and effective October 31, 2008, is amended as follows:

Paragraph 6007 Offshore Airspace Areas.

* * * * *

Atlantic Low [Amended]

That airspace extending upward from 1,700 feet MSL bounded on the east by the Moncton FIR and the New York Oceanic CTA/FIR, on the south by lat. 34°00′00″ N., on the west and north by a line 12 miles from and parallel to the U.S. shoreline, excluding Federal airways and the East Coast Low offshore airspace area.

* * * * *

Issued in Washington, DC, on January 12, 2009.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. E9–1108 Filed 1–16–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–1167; Airspace Docket No. 08–ASO–16]

Proposed Amendment of the South Florida Low Offshore Airspace Area; Florida

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the altitude floor of the South Florida Low Offshore Airspace Area, located off the east coast of the United States (U.S.). This action would lower the floor of the area from 2,700 feet above mean sea level (MSL) to 1,300 feet MSL. The change would provide additional altitudes for air traffic control to vector aircraft on arrival to various east coast airports, ensuring the safety of aircraft and the efficient use of airspace within the National Airspace System.

DATES: Comments must be received on or before March 9, 2009.

ADDRESSES: Send comments on the proposal to the U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; *telephone:* (202) 366–9826. You must identify the docket number FAA–2008–1167 and Airspace Docket No. 08–ASO–16 at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov*.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2008–1167 and Airspace Docket No. 08–ASO–16) and be submitted in triplicate to the Docket Management Facility (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenter's wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA

Docket No. FAA–2008–1167 and Airspace Docket No. 08–ASO–16.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

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

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to modify the designated altitude floor of the South Florida Low Offshore Airspace area. The proposed change would lower the floor of the area from 2,700 feet MSL to 1,300 feet MSL. Currently, Air Traffic Control (ATC) cannot vector arriving aircraft below 2,700 feet MSL while operating within the South Low Offshore Airspace Area. The proposed change would provide additional controlled airspace so that ATC could use lower altitudes while vectoring aircraft on arrival to Myrtle Beach, SC; Fort Myers, FL; Fort Lauderdale, FL; and Miami, FL. The change would increase ATC system efficiency and reduce complexity at these airports.

Offshore airspace areas are published in paragraph 6007, of FAA Order 7400.9S signed October 3, 2008 and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The offshore airspace area listed in this document will be published subsequently in the Order.

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

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

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

ICAO Considerations

As part of this proposal relates to navigable airspace outside the United States, this notice is submitted in accordance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

The application of International Standards and Recommended Practices by the FAA, Office of System Operations Airspace and AIM, Airspace & Rules Group, in areas outside the United States domestic airspace, is governed by the Convention on International Civil Aviation. Specifically, the FAA is governed by Article 12 and Annex 11, which pertain to the establishment of necessary air navigational facilities and services to promote the safe, orderly, and expeditious flow of civil air traffic. The purpose of Article 12 and Annex 11 is to ensure that civil aircraft operations on international air routes are performed under uniform conditions.

The International Standards and Recommended Practices in Annex 11 apply to airspace under the jurisdiction of a contracting state, derived from ICAO. Annex 11 provisions apply when air traffic services are provided and a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting this responsibility may apply the International Standards and Recommended Practices that are consistent with standards and practices utilized in its domestic jurisdiction.

In accordance with Article 3 of the Convention, state-owned aircraft are exempt from the Standards and Recommended Practices of Annex 11. The United States is a contracting state to the Convention. Article 3(d) of the Convention provides that participating state aircraft will be operated in international airspace with due regard for the safety of civil aircraft. Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9S, Airspace Designations and Reporting

Points, signed October 3, 2008 and effective October 31, 2008, is amended as follows:

Paragraph 6007 Offshore Airspace Areas.

* * * * *

South Florida Low, FL [Amended]

That airspace extending upward from 1,300 feet MSL bounded on the west by the Houston Oceanic CTA/FIR; bounded on the north from west to east by the Jacksonville Air Route Traffic Control Center boundary, a line 12 miles from and parallel to the U.S. shoreline and lat. 34°00′00″ N., bounded on the east by the New York Oceanic CTA/FIR and the San Juan Oceanic CTA/FIR; bounded on the south from east to west by the Santo Domingo FIR, the Port-Au-Prince CTA/FIR and the Havana CTA/FIR; excluding the Grand Bahama TCA and the Nassau TCA.

* * * * *

Issued in Washington, DC, on January 12, 2009.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. E9–1111 Filed 1–16–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–1026; Airspace Docket No. 08–AEA–17]

RIN 2120–AA66

Proposed Establishment of Area Navigation Route Q–42; East-Central United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish a high altitude area navigation (RNAV) route, designated Q–42, extending between the New York-Philadelphia area and the Kirksville, MO, very high frequency omnidirectional range/tactical air navigation (VORTAC) aid. The route would streamline RNAV procedures in the east-central United States by creating a route parallel to the existing Jet Route J–80. The new route would help alleviate departure delay issues for westbound aircraft flying from the New York and Philadelphia areas.

DATES: Comments must be received on or before March 9, 2009.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; telephone: (202) 366–9826. You must identify FAA Docket No. FAA–2008–1026 and Airspace Docket No. 08–AEA–17 at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2008–1026 and Airspace Docket No. 08–AEA–17) and be submitted in triplicate to the Docket Management Facility (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2008–1026 and Airspace Docket No. 08–AEA–17.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

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

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to establish a high altitude RNAV route, designated Q–42, between the ELIOT, PA, navigation fix and the Kirksville, MO, VORTAC. The new route would help alleviate departure delays by providing an additional route, generally parallel to existing Jet Route J–80, to handle westbound departure traffic from the New York and Philadelphia airports. The new route would traverse airspace assigned to the New York, Cleveland, Indianapolis, Chicago and Kansas City Air Route Traffic Control Centers.

High altitude RNAV routes are published in paragraph 2006 of FAA Order 7400.9S signed October 3, 2008 and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The RNAV route listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine

matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes an RNAV route to enhance the safe and efficient flow of traffic in the east-central United States.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a, 311b. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008 and effective October 31, 2008, is amended as follows:

Paragraph 2006 United States Area Navigation Routes.

* * * * *

Q–42 IRK MO to ELIOT, PA [New]

IRK	VORTAC	(Lat. 40°08′06″ N., long. 92°35′30″ W.)
STRUK	WP	(Lat. 40°14′04″ N., long. 90°18′22″ W.)
DNV	VORTAC	(Lat. 40°17′38″ N., long. 87°33′26″ W.)
MIE	VOR/DME	(Lat. 40°14′14″ N., long. 85°23′39″ W.)
HIDON	WP	(Lat. 40°10′00″ N., long. 81°37′27″ W.)
BUBAA	WP	(Lat. 40°10′27″ N., long. 80°58′17″ W.)
PSYKO	WP	(Lat. 40°08′37″ N., long. 79°09′13″ W.)
BRNAN	WP	(Lat. 40°08′07″ N., long. 77°50′07″ W.)
MAALS	WP	(Lat. 40°19′16″ N., long. 76°16′08″ W.)
SUZIE	WP	(Lat. 40°27′12″ N., long. 75°58′22″ W.)
ETX	VOR/DME	(Lat. 40°34′52″ N., long. 75°41′02″ W.)
ELIOT	WP	(Lat. 40°49′07″ N., long. 75°07′48″ W.)

* * * * *

Issued in Washington, DC, on January 12, 2009.

Edith V. Parish,

Manager, Airspace & Rules Group.

[FR Doc. E9–1112 Filed 1–16–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. FAA–2009–0022; Notice No. 09–01]

RIN 2120–AJ30

Crewmember Requirements When Passengers Are Onboard

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: Currently, during passenger boarding and deplaning, all flight attendants are required to be on board the airplane. This rulemaking would allow one required flight attendant to deplane during passenger boarding, and conduct safety-related duties, as long as certain conditions are met. In addition, this rulemaking would allow a reduction of flight attendants remaining on board the airplane during passenger deplaning, as long as certain conditions are met. The FAA has determined that these revisions to current regulations can be made as a result of recent safety enhancements to airplane equipment and procedures. These changes have mitigated the risks to passengers during ground operations that previously required all flight attendants on board the airplane during passenger boarding and deplaning.

DATES: Send your comments on or before April 21, 2009.

ADDRESSES: You may send comments identified by Docket Number FAA–2009–0022 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Bring comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

For more information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the electronic form of all comments received into any of our dockets,

including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketsInfo.dot.gov.*

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time and follow the online instructions for accessing the docket. Or, go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For questions concerning this proposed rule contact Jodi L. Baker, Air Transportation Division/Air Carrier Operations Branch, AFS–220, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8166; facsimile (202) 267–5229, e-mail *Jodi.L.Baker@faa.gov.* For legal questions concerning this proposed rule contact Paul Greer, Operations Law Branch, AGC–220; telephone (202) 267–3073, e-mail *Paul.Greer@faa.gov.*

SUPPLEMENTARY INFORMATION: Later in this preamble under the Additional Information section, we discuss how you can comment on this proposal and how we will handle your comments. Included in this discussion is related information about the docket, privacy, and the handling of proprietary or confidential business information. Also, we discuss how you can get a copy of this proposal and related rulemaking documents.

Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator, including the authority to issue, rescind, and revise regulations. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Chapter 447—Safety Regulation. Under section 44701(a)(5), the FAA is charged with promoting safe flight of civil aircraft by, among other things, prescribing regulations the FAA finds necessary for safety in air commerce.

Background

Statement of the Problem

The FAA has decided to review its current regulation regarding flight attendant requirements during passenger boarding and deplaning in light of safety enhancements to airplane equipment and procedures, and changes in airplane security procedures and requirements. These changes have mitigated the risks to passengers during ground operations that previously required all flight attendants be on board the airplane during passenger boarding and deplaning.

Current rules prohibit a required flight attendant from deplaning an airplane for any reason during passenger boarding and deplaning, even to conduct safety-related duties. This prohibition has unintentional consequences that may adversely affect conditions inside the passenger cabin. This proposed rule would allow air carriers to permit one required flight attendant to deplane during passenger boarding and one or more required flight attendants to deplane during passenger deplaning, subject to certain conditions and limitations.

History

This issue has been addressed numerous times over the last two decades and has been the subject of guidance documents, legal interpretations and petitions for exemption.

In 1982, the FAA amended 14 CFR 121.391 and inserted § 121.391(e) to allow a reduction in the number of required flight attendants during stops where passengers remain on board (also called ''intermediate stops'') (47 FR 56460; December 16, 1982). Section 121.391(e) was recodified as § 121.393(b) in 1995 (60 FR 65832; December 20, 1995).

On May 14, 1985, John Cassady, Assistant Chief Counsel for the Regulations and Enforcement Division of the FAA, issued a written interpretation to William Brennan, Manager of the Flight Standards Service, Air Transportation Division, stating that ''during the deplaning and boarding phase at an intermediate stop, all of the flight attendants required by 14 CFR 121.391(a) must be on board the aircraft.'' A copy of this document has been placed in the docket for this rulemaking. This rulemaking is intended to codify a change to this interpretation.

On August 8, 1986, the Director of the Flight Standards Service issued Action Notice A8430.5, FAR 121.391(a) and (e); Flight Attendants, stating ''at intermediate stops where passengers remain on board the aircraft, at least the number of persons specified in § 121.391(e) must be aboard the aircraft. This includes that period of time during which passengers are deplaning or boarding.'' This Action Notice appeared to permit a reduction of required flight attendant crewmembers during boarding and deplaning at intermediate stops, possibly in conflict with the legal interpretation of 1985. Although currently expired, a copy of this document has also been placed in the docket for this rulemaking.

On April 5, 1989, the FAA issued an NPRM, ''Flight Attendant Requirements'' (54 FR 15134; April 14, 1989) proposing to allow a reduced number of flight attendants aboard passenger-carrying airplanes at all stops, during passenger boarding and deplaning, subject to certain conditions and limitations. The NPRM was withdrawn in 1996 (61 FR 29000; June 6, 1996).

In 2003, the Air Transport Association (ATA) petitioned for rulemaking to amend § 121.391 and permit flight attendants to use a phone on the passenger loading bridge during boarding, deplaning and stops where passengers remain on board (68 FR 61161; October 27, 2003). The ATA subsequently withdrew the petition on December 12, 2003, noting it cited an incorrect regulation (Regulatory Docket No. FAA–2003–14594). The ATA did not re-petition.

On May 8, 2001, the FAA's Assistant Chief Counsel for Regulations affirmed the 1985 legal interpretation that all flight attendants required by § 121.391 needed to be on board the aircraft during passenger boarding and deplaning in a memo to the Manager of the Air Transportation Division. The Air Transportation Division subsequently issued guidance in accordance with the 2001 legal interpretation via Flight Standards Information Bulletin for Air Transportation, FSAT 01–03, Number of Flight Attendants Required at Stops Where Passengers Remain Onboard, 14 CFR 121.391 and 121.393. A copy of this document has also been placed in the docket for this rulemaking. The information contained in this FSAT is currently found in FAA Order 8900.1, Flight Standards Information Management System (FSIMS) Volume 3, Chapter 33 Cabin Safety and Flight Attendant Management, section 4 Flight Attendant Requirements (*http://fsims.faa.gov/*).

In 2006, Southwest Airlines petitioned for an exemption to substitute a pilot for one required flight attendant during boarding at an intermediate stop and to reduce the number of required flight attendants on board during the deplaning of passengers at an intermediate stop. The FAA granted this exemption in 2007

(Exemption No. 9382, Regulatory Docket No. FAA–2006–25466). Three additional air carriers have been issued similar grants of exemption since the issuance of the original grant.

Current Requirements

During any passenger boarding and deplaning, the full complement of flight attendants required by § 121.391(a) must be on board the airplane at all times (See Memo from John Cassady to William Brennan, dated May 14, 1985). However § 121.393 permits a reduction of the number of required flight attendants when passengers are on board the airplane with the engines shut down and at least one floor level exit is open to provide for the deplaning of passengers. The formula for determining the reduction of flight attendants is: Half the number of flight attendants required by § 121.391(a), rounded down to the next lower number in the case of a fraction, but never fewer than one.

General Discussion of the Proposal

During passenger boarding and deplaning, it may be in the interest of the traveling public for a flight attendant to conduct safety-related duties outside the airplane cabin. However, current regulations prohibit a flight attendant from performing these duties if the flight attendant is one of the flight attendants required by § 121.391(a).

As previously noted, the number of flight attendants required during passenger boarding and deplaning has been discussed numerous times since 1985. Although the FAA consistently upheld the requirement that all flight attendants required by § 121.391(a) stay on board the airplane during boarding and deplaning, changes to regulations since 1985 have reduced the hazards to passengers during these phases of operation. These changes have reduced risks to passengers by improving firefighting equipment, increasing the time available to evacuate an airplane and improving accessibility to exits. Examples include:

- Requiring lavatory smoke detectors, automatic lavatory waste receptacle fire extinguishers and Halon 1211 extinguishers;
- Improving cabin interior flammability standards to enhance survivability by increasing the time before flashover occurs;
- Improving thermal insulation standards to reduce the risk of fire in inaccessible parts of the airplane cabin and increase the time available for a passenger evacuation; and
- Improving passenger access to Type III (typically overwing) emergency exits.

In addition to the above certification regulation changes, the FAA has revised operational regulations since 1985, which has also reduced the risks to passengers during boarding and deplaning. First, prior to 1987, air carriers were not required to screen passengers for excess or oversized carry-on baggage prior to boarding the aircraft. Current carry-on baggage regulations require this action, which has reduced flight attendant workload in the handling of carry-on baggage during passenger boarding. Flight attendants no longer have to stow an unlimited amount of baggage carried on the airplane by passengers. Second, § 121.585, promulgated in 1990, requires an air carrier to assign exit seats to passengers after considering a list of exit seat selection criteria and the passenger's ability to perform exit seat functions. Because the majority of passengers have been screened to meet exit seat criteria, these considerations lead to exit seat passengers being more likely to initiate ''self-help'' in the event of an emergency during passenger boarding. Third, the changes to FAA operational regulations have been complemented since 2001 by improved Transportation Security Administration regulations, which have reduced the risk of a security-related threat during passenger boarding or deplaning even further.

All of these changes mitigate the risks to which passengers are exposed during boarding and deplaning. As a result, the FAA now proposes to permit a reduced required flight attendant crew during boarding and deplaning.

Limitations Applicable to Passenger Boarding

The FAA believes it appropriate to permit one required flight attendant to conduct safety-related duties either in the passenger loading bridge connected to the airplane; or in another nearby location, such as the bottom of the boarding stairs. To maintain the current level of safety, however, the certificate holder would have to comply with the following restrictions:

- The flight attendant deplaning the airplane must remain within 30 feet of the passenger entry door;
- The flight attendant deplaning the airplane must be conducting safety-related duties related to the flight being boarded. The flight attendant may not conduct non-safety-related duties such as personal business; and
- The airplane must be of a type that requires two or more flight attendants in accordance with § 121.391(a). A required flight attendant may not leave an airplane with a passenger seating capacity of less than 50, because one flight attendant must remain on the airplane at all times.

Typically, during passenger boarding, the airplane cabin starts empty and becomes increasingly more populated by arriving passengers. The increased number of passengers leads to an increased number of safety duties inside the airplane cabin. Examples include: Scanning passenger carry-on baggage to ensure compliance with both § 121.585 and the air carrier's approved carry-on baggage program, and verifying compliance with the approved exit seat program. The FAA believes permitting only one flight attendant to deplane during boarding and limiting the amount of time he or she is absent from the airplane cabin (by limiting the type of duties he or she may perform) ensures the remaining flight attendant(s) are able to effectively manage safety duties inside the airplane. It may be necessary for the certificate holder to revise other approved programs, such as its carry-on baggage program or exit seat program, to ensure all required duties are accomplished by the remaining flight attendant(s). Also, if the airplane requires only one flight attendant in accordance with § 121.391(a), the FAA is not permitting that flight attendant to deplane. This ensures no passengers are left unattended on board the airplane.

When the ATA petitioned for rulemaking in 2003, it proposed that a flight attendant could use the telephone installed on the passenger loading bridge to contact and coordinate with other airline personnel, or local law enforcement, to assist with Federal regulation compliance and to identify security issues or medical emergencies. The FAA agrees that a flight attendant be permitted to use the telephone installed on the passenger loading bridge to perform these functions, but is also proposing to permit a flight attendant to deplane during boarding to conduct other safety-related duties, provided he or she remains within 30 feet of the airplane's passenger entry door. This would allow a flight attendant to use the telephone installed on the passenger loading bridge and to conduct other duties, such as removing excess or oversized carry-on baggage from the airplane and placing it on the passenger loading bridge or adjacent to the bottom of the boarding stairs. It would also permit a flight attendant to coordinate with other airline personnel in cases where a telephone is not installed on the passenger loading bridge or a passenger loading bridge is not used for boarding. A flight attendant deplaning during passenger boarding should not be carrying passenger carry-

on bags to the cargo hold for stowage or re-entering the passenger terminal to coordinate with other employees. Also, by requiring a flight attendant to remain within 30 feet of the door being used for passenger boarding, the flight attendant is still quickly available to assist passengers in the event of an emergency in the cabin. The FAA specifically requests comments about the adequacy of the proposed 30 foot limitation.

Finally, a flight attendant who deplanes during boarding is limited to performing only safety-related duties related to the flight being boarded. Existing regulations already restrict a flight attendant to performing only safety-related duties during airplane movement on the surface. A flight attendant who deplanes during boarding would not be permitted to conduct non-safety-related duties, such as collecting passenger tickets or calling for catering. A flight attendant who deplanes during boarding also may not conduct personal business, such as submitting bids related to crew scheduling, making layover arrangements, or conducting family business. Allowing a flight attendant to conduct business not related to the safety of the flight would not be in the public interest and would not be permitted.

Substituting a Qualified Crewmember for a Required Flight Attendant During Passenger Boarding

Only two types of qualified crewmembers are used in air carrier operations: Flightcrew members or flight attendants. This proposed rule would allow a flightcrew member to substitute for one required flight attendant during boarding. Nothing in the proposed rule, or the current rule, prevents an air carrier from substituting a qualified flight attendant for another qualified flight attendant; however, if the air carrier chooses to substitute another qualified crewmember, such as a pilot or flight engineer, the certificate holder must meet certain conditions.

The proposed rule addresses two possible scenarios during boarding that involve a reduction, by one, of the number of flight attendants required for boarding by § 121.391(a), on an airplane that requires more than one flight attendant. The first scenario, previously discussed and addressed in proposed § 121.394(a)(1), is when one required flight attendant steps off the airplane during boarding to perform safety related duties and remains within 30 feet of the boarding door.

The second scenario is when one required flight attendant is not within 30 feet of the boarding door and is addressed in proposed § 121.394(a)(2). In this case, a qualified flightcrew member, such as a pilot or flight engineer, may substitute in the cabin for one required flight attendant who is not on the airplane when boarding commences or who leaves the vicinity of the aircraft during boarding.

Under proposed § 121.394(a)(2), the flightcrew member who substitutes for the required flight attendant must be trained and qualified on that airplane as a pilot or a flight engineer for that certificate holder. This ensures that the flightcrew member has received emergency and security training that is specific to that airplane and that certificate holder.

If the certificate holder chooses to substitute a flightcrew member for a flight attendant in accordance with proposed § 121.394(a)(2), it must ensure the substitute crewmember is prepared to conduct his or her duties by having in his or her possession all items required for duty by the air carrier, such as a flight operations or flight attendant manual. The substitute crewmember must also be identifiable to the passengers as a working ''crewmember.''

In addition, the certificate holder must ensure the use of a substitute crewmember does not impinge on the duty and rest requirements of Title 14 Code of Federal Regulations (14 CFR). The FAA has previously stated via legal interpretation that pre- and post-flight duties are part of a duty period (see August 12, 2008, FAA letter to Brent Harper, Southwest Airlines). A copy of this document has been placed in the docket for this rulemaking. Therefore, a substitute crewmember is ''on duty'' while substituting for an assigned flight attendant.

Additional procedures that would have to be developed by the certificate holder and described in its manual system under proposed § 121.394(a)(2) include:

- The functions to be performed by the substitute crewmember and remaining flight attendants in an emergency or situation requiring emergency evacuation. Similar to the requirements found in § 121.397, the certificate holder must show that these functions are realistic, can be practically accomplished and will meet any reasonably anticipated emergency;
- A method to ensure that the substitution of a flightcrew member for a flight attendant during passenger boarding does not interfere with the safe operation of the flight (e.g. interfering with the completion of the flightcrew member's pre-flight duties, checklists, etc);
- A method to ensure that the flightcrew member is located in the passenger cabin during the substitution; and
- A method to ensure that other regulatory safety functions performed by a flight attendant, including but not limited to, monitoring passengers during refueling, scanning passenger carry-on baggage during boarding, and verifying suitability of exit seat passengers, are accomplished by the flightcrew member and the remaining flight attendants on the airplane.
- A method to ensure that the substitute flightcrew member is trained in all assigned flight attendant duties.

Limitations Applicable to Passenger Deplaning

A flight attendant may be asked to conduct other safety-related duties during passenger deplaning, such as maintaining custody of an unaccompanied minor or contacting local law enforcement to assist with an unruly passenger. However, the conditions present during passenger deplaning mitigate safety risks to passengers to allow a further reduction in required flight attendants. The FAA proposes to permit a reduction to half the number of flight attendants required by § 121.391(a), rounded down to the next lower number in the case of a fraction, but never fewer than one.

At the time of deplaning, each passenger has already received all required safety information briefings and had an opportunity to review the passenger safety information card and all posted signs and placards. In addition, a crewmember has verified the suitability of exit seat passengers, and the exit seat passengers have had an opportunity to ask questions about their exit seat responsibilities. These passengers are better prepared to assist themselves in an emergency evacuation than those passengers just boarding an airplane. During deplaning, passengers are in the process of leaving the airplane in an orderly fashion through one or more floor-level exits with pre-positioned passenger loading bridges or boarding stairs. These factors lessen the exposure time to the risk of an emergency or a possible evacuation. Further, exiting passengers, as well as additional airline personnel, are available to assist the remaining flight attendant(s) with an unruly or threatening passenger during deplaning.

Limitations Applicable During Boarding and Deplaning Passengers

In addition to the specific limitations described above, the FAA proposes requiring a certificate holder to duplicate ground conditions already designed to reduce risks to passengers

when a reduced number of flight attendants is on board an airplane. The FAA required these conditions when risks were considered in reducing the number of required flight attendants during stops where passengers remain on board. The conditions are: The airplane is stationary in a level attitude with at least one floor-level exit open; and all engines are shut down, mitigating the risk of an engine torching or overheating. These conditions must also exist to permit a reduction in the number of required flight attendants during passenger boarding and deplaning, in order to provide the same level of risk mitigation as at a stop where passengers remain on board. If the certificate holder cannot provide these conditions, it may not reduce the flight attendant crew below the requirements of § 121.391(a).

Finally, the FAA proposes the flight attendants remaining on board the airplane be evenly distributed near the floor-level exits. This proposed requirement would assure that the flight attendants are available to deal more effectively with an emergency evacuation, should the need arise. If only one flight attendant remains on board the airplane during passenger boarding, he or she must be located in accordance with the air carrier's FAA-approved operating procedures. The air carrier should consider items such as the location of the door being used for passenger boarding, the configuration of the cabin, the location of the emergency light switch, and the air carrier's emergency procedures when determining the best location for the flight attendant.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there is no new information collection requirement associated with this proposed rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule.

The FAA has decided to review its current regulations regarding flight attendant requirements during passenger boarding and deplaning, in light of safety enhancements to airplane equipment and procedures, and changes in airplane security procedures and requirements. These changes have mitigated the risks to passengers during ground operations that previously required all flight attendants on board the airplane during passenger boarding and deplaning. This proposed rule merely revises and clarifies existing FAA rules and is cost relieving and does not impose any cost on any regulated entity.

FAA has, therefore, determined that this proposed rule is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions. Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA has decided to review its current regulation regarding flight attendant requirements during passenger boarding and deplaning, in light of safety enhancements to airplane equipment and procedures, and changes in airplane security procedures and requirements. These changes have mitigated the risks to passengers during ground operations that previously required all flight attendants to be on board the airplane during passenger boarding and deplaning. This proposed rule is cost relieving and does not impose any cost on any regulated entity.

Therefore, the FAA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The FAA solicits comments regarding this determination.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39) prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this proposed rule

and has determined that it would have only a domestic impact and therefore no affect on international trade.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $136.1 million in lieu of $100 million. This proposed rule does not contain such a mandate.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have federalism implications.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 312(f) and involves no extraordinary circumstances.

Additional Information

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, please send only one copy of written comments, or if you are filing comments electronically, please submit your comments only one time.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by—

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

2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/*; or

3. Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

You may access all documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, from the Internet through the Federal eRulemaking Portal referenced in paragraph 1.

List of Subjects in 14 CFR Part 121

Aviation safety, Air carriers, Air transportation, Airplanes, Airports, Boarding, Crewmembers, Deplaning, Flight attendants, Pilots, Transportation, Common carriers.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Chapter I, Part 121 of Title 14, Code of Federal Regulations, as follows:

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

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 46105.

2. Revise § 121.391(a) introductory text to read as follows:

§ 121.391 Flight attendants.

(a) Except as specified in § 121.393 and § 121.394, each certificate holder must provide at least the following flight attendants on board each passenger-carrying airplane when passengers are on board:

* * * * *

3. Add § 121.394 to read as follows:

§ 121.394 Flight attendant requirements during passenger boarding and deplaning.

(a) During passenger boarding, on each airplane for which more than one flight attendant is required by § 121.391(a), the certificate holder may reduce the number of required flight attendants by one, provided the requirements of either paragraph (a)(1) or (a)(2) of this section are met.

(1) When the flight attendant leaving the airplane remains within 30 feet of the door through which passengers are boarding:

(i) The flight attendant may only conduct safety duties related to the flight being boarded;

(ii) The airplane engines are shut down; and

(iii) At least one floor level exit remains open to provide for the deplaning of passengers.

(2) When the flight attendant leaving the airplane does not remain within 30 feet of the door through which passengers are boarding, a flightcrew member of the certificate holder, trained and qualified on that type airplane, may substitute for the flight attendant provided:

(i) The certificate holder describes in its manual the necessary functions to be performed by the substitute crewmember and remaining flight attendants in an emergency or situation requiring emergency evacuation. The certificate holder must show those functions are realistic, can be practically accomplished and will meet any reasonably anticipated emergency.

(ii) The certificate holder describes in its manual how other regulatory functions performed by a flight attendant will be accomplished by the substitute crewmember and the remaining flight attendants on the airplane.

(iii) The certificate holder ensures the substitute flightcrew member is trained in all assigned flight attendant duties.

(iv) The certificate holder ensures the substitute crewmember is in possession of all items required for duty.

(v) The certificate holder ensures the substitute crewmember is located in the passenger cabin.

(vi) The certificate holder identifies the substitute crewmember to the passengers.

(vii) The certificate holder ensures the time spent conducting boarding duties applies towards daily duty time limits and is considered when determining crewmember rest requirements.

(viii) The certificate holder does not permit the substitution of a flightcrew member for a flight attendant to interfere with the safe operation of the flight. If all flightcrew members are required to perform preflight duties, passenger boarding must not commence until the flight attendants required by § 121.391(a) are on board the airplane.

(ix) The airplane engines are shut down.

(x) At least one floor-level exit remains open for the deplaning of passengers.

(b) During passenger deplaning, on each airplane for which more than one flight attendant is required by § 121.391(a), the certificate holder may reduce the number of flight attendants required by that paragraph provided:

(1) The airplane engines are shut down;

(2) At least one floor level exit remains open to provide for the deplaning of passengers;

(3) The number of flight attendants on board is at least half the number required by § 121.391(a), rounded down to the next lower number in the case of fractions, but never fewer than one.

(c) If only one flight attendant is on the airplane during passenger boarding or deplaning, that flight attendant must be located in accordance with the certificate holder's FAA-approved operating procedures. If more than one flight attendant is on the airplane during passenger boarding or deplaning, the flight attendants must be evenly distributed throughout the airplane cabin, in the vicinity of the floor-level exits, to provide the most effective assistance in the event of an emergency.

Issued in Washington, DC, on January 14, 2009.

John M. Allen,

Director, Flight Standards Service.

[FR Doc. E9–1140 Filed 1–16–09; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 38

RIN 3038–AC28

Conflicts of Interest in Self-Regulation and Self-Regulatory Organizations

AGENCY: Commodity Futures Trading Commission (''Commission'').

ACTION: Proposed rule; withdrawal of previous proposed rule.

SUMMARY: On January 31, 2007, the Commission adopted its first acceptable practices for Section 5(d)(15) (''Core Principle 15'') of the Commodity Exchange Act (''Act'').[1] As with all other acceptable practices, those for Core Principle 15 are a safe harbor that designated contract markets (''DCMs'') can use to demonstrate core principle compliance. The acceptable practices contain four provisions—three are ''operational provisions'' and one provides necessary definitions, including a definition of ''public director.'' All four provisions were published simultaneously in the **Federal Register** on February 14, 2007, and became effective on March 16, 2007.[2] Existing DCMs were given a two-year phase-in period to implement the acceptable practices or otherwise demonstrate full compliance with Core Principle 15.

On March 26, 2007, the Commission published certain proposed amendments to the definition of public director in the acceptable practices.[3] The Commission received six comment letters, but did not act upon the proposed amendments.[4] Subsequently, on November 23, 2007, the Commission published a stay of the entire acceptable practices for Core Principle 15 in the **Federal Register**.[5] The Commission noted that absent a clear and settled definition of public director, the acceptable practices' three operational provisions were difficult to implement. To bring further clarity to this term and move to finalize the underlying acceptable practices, the Commission hereby withdraws the proposed amendments to the definition of public director published on March 26, 2007, and proposes and seeks public comment on updated proposed amendments to the definition of public director, as described below. This proposal does not amend the other provisions contained in the adopted acceptable practices, including the DCM requirement for a regulatory oversight committee (''ROC'') consisting of all public directors and a board of directors with at least 35% public directors. The November 23, 2007 stay remains in effect until further notice by the Commission.

DATES: Comments on the new proposed amendments should be submitted on or before February 20, 2009.

ADDRESSES: Comments should be sent to David Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Comments may be submitted via e-mail at *secretary@cftc.gov.* ''Regulatory Governance'' must be in the subject field of responses submitted via e-mail, and clearly indicated on written submissions. Comments may also be submitted at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Rachel F. Berdansky, Deputy Director for Market Compliance, 202–418–5429, or Sebastian Pujol Schott, Special Counsel, 202–418–5641, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

A. Procedural History

As noted above, the Commission adopted its first acceptable practices for Core Principle 15 on January 31, 2007. In order to receive the benefit of the safe harbor provided by the acceptable practices, a DCM is required to satisfy all four of the included provisions. The acceptable practices include three operational provisions pertaining to DCM boards of directors, the insulation and oversight of self-regulatory functions, and the composition of disciplinary panels. In particular, the acceptable practices require that a DCM's board be composed of at least 35% public directors. They also require that a DCM's regulatory programs fall under the authority and oversight of a board-level ROC consisting exclusively of public directors. Finally, the acceptable practices require that a DCM's disciplinary panels include at least one public person. These provisions remain unchanged by this proposed rule.

[1] The Act is codified at 7 U.S.C. 1 *et seq.* (2000). The acceptable practices for the DCM core principles reside in Appendix B to Part 38 of the Commission's Regulations, 17 CFR Part 38, App. B. Core Principle 15 states: ''CONFLICTS OF INTEREST—The board of trade shall establish and enforce rules to minimize conflicts of interest in the decision making process of the contract market and establish a process for resolving such conflicts of interest.'' CEA section 5(d)(15). 7 U.S.C. 7(d)(15).

[2] 72 FR 6936 (February 14, 2007).

[3] 72 FR 14051 (March 26, 2007). Under the acceptable practices, the definition of ''public director'' is also relevant to members of DCM regulatory oversight committees (all of whom must be public directors) and to members of DCM disciplinary panels (panelists need not be directors, but panels must include at least one member who meets certain elements of the public director definition).

[4] The comment letters are available on the Commission's Web site, at: *http://www.cftc.gov/lawandregulation/federalregister/federalregistercomments/2007/07-001.html.*

[5] 72 FR 65658 (November 23, 2007).

All three operational provisions are dependent on the presence of one or more ''public'' persons, either public directors serving on the board, public directors serving on the ROC, or public disciplinary panel members serving on adjudicatory bodies. Thus, the acceptable practices include an important fourth provision that defines ''public director'' and also impacts disciplinary panel members. The definition of public director includes two separate elements.[6] The first and most important element is an overarching materiality test, which provides that to qualify as a public director, the director must first be found ''to have no material relationship with the contract market.'' The second element consists of a series of bright-line tests that outline specific relationships that are *per se* material and automatically disqualify a director from service as a public director.

The acceptable practices were published in the **Federal Register** on February 14, 2007, with an effective date of March 16, 2007. Shortly thereafter, the Commission proposed certain clarifying and other amendments to the definition of public director.[7] However, those amendments were limited to the bright-line tests. In proposing those amendments, the Commission emphasized that they should not be read as a diminution of the public representation, conflict-of-interest mitigation, and self-regulatory insulation intended by the acceptable practices. To that end, all three operational provisions in the acceptable practices remained as originally adopted. The Commission received six comment letters in response to the March 26, 2007, proposed amendments, including letters from the National Futures Association (''NFA''); the Futures Industry Association (''FIA''); the CBOE Futures Exchange (''CFE''); the Chicago Board of Trade (''CBOT''); the Chicago Mercantile Exchange (''CME'') and Kansas City Board of Trade (''KCBT'') writing jointly; and Mr. Dennis Gartman (''Gartman'').

The six comment letters included general observations on the merits of the entire acceptable practices for Core Principle 15. They also included comments on specific provisions of the acceptable practices and on the proposed amendments to the definition of public director itself. CFE, for example, stated its belief that the acceptable practices will ''serve to enhance the self regulatory process'' and ''have a positive impact'' on exchange governance and conflicts of interest.[8] At the same time, CFE requested amendments or clarifications with respect to the payments permitted to public directors; allowing overlapping public directors between a DCM and its affiliates; and compensation for director services.

The joint comment letter from CME and KCBT repeated prior arguments against the acceptable practices. Among other things, the two exchanges stated that ''the CEA does not grant the Commission authority to require an arbitrary minimum percentage of 'public' directors on publicly-traded DCM boards.'' [9] They also stated that ''the Act does not grant the Commission power to dictate the formation or conduct of a ROC.'' [10] The Commission has considered these arguments before and addressed them at length in the public record.[11]

The CBOT's comment letter noted that CBOT ''continues to question the need for the acceptable practices in general'' and that it ''believes that the Commission's definition of a public director is overbroad.'' [12] CBOT also elaborated on its specific concerns regarding the definition of public director. The FIA stated that ''FIA is supportive of the acceptable practices adopted by the Commission * * * and compliments the Commission and its staff for their extensive work in this important area.'' [13] However, FIA also asked the Commission to reconsider elements of the bright-line tests for public director. In particular, FIA argued that ''the Commission's $100,000 professional service payment criterion sweeps too broadly insofar as it equates service to a DCM with service to a DCM member.'' [14]

Additional comment letters were received from NFA and from Gartman. NFA noted that the acceptable practices for Core Principle 15 ''do not apply to NFA's governance and NFA again applauds the Commission's decision not to include registered futures association's [sic]'' under these acceptable practices.[15] NFA then provided examples of how the acceptable practices might impact NFA if they were applicable to it. NFA also proposed changes to the definition of public director, including that the Commission ''eliminate * * * criteria based upon payments to 'firms' by 'members'.'' [16] Finally, Gartman summarized his experience in the futures industry and noted that he served as a director of the KCBT. Gartman was concerned that the limitation on payments to public directors would preclude him from serving as a director of the exchange. Gartman stated that he ''clearly earn[s] more than $100,000/year from business directly related to the futures industry, and it is because of that relationship that your new rules will preclude me from remaining as a Director of the KC Board of Trade.'' [17]

The Commission carefully considered the six comment letters noted above. After due deliberation, however, it determined not to act on the proposed amendments or the comments received. Instead, on November 23, 2007, the Commission gave notice via the **Federal Register** that the acceptable practices for Core Principle 15 were stayed indefinitely and in their entirety. Likewise, the two-year compliance period for existing DCMs also was stayed. With the definition of public director in flux, the Commission, with its two new members, concluded that a stay was an appropriate response to the resulting regulatory uncertainty while it considered ways to move forward on the proposal.

In issuing the stay, the Commission explained that it would ''carefully consider its next steps'' with respect to the acceptable practices.[18] It is noteworthy, however, that the Commission did not repeal or in any way diminish the acceptable practices, nor did it abandon its commitment to the principles that they embody. Now, returning again to those principles, the Commission fully reasserts the fundamental philosophy underpinning the acceptable practices for Core Principle 15: that potential conflicts of

[6] While not required under these acceptable practices, the Commission believes DCMs benefit from endeavoring to recruit their public directors from a broad and culturally diverse pool of qualified candidates.

[7] In addition to the clarifying amendments, the Commission also proposed to correct a technical drafting error.

[8] CFE Comment Letter at 1.

[9] CME and KCBT Comment Letter at 2.

[10] *Id.*

[11] The Commission carefully reviewed and addressed challenges to its authority when it originally adopted the acceptable practices for Core Principle 15. *See* 72 FR 6936, 6940–6943 (providing an overview of the Commission's authority to issue the acceptable practices and explaining that the acceptable practices for Core Principle 15: (a) Do not conflict with Core Principle 16; (b) are not contrary to the text of the Act; (c) are not contrary to Congressional intent in enacting the Commodity Futures Modernization Act; (d) no not impermissibly shift the burden to DCMs for demonstrating compliance; (e) do not conflict with the guidance to Core Principle 14; and (f) are justified as a prophylactic measure).

[12] CBOT Comment Letter at 1.

[13] FIA Comment Letter at 1–2.

[14] *Id.* at 2.

[15] NFA Comment Letter at 1.

[16] *Id* at 2.

[17] Gartman Comment Letter at 1.

[18] 72 FR 65658, 65659 (November 23, 2007).

interest in self-regulation by for-profit and publicly-traded DCMs—structural conflicts of interest—can be addressed successfully through appropriate measures embedded in DCMs' governance structures.

B. The Commission Remains Committed to the Acceptable Practices for Core Principle 15

Through this release, and the proposed amendments to the bright-line tests for public director contained herein, the Commission reaffirms its support for public representation on DCM boards of directors and disciplinary panels, including the 35% public board standard first enunciated in the acceptable practices. Likewise, the Commission reaffirms its strong commitment to ROCs, consisting exclusively of public directors, to oversee all facets of DCMs' self-regulatory programs and staff. In short, while the definition of public director is subject to refinement, the importance of public directors' purpose and placement at the center of effective self-regulation remains intact, as do the acceptable practices for Core Principle 15 that provide secure safe harbors for compliance.

Equally important, the Commission remains committed to a definition of public director that is both meaningful and effective. To that end, the Commission hereby withdraws its previous proposal to amend the bright-line tests for public director and seeks public comment on new bright-lines that simplify and clarify the definition of ''public director'' while maintaining its integrity and effectiveness.

The Commission believes that, while the changes summarized below are material, they are fundamentally consistent with the design and purposes of the acceptable practices as originally conceived. Most importantly, the new proposed amendments touch only on the bright-line tests. Thus, the single most important element of the definition of public director—the overarching ''material relationship'' test in section (2)(i)—remains unchanged. As before, ''[t]o qualify as a public director of a contract market, an individual must first be found, by the board of directors, on the record, to have no material relationship with the contract market.'' [19] And, as before, ''[a] material relationship is one that reasonably could affect the independent judgment or decision making of the director.'' [20]

The practical consequence of the amended bright-line tests for public director is that certain relationships that were once automatically disqualifying now must be analyzed under the material relationship test recited above. This in no way diminishes the importance of such relationships. Instead, it makes it incumbent upon DCMs to conduct the necessary facts and circumstances analysis to determine whether a potential public director's relationship with his or her DCM in fact rises to the level of a material relationship. The Commission believes that requiring the DCM to conduct this analysis is consistent with the spirit and intent of the acceptable practices.

Fundamentally, the proposed amendments to the bright-line tests restate the proposition that while certain director-DCM relationships are so clearly material that the Commission must automatically preclude them in public directors, the materiality of all other relationships is best determined by the DCM, as the need arises and the specific facts present themselves. This is especially true with respect to the complex business, social, and other relationships that exist at the highest levels of corporate management and directorship in the financial services industry. In addition, the proposed amendments also serve to streamline and clarify the definition of public director in certain areas, with the understanding that, in those areas, the overarching material relationship test will continue to give the necessary protection to the integrity of the ''public director'' designation.

Finally, while reemphasizing the importance of the material relationship test in the definition of public director, the Commission also notes its continued commitment to specific bright-line tests for director-DCM relationships that, as explained above, are so clearly material that they must automatically preclude service as a public director. Accordingly, the proposed amendments to the bright-line tests retain most of the original substantive content of the tests. As with the original bright-line tests, those now proposed touch on a potential public director's (A) Employment relationships with the contract market; (B) direct and indirect membership relationships with the contract market; (C) direct and indirect compensation relationships with the contract market; and (D) familial relationships with the contract market. The one-year look back period also remains intact, as does the requirement that a DCM disclose to the Commission those members of its board that are public directors and the basis for those determinations. The Commission will also closely scrutinize the implementation of the materiality and bright-line tests when conducting its routine rule enforcement reviews of the exchanges, to ensure that the independence of these public directors is upheld. The proposed amendments are summarized below.

C. The Proposed Amendments

First, in subsection (2)(ii), the Commission proposes to make its vocabulary more consistent with that in subsection (2)(i), but without altering its meaning. As adopted, the provision states that ''* * * a director shall not be considered public if [the bright-line tests are not met].'' The Commission proposes that subsection (2)(ii) should instead read ''* * * a director shall be considered to have a 'material relationship' with the contract market if [the bright-line tests are not met].'' Because the overarching material relationship test in subsection (2)(i) precludes a person with a material relationship from serving as a public director, the purpose and effect of the provision remains unchanged.

Second, in subsections (2)(ii)(A) and (2)(iv), the Commission proposes amendments that will free a DCM's public directors from bright-line tests that they would have failed if they also served as directors of the DCM's affiliates. For this purpose, ''affiliate'' is proposed to be defined in subsection (2)(ii)(A) to include ''parents or subsidiaries of the contract market or entities that share a common parent with the contract market.'' Previously, a DCM's public directors could also serve as directors of its parent company, but not as directors of its subsidiary or sister companies. With this amendment, the latter two relationships no longer suffer automatic exclusion. Thus, for example, an exchange holding company owning two DCMs could place the same public director on the boards of all three entities without falling afoul of the acceptable practices and voluntary safe harbor for Core Principle 15 if the director separately qualified as a public director for each entity.

The Commission cautions, however, that any affiliate relationships must still be scrutinized carefully under the material relationship test in subsection (2)(i). As stated previously, the fact that an interlocking director relationship is no longer automatically precluded under the bright-line tests does not signal that the Commission is no longer concerned with this type of relationship. Instead, the point of analysis is simply shifted from a preemptive, bright-line determination

[19] Acceptable practices for Core Principle 15 at (b)(2)(i).

[20] *Id.*

by the Commission to an overarching material relationship test applied by the DCM and its board of directors. In this context, the Commission notes that certain affiliate relationships could certainly be material. For example, a DCM affiliate that is also subject to the DCM's regulatory authority (*e.g.*, as a member of the DCM or as a participant in its markets) raises obvious concerns.

Third, the Commission proposes to amend subsection (2)(ii)(B) of the definition of public director. As adopted, this subsection precludes DCM members, employees of members, and persons affiliated with members from service as public directors. Currently, the acceptable practices define ''affiliated with a member'' as being an officer or director of a member, or having ''*any other relationship with the member such that his or her impartiality could be called into question in matters concerning the member*'' (emphasis added). As is obvious from the statutory text, subsection (2)(ii)(B) effectively inserts another material relationship determination in what is an otherwise bright-line test. Thus, not only are members and their employees, officers, and directors excluded as public directors, but another category of potential directors—those having any relationship with a member such that his or her impartiality could be called into question in matters concerning the member—is also excluded.

The Commission believes that subsection (2)(ii)(B) should be streamlined in three ways. First, any material relationship determinations made pursuant to section (2) should take place under the overarching material relationship test of subsection (2)(i), and not under the bright-line tests of subsection (2)(ii). Second, subsection (2)(ii)(B) should set forth the exact membership relationships that are automatically precluded. Finally, the subsection should allow the DCM to conduct the necessary analysis of the facts and circumstances to determine whether employment by a member—or, more likely, employment of his or her spouse, parent, child, or sibling—should prove fatal to an otherwise qualified public director.

Each of these changes is reflected in the proposed amendments to subsection (2)(ii)(B). The proposed amendments eliminate the material relationship test embedded in the original subsection and restructure it as a strict bright-line test. The amended subsection also states with precision which membership relationships are automatically considered material relationships: Neither a DCM member nor its officers or directors may serve as public directors of the DCM. Finally, a DCM member's employees are no longer automatically precluded (unless they are employed as officers or directors). As with other amendments proposed herein, however, the Commission again reiterates that the amendments merely shift the point of analysis from the bright-lines of subsection (2)(ii) to the overarching material relationship test of subsection (2)(i). As before, the Commission remains concerned about any relationship between potential public directors and DCM members that could ''affect the independent judgment or decision making of the director.''

Finally, the Commission proposes to amend subsection (2)(ii)(C) of the bright-line tests. Here again, the Commission seeks to simplify and clarify the provision, and to ensure that the bright-line tests are clearly articulated. As adopted, subsection (2)(ii)(C) creates a $100,000 combined annual payments test for potential public directors and the firms with which they may be affiliated (''payment recipients''). A particular payment's relevance to the $100,000 bright-line test depends upon the source (''payment provider'') and nature of the payment. In this regard, the subsection does not specify which payments should count towards the $100,000 annual cap—-all payments or only those for certain types of services. In addition, the subsection also contains potential ambiguity with respect to the universe of potential payment providers and payment recipients.

The first proposed amendment to subsection (2)(ii)(C) defines the nature of ''payment,'' specifying that it is payment for ''legal, accounting, or consulting services.'' The second proposed amendment clarifies that the relevant payment recipients include the potential public director and any firm in which the director is an officer, partner, or director. The third proposed amendment to subsection (2)(ii)(C) clarifies that the relevant payment providers include the DCM and any parent, sister, or subsidiary company of the DCM. Notably, the proposed new payment providers provision no longer captures DCM members or persons or entities affiliated with members, although such relationships should still be analyzed under the overarching materiality test of subsection (2)(i). Finally, the Commission proposes to amend subsection (2)(ii)(C) to take into account payments to a public director in excess of $100,000 by sister and subsidiary companies of the DCM. This is consistent with the Commission's intent, previously articulated, not to automatically prohibit overlapping public directors between DCMs and their affiliates.

II. Related Matters

A. Cost-Benefit Analysis

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its actions before issuing a new regulation or order under the Act.[21] By its terms, Section 15(a) requires the Commission to ''consider the costs and benefits'' of a subject rule or order, without requiring it to quantify the costs and benefits of its action or to determine whether the benefits of the action outweigh its costs. Section 15(a) requires that the costs and benefits of proposed rules be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interests considerations. In conducting its analysis, the Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concerns and may determine that notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the CEA.[22]

On February 14, 2007, the Commission published final acceptable practices for Core Principle 15 that included prophylactic measures designed to minimize conflicts of interest in DCMs' decision making processes. The final rulemaking thoroughly considered the costs and benefits of the acceptable practices and responded to comments relating to the costs of adhering to their requirements.

The new amendments herein to the definition of public director are proposed to bring further clarity and finality to the acceptable practices for Core Principle 15. The Commission believes that the proposed amendments are fully consistent with the design and purpose of the acceptable practices as originally conceived. Furthermore, through more consistent, streamlined, and precise articulations, the proposed amendments will facilitate DCMs' implementation of the acceptable practices and thereby further important public interest considerations with

[21] 7 U.S.C. 19(a).

[22] E.g., *Fishermen's Dock Co-op., Inc.* v. *Brown,* 75 F3d 164 (4th Cir. 1996); *Center for Auto Safety* v. *Peck,* 751 F.2d 1336 (D.C. Cir. 1985) (agency has discretion to weigh factors in undertaking cost benefit analyses).

respect to conflicts of interest in DCM self-regulation. In particular, the acceptable practices offer all DCMs a safe harbor for compliance with Core Principle 15, which requires them to ''establish and enforce rules to minimize conflicts of interest in the decision making process of the contract market. * * *''[23] The acceptable practices' safe harbor is based on the inclusion of public directors on their boards; the creation and empowerment of ROCs consisting exclusively of public directors; and the presence of public persons on DCM disciplinary panels. Thus, each of these provisions depends heavily on a clear and settled definition of public director. The Commission believes that the proposed amendments will not impose any additional costs upon DCMs. To the contrary, they may reduce the costs of compliance through improvements in the bright-line tests for public director, such that the tests truly operate as bright-lines and the definition of public director is well-settled.

After considering the above mentioned factors and issues, the Commission has determined to propose these amendments to the acceptable practices for Core Principle 15. The Commission specifically invites public comment on its application of the criteria contained in Section 15(a) of the Act and further invites interested parties to submit any quantifiable data that they may have concerning the costs and benefits of the proposed amendments to the acceptable practices for Core Principle 15.

B. Paperwork Reduction Act of 1995

These proposed amendments to the acceptable practices for Core Principle 15 will not impose any new recordkeeping or information collection requirements, or other collections of information that require approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Accordingly, the Paperwork Reduction Act does not apply. We solicit comments on the accuracy of our estimate that no additional recordkeeping or information collection requirements or changes to existing collection requirements would result from the amendments proposed herein.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities. The proposed amendments to the Acceptable Practices for Core Principle 15 affect DCMs. The Commission has previously determined that DCMs are not small entities for purposes of the Regulatory Flexibility Act.[24] Accordingly, the Acting Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed amendments to the acceptable practices will not have a significant economic impact on a substantial number of small entities.

III. Text of Proposed Amendments

List of Subjects in 17 CFR Part 38

Commodity futures, Reporting and recordkeeping requirements.

In light of the foregoing, and pursuant to the authority in the Act, and in particular, Sections 3, 5, 5c(a) and 8a(5) of the Act, the Commission hereby proposes to amend Part 38 of Title 17 of the Code of Federal Regulations as follows:

PART 38—DESIGNATED CONTRACT MARKETS

1. The authority citation for part 38 continues to read as follows:

Authority: 7 U.S.C. 2, 5, 6, 6c, 7, 7a–2, and 12a, as amended by Appendix E of Public Law 106–554, 114 Stat. 2763A–365.

2. In Appendix B to Part 38 revise paragraphs (b)(2)(ii) through (b)(2)(v) of the acceptable practices for Core Principle 15 to read as follows:

Appendix B to Part 38—Guidance on, and Acceptable Practices in, Compliance With Core Principles

* * * * *

Core Principle 15 of section 5(d) of the Act: CONFLICTS OF INTEREST

* * * * *

(b) * * *

(2) * * *

(ii) In addition, a director shall be considered to have a ''material relationship'' with the contract market if any of the following circumstances exist:

(A) The director is an officer or employee of the contract market or an officer or employee of its affiliate. In this context, ''affiliate'' includes parents or subsidiaries of the contract market or entities that share a common parent with the contract market;

(B) The director is a member of the contract market, or an officer or director of a member. ''Member'' is defined according to Section 1a(24) of the Commodity Exchange Act and Commission Regulation 1.3(q);

(C) The director, or a firm with which the director is an officer, director, or partner, receives more than $100,000 in combined annual payments from the contract market, or any affiliate of the contract market (as defined in Subsection (2)(ii)(A)), for legal, accounting, or consulting services. Compensation for services as a director of the contract market or as a director of an affiliate of the contract market does not count toward the $100,000 payment limit, nor does deferred compensation for services prior to becoming a director, so long as such compensation is in no way contingent, conditioned, or revocable;

(D) Any of the relationships above apply to a member of the director's ''immediate family,'' i.e., spouse, parents, children and siblings.

(iii) All of the disqualifying circumstances described in Subsection (2)(ii) shall be subject to a one-year look back.

(iv) A contract market's public directors may also serve as directors of the contract market's affiliate (as defined in Subsection (2)(ii)(A)) if they otherwise meet the definition of public director in this Section (2).

(v) A contract market shall disclose to the Commission which members of its board are public directors, and the basis for those determinations.

* * * * *

Issued in Washington, DC, on January 12, 2009 by the Commission.

David Stawick,

Secretary of the Commission.

Concurring Statement of Commissioner Jill E. Sommers Regarding the Withdrawal of Previously Proposed Amendments to the Acceptable Practices for Core Principle 15 and Solicitation of Public Comments on New Proposed Amendments

I fully support the Commission's decision to issue these proposed amendments to the bright-line tests for determining when a board member has a material relationship with an exchange such that he or she is disqualified from serving as a public director. The proposed amendments attempt to cure certain ambiguities and complexities that existed in the acceptable practices adopted by the Commission on January 31, 2007, and the proposed amendments thereto published on March 26, 2007. I commend Commission staff for their dedication to this important project and their resolve, through several changes in Commission membership, to get it right. I believe the amendments proposed today provide a workable method of discerning the existence of those relationships that should be deemed automatically ''material,'' and appropriately leave to the exchanges the responsibility for determining whether other circumstances not specified in the bright-line tests may give rise to potential conflicts of interest.

I write separately, however, to express my disagreement with issuing the statement contained in footnote six of

[23] 7 U.S.C. 7(d)(15).

[24] *See* Policy Statement and Establishment of Definitions of ''Small Entities'' for Purposes of the Regulatory Flexibility Act, 47 FR 18618, 18619 (Apr. 30, 1982).

the proposal, that ''the Commission believes DCMs benefit from endeavoring to recruit their public directors from a broad and culturally diverse pool of qualified candidates.'' The purpose of the acceptable practices is to ''ensure that there is adequate independence within [exchange] board[s] to insulate [their] regulatory functions from the interests of the exchange's management, members and other business interests of the market itself.'' 71 FR 38740 (July 7, 2006). It is not clear to me how recruiting directors from a culturally diverse pool of candidates advances that goal, nor is it a given that seating a well-qualified board that is culturally diverse is something that may be practicably accomplished. My primary objection, however, is based on the fact that we have no legal authority to issue pronouncements on the subject. We are not a commission of general jurisdiction. Our authority and oversight responsibilities are specifically limited by statute and do not include the promotion of equal employment opportunity. Moreover, to the extent the Commission may be suggesting that exchanges consider factors such as race, gender, national origin, or religion in selecting public directors, we may be encouraging activity that could potentially violate Title VII of the Civil Rights Act of 1964.

Concurring Statement of Commissioner Bart Chilton Regarding the Withdrawal of Previously Proposed Amendments to the Acceptable Practices for Core Principle 15 and Solicitation of Public Comments on New Proposed Amendments

I concur in the Commission's issuance of the above-referenced action. I write separately, however, to comment on certain aspects of the proposal of particular interest to me.

First, I am gratified to see language in the proposal relating to my longstanding request that we note to designated contract markets the benefits of diversity in recruiting public directors. While this is, as stated, not a requirement under the acceptable practices, it is quite obviously a laudable and attainable goal, and one that should be encouraged.

Second, I would ask commenters to respond specifically as to whether the Commission has included within the proposal all appropriate decision-making bodies at designated contract markets, or whether the class should be broadened to include entities other than boards of directors, executive committees or similarly empowered bodies, regulatory oversight committees, and disciplinary panels.

Lastly, I note with some concern the timeline of this proposal. In November 2007, the Commission stayed the ''final'' acceptable practices that had been issued in February 2007. This was a necessary action, although unfortunate in that it created further delay in an already protracted and flawed process. Even more unfortunate, swift action was promised on this proposal in December 2007, yet it has taken more than a full year to see any progress. As public servants, we can and should do better to serve American consumers and businesses.

[FR Doc. E9–891 Filed 1–16–09; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1300, 1301, 1304, 1305, and 1307

[Docket No. DEA–316A]

RIN 1117–AB18

Disposal of Controlled Substances by Persons Not Registered With the Drug Enforcement Administration

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: In response to concerns raised by individuals, public and private organizations, the healthcare industry, and the law enforcement community, the Drug Enforcement Administration (DEA) is soliciting information on the disposal of controlled substances dispensed to individual patients, also defined as ultimate users, as well as long term care facilities. DEA is seeking options for the safe and responsible disposal of dispensed controlled substances in a manner consistent with the Controlled Substances Act and its implementing regulations.

DATES: Written comments must be postmarked on or before March 23, 2009, and electronic comments must be sent on or before midnight Eastern time March 23, 2009.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–316'' on all written and electronic correspondence. Written comments being sent via regular or express mail should be sent to the Drug Enforcement Administration, *Attention:* DEA Federal Register Representative/ODL, 8701 Morrissette Drive, Springfield, VA 22152. Comments may be sent to DEA by sending an electronic message to *dea.diversion.policy@usdoj.gov*. Comments may also be sent electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document is also available at the *http://www.regulations.gov* Web site. DEA will accept attachments to electronic comments in Microsoft Word, WordPerfect, Adobe PDF, or Excel file formats only. DEA will not accept any file formats other than those specifically listed here.

Please note that DEA is requesting that electronic comments be submitted before midnight Eastern time on the day the comment period closes because *http://www.regulations.gov* terminates the public's ability to submit comments at midnight Eastern time on the day the comment period closes. Commenters in time zones other than Eastern time may want to consider this so that their electronic comments are received. All comments sent via regular or express mail will be considered timely if postmarked on the day the comment period closes.

FOR FURTHER INFORMATION CONTACT: Mark W. Caverly, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152, Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments: Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov* and in the Drug Enforcement Administration's public docket. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all the personal identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the

public docket, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personal identifying information and confidential business information identified and located as set forth above will be redacted and the comment, in redacted form, will be posted online and placed in the Drug Enforcement Administration's public docket file. Please note that the Freedom of Information Act applies to all comments received. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION** paragraph.

Legal Authority

The Drug Enforcement Administration (DEA) enforces the Comprehensive Drug Abuse Prevention and Control Act of 1970, often referred to as the Controlled Substances Act (CSA) and the Controlled Substances Import and Export Act (21 U.S.C. 801–971) as amended. DEA regulations implementing these statutes are published in Title 21 of the Code of Federal Regulations (CFR), Parts 1300 to 1399. These regulations are designed to establish a framework for the legal distribution of controlled substances to deter their diversion to illegal purposes and to ensure that there is a sufficient supply of these drugs for legitimate medical, scientific, research, industrial, and other purposes. Controlled substances are those substances listed in the schedules of the CSA and 21 CFR 1308.11–1308.15, and generally include narcotics, stimulants, depressants, and hallucinogens that have a potential for abuse and physical and psychological dependence, as well as anabolic steroids.

The CSA and DEA's regulations require that persons involved in the manufacture, distribution, research, dispensing, import, and export of controlled substances register with DEA (unless exempt), keep track of all stocks of controlled substances, and maintain records to account for all controlled substances received, distributed, or otherwise disposed of.

Background

Under the CSA, Congress established a ''closed system'' of distribution designed to prevent the diversion of controlled substances.[1] As part of this closed system, all persons who lawfully handle controlled substances must be registered with DEA or exempt from registration by the CSA or DEA regulations. Another central element of this closed system is that DEA registrants must maintain strict records of all transactions in controlled substances. Consistent with the CSA requirements, current DEA regulations employ a system to account for all controlled substances received, stored, distributed, dispensed, or otherwise disposed of. Under this system, all controlled substances used in legitimate commerce may be transferred only between persons or entities who are DEA registrants or who are exempted from the requirement of registration, until they are dispensed to the ultimate user. Thus, for example, a controlled substance, after being manufactured by a DEA-registered manufacturer, may be transferred to a DEA-registered distributor for subsequent distribution to a DEA-registered retail pharmacy. After a DEA-registered practitioner, such as a physician or a dentist, issues a prescription for a controlled substance to a patient (i.e., the ultimate user), that patient can fill that prescription at a retail pharmacy to obtain that controlled substance. In this system, the manufacturer, the distributor, the practitioner, and the retail pharmacy are all required to be DEA registrants, or to be exempted from the requirement of registration, to participate in the process.

As set forth in the CSA, an ultimate user is exempt from the requirement of registration—but only to the extent the ultimate user possesses a controlled substance that has been lawfully obtained for his own use or the use of a member of his household or for an animal owned by him or by a member of his household (21 U.S.C. 822(c)(3), 802(27)). Beyond such circumstances, the CSA and its implementing regulations do not currently contemplate a situation in which an ultimate user would distribute a controlled substance. Thus, such distribution, regardless of the purpose, is illegal.

Under the Controlled Substances Act, specifically 21 U.S.C. 802(27), the term ''ultimate user'' means a person who has lawfully obtained, and who possesses, a controlled substance for his own use or for the use of a member of his household or for an animal owned by him or by a member of his household. Ultimate users are not required to register with DEA to possess controlled substances.

Every person who manufactures or distributes any controlled substance or List I chemical, or who proposes to engage in the manufacture or distribution of any controlled substance or List I chemical, shall obtain annually a registration issued by the Attorney General in accordance with the rules and regulations promulgated by him (21 U.S.C. 822(a)). ''The term 'distribute' means to deliver (other than by administering or dispensing) a controlled substance or a listed chemical'' (21 U.S.C. 802(11)). ''The terms 'deliver' or 'delivery' mean the actual, constructive, or attempted transfer of a controlled substance or a listed chemical, whether or not there exists an agency relationship.'' (21 U.S.C. 802(8)). Thus, because the terms deliver and distribute, as defined in the CSA, encompass all methods of delivery and distribution of controlled substances, and because the CSA allows ultimate users to obtain and possess controlled substances solely for purposes of use, under current law, an ultimate user may not deliver or distribute controlled substances for purposes of disposal (unless the ultimate user is also a DEA registrant).

DEA issues registrations to certain business firms, called reverse distributors, to authorize them to take controlled substances that are expired or otherwise unwanted from other DEA registrants for subsequent disposal or distribution back to the manufacturer. Reverse distributors are the only DEA registrants permitted to receive controlled substances from other registrants expressly for the purpose of disposal; other registrants, e.g., pharmacies, may dispose of controlled substances already in their possession that have expired, been damaged, or contaminated, but may not accept controlled substances from another person solely for the purpose of disposal. Under 21 CFR 1300.01(b)(41):

> The term ''reverse distributor'' means a registrant who receives controlled substances acquired from another DEA registrant for the purpose of—
>
> (i) Returning unwanted, unusable, or outdated controlled substances to the manufacturer or the manufacturer's agent; or
>
> (ii) Where necessary, processing such substances or arranging for processing such substances for disposal.

DEA issues these firms registrations as reverse distributors and they must adhere to certain security and recordkeeping requirements to ensure that unwanted controlled substances are accounted for and disposed of in accordance with all relevant State and

[1] H.R. Rep. No. 91–1444 at 3 (1970).

Federal laws and regulations. In addition, reverse distributors must adhere to any local, county, State, and/or Federal environmental regulations when they dispose of the unwanted controlled substances. While a reverse distributor is registered by DEA at a specific location and is permitted to store controlled substances at that location, it is important to note that the reverse distributor is not required to dispose of the controlled substances at its registered location. Opportunities for large scale disposal (including by reverse distributors) of unused or expired controlled substances have been complicated by existing statutory requirements under the Controlled Substances Act and Federal and State waste disposal laws.

By regulation, a reverse distributor cannot take unwanted controlled substances from non-DEA registrants. For example, as stated previously, once a controlled substance has been dispensed to a patient as the ultimate user, either by prescription or through other means, the ultimate user cannot give the controlled substance to a reverse distributor. Such furnishing of a controlled substance by the ultimate user would be a distribution, which an ultimate user is not permitted to make without being registered. Further, the reverse distributor cannot currently take custody of the controlled substance because reverse distributors are only permitted to receive controlled substances from other DEA registrants. Members of the public have told DEA that the inability to use a reverse distributor in the disposal process is one of the reasons that ultimate users have difficulty safely disposing of unwanted medications, especially controlled substances.

Aside from ultimate users not being permitted to distribute controlled substances for purposes of disposal without being separately registered and reverse distributors not being permitted to receive controlled substances from non-registered ultimate users, recordkeeping requirements also apply to the disposal of controlled substances. The CSA requires every registrant who manufactures, distributes, or dispenses a controlled substance or substances to maintain, on a current basis, a complete and accurate record of each such substance manufactured, received, sold, delivered, or otherwise disposed of by the registrant (21 U.S.C. 827(a)(3)). Records must contain such information as the Attorney General requires to be kept by regulation (21 U.S.C. 827(b)(1)). For reverse distributors, these records include, for each controlled substance in finished form, the following:

(i) The name of the substance.

(ii) Each finished form (e.g., 10-milligram tablet or 10-milligram concentration per fluid ounce or milliliter) and the number of units or volume of finished form in each commercial container (e.g., 100-tablet bottle or 3-milliliter vial).

(iii) The number of commercial containers of each such finished form received from other persons, including the date of and number of containers in each receipt and the name, address, and registration number of the person from whom the containers were received.

(iv) The number of commercial containers of each such finished form distributed back to the original manufacturer of the substance or manufacturer's agent, including the date of and number of containers in each such distribution and the name, address, and registration number of the manufacturer or manufacturer's agent to whom the containers were distributed.

(v) The number of units or volume of finished forms and/or commercial containers disposed of including the date and manner of disposal, the quantity of the substance in finished form disposed, and the signatures of two responsible employees of the registrant who witnessed the disposal.

(21 CFR 1304.22(e)(2))

Based on current law and DEA regulations, if ultimate users were otherwise permitted to provide their unwanted controlled substances to reverse distributors then the above recordkeeping requirements would continue to apply to the reverse distributors, unless an exemption is granted by regulation pursuant to 21 U.S.C. 827(c)(3).

Redistribution or Reuse

As discussed below, nonregistrants may dispose of controlled substances upon instruction by DEA Special Agents in Charge. However, no provisions in the CSA or DEA regulations allow a DEA registrant to routinely acquire controlled substances from a non-registrant (i.e. individual patient). Hence, patients are currently prohibited from furnishing controlled substances to reverse distributors for disposal and from returning controlled substances to a registrant for the purpose of redistribution or reuse. According to the National Conference of State Legislatures, in 2007, 10 States passed laws allowing or encouraging the donation of unused pharmaceutical drugs. Many of these programs involve health care facilities, nursing homes or other pharmacies. However, the CSA and current DEA regulations prohibit ultimate users from delivering or distributing controlled substances—even if such distribution takes the form of a donation to a DEA registrant participating in one of these State authorized programs—and prohibit registrants from accepting such donations from ultimate users. Consequently, these State laws do not provide a mechanism consistent with Federal law for donation, return, or reuse of controlled substances.

The Food and Drug Administration (FDA) does not generally permit the redistribution of medications, except under limited circumstances. The FDA Compliance Policy Guides Manual, Chapter 4, Human Drugs, Section 460.300 reads as follows:

Sec. 460.300 Return of Unused Prescription Drugs to Pharmacy Stock (CPG 7132.09)

POLICY:

A pharmacist should not return drugs [sic] products to his stock once they have been out of his possession. It could be a dangerous practice for pharmacists to accept and return to stock the unused portions of prescriptions that are returned by patrons, because he would no longer have any assurance of the strength, quality, purity or identity of the articles.

Many state boards of pharmacy have issued regulations specifically forbidding the practice. We endorse the actions of these State boards as being in the interest of public health.

The pharmacist or doctor dispensing a drug is legally responsible for all hazards of contamination or adulteration that may arise, should he mix returned portions of drugs to his shelf stocks. Some of our investigations in the past have shown that drugs returned by patrons and subsequently resold by the pharmacist were responsible for injuries.[2]

DEA shares similar concerns regarding the redistribution of controlled substances. This practice is not addressed by the CSA or its implementing regulations.

Disposal of Unused or Unwanted Medications by Ultimate Users

As stated previously, the CSA and its implementing regulations do not contemplate a situation in which an ultimate user would distribute controlled substances. However, 21 CFR 1307.21 provides the procedure for disposing of controlled substances by persons who are not registrants. This procedure involves the nonregistrant submitting a letter to the local DEA Special Agent in Charge. The letter must include the name and address of the person; the name and quantity of each controlled substance to be disposed of; how the applicant obtained the controlled substance, if known; and the name, address, and registration number, if known, of the person who possessed

[2] Food and Drug Administration, *Compliance Guides Policy Manual* Section 460.300, Return of Unused Prescription Drugs to Pharmacy Stock (CPG 7132.09). October 1, 1980. *http://www.fda.gov/ora/compliance_ref/cpg/cpgdrg/cpg460-300.html.*

the controlled substances prior to the applicant, if known (21 CFR 1307.21(a)(2)). Provided such disposal is permissible under the CSA, the Special Agent in Charge shall authorize and instruct the applicant to dispose of the controlled substance through any of the following methods: Transfer of the substance to a person registered under the CSA and authorized to possess the substance; delivery to an agent of the Administration or to the nearest office of the Administration; by destruction in the presence of an agent of the Administration or other authorized person; or, by such other means as the Special Agent in Charge may determine to ensure that the substance does not become available to unauthorized persons (21 CFR 1307.21(b)). Though this is an option currently available to ultimate users, it is used in extremely limited circumstances.

Another option available for the disposal of unwanted controlled substances dispensed to ultimate users is through take-back programs that comply with applicable Federal and state law. Take-back programs are organized collection events designed to reduce the amount of unwanted or unused pharmaceuticals that may pose a risk to public health and safety, may be accessible to diversion, or that otherwise may be disposed of in a manner that does not comply with State or Federal laws or regulations. As previously stated, the distribution of a controlled substance by an ultimate user for the purpose of disposal is a scenario not contemplated by the CSA and its closed system of distribution. However, as indicated above, ultimate users, and other DEA nonregistrants, in possession of controlled substances may dispose of those substances by receiving permission from the local DEA Special Agent in Charge, provided such disposal takes place in a manner consistent with the structure of the CSA.

In the absence of regulations expressly addressing the disposal of controlled substances dispensed to ultimate users, DEA has recently granted temporary permission to law enforcement agencies who have requested authorization to accept for disposal controlled substances that have been dispensed to ultimate users. In granting such temporary authorization, DEA has imposed certain conditions to ensure that the controlled substances do not become available to unauthorized persons, consistent with 21 CFR 1307.21, and to promote consistency with the structure of the CSA. Thus, the only take-back programs for which DEA has recently granted temporary allowances are those in which law enforcement officials directly receive the controlled substances from the ultimate users. Recognizing that there might be additional appropriate methods of allowing for the disposal of controlled substances dispensed to ultimate users, DEA is seeking information to provide more accessible ways to safely and responsibly dispose of dispensed controlled substances in a manner consistent with the CSA.

Disposal of Unused Medications by Long Term Care Facilities (LTCFs)

The term ''long term care facility'' (LTCF) is defined to mean ''a nursing home, retirement care, mental care, or other facility or institution which provides extended health care to resident patients.'' (21 CFR 1300.01(b)(25)). Most LTCFs are not DEA registered entities.

When patients residing at LTCFs require controlled substances their practitioner issues a prescription which is usually dispensed for the full amount by a registered pharmacy. The LTCF holds the prescribed drugs in a custodial manner for the patient and dispenses the medications on the schedule the practitioner orders. As a result of these dispensing practices, when patients die, leave the facility, or their medication is discontinued or changed, the LTCF may be left with excess controlled substances that must be disposed of to avoid diversion.

DEA has been acutely aware of the problems surrounding the disposal of dispensed controlled substances at LTCFs for some time, and has worked to reduce the accumulation of controlled substances at LTCFs through a number of regulatory actions. Prescribing practitioners are required by regulation to specify the quantity prescribed on the prescriptions. However, DEA recognized that LTCF patients are a unique part of society, and may often need the Schedule II controlled substances medications they are prescribed changed on short notice based on their rapidly changing health conditions. Consequently, patients might not need the full quantity of the Schedule II controlled substance that the practitioner had initially prescribed. To reduce the potential excess amounts of dispensed controlled substances, practitioners prescribing Schedule II controlled substances for LTCF patients needed the ability to prescribe smaller quantities of those substances more frequently than would be necessary for other patients. Practitioners are required to manually sign prescriptions for Schedule II controlled substances for the prescription to be valid (21 CFR 1306.05(a)), and the dispensing pharmacy is unable to dispense the needed controlled substance until it receives a valid prescription (21 CFR 1306.11(a)). It became evident that this requirement made it more difficult for prescribing practitioners to be responsive to the immediate and changing needs of LTCF patients. To address this circumstance, DEA promulgated regulations that permit the facsimile transmission of written, manually signed Schedule II prescriptions for residents of LTCFs by the practitioner or the practitioner's agent to the dispensing pharmacy (21 CFR 1306.11(f)). The facsimile serves as the original prescription for the dispensing pharmacy's records. DEA has also permitted the facsimile transmission of written, manually signed Schedule II controlled substance prescriptions for patients enrolled in hospice care programs certified and/or paid for by Medicare under Title XVIII of the United States Code, or hospice programs licensed by the State (21 CFR 1306.11(g)).

DEA has also established partial dispensing provisions for Schedules II–V prescriptions (including unit-dose dispensing, if desired), to limit the quantity of controlled substances dispensed at one time and avoid waste if the treatment was changed or discontinued. These regulations include specific provisions for residents of LTCFs or patients with medical diagnoses documenting a terminal illness (21 CFR 1306.13(b), 1306.23). According to the pharmacy industry, however, dispensing fees, reimbursement practices, and difficulties in educating practitioners regarding the need to prescribe controlled substances in anticipation of a patient's actual need for the controlled substance have, for the most part, precluded using that approach.

To further prevent the accumulation of controlled substances at LTCFs, DEA has permitted retail pharmacies to install and operate automated dispensing systems (ADS) at LTCFs (21 CFR 1301.27). ADS are conceptually similar to a vending machine. A pharmacy stores bulk controlled substances in the ADS in separate bins or containers and programs and controls the ADS remotely. Only authorized staff at the LTCF has access to the ADS's contents, which are dispensed on a single-dose basis at the time of administration pursuant to a prescription. The ADS electronically records each dispensing, thus maintaining dispensing records for the pharmacy. Because the controlled substances are not considered dispensed until the system provides them,

controlled substances in the ADS are pharmacy stock, not waste.

Despite DEA's efforts to reduce the accumulation of dispensed controlled substances at LTCFs, accumulation continues to be a concern. LTCFs that are not DEA registrants may not transfer the controlled substances to either the pharmacy that supplied them or to a reverse distributor for disposal.

Purpose of Advance Notice of Proposed Rulemaking

On February 20, 2007, in recognition of the advice being provided by environmental organizations to the public to dispose of medications in household trash (as opposed to flushing them into the waste-water system), the U.S. Office of National Drug Control Policy (ONDCP) announced guidelines for the disposal of ultimate user medications, including dispensed controlled substances. The guidelines were published by ONDCP in conjunction with the Department of Health and Human Services (HHS), and the EPA.[3] The guidelines advise the public to flush medications only if the prescription label or accompanying patient information specifically states to do so. Instead of flushing, ONDCP recommends that, after performing a minimal deactivation procedure, the medications be disposed of in common household trash or at community pharmaceutical ''take-back'' programs. The press release announcing the guidelines stated:

> The new Federal guidelines are a balance between public health concerns and potential environmental concerns. ''While EPA continues to research the effects of pharmaceuticals in water sources, one thing is clear: Improper drug disposal is a prescription for environmental and societal concern,'' said EPA Administrator Stephen L. Johnson. ''Following these new guidelines will protect our Nation's waterways and keep pharmaceuticals out of the hands of potential abusers.''

In addition to environmental concerns, there are safety concerns that medications, especially controlled substances, could be either intentionally or unintentionally abused. Children may retrieve a medication from the trash and ingest it without the specific intention of abusing it. For these reasons, some medications include flushing disposal instructions to make them less available and to mitigate safety risks.

The illicit use of prescription medication is a growing problem among young adults. According to the 2007 National Survey on Drug Use and Health, more persons age 12 and above are engaged in the non-medical use of psychotherapeutic drugs than those abusing cocaine, heroin, and methamphetamine combined. Prescription drug abuse is second only to marijuana use.[4] The 2005 Partnership Attitude Tracking Study (PATS) reported that 62 percent of teens say prescription pain relievers are easy to get from parents' medicine cabinets.[5]

DEA is seeking options for the disposal of controlled substances dispensed to DEA nonregistrants that protect public health and safety, minimize the possibility of diversion, are consistent with the CSA and DEA regulations, and provide sound environmental solutions.

Request for Information

DEA seeks comments regarding the promulgation of regulations to permit the disposal of controlled substances by ultimate users and long term care facilities consistent with the Controlled Substances Act and its implementing regulations. DEA seeks comments regarding how various entities would address the issue of the disposal of dispensed controlled substances held by DEA nonregistrants in light of the current restrictions that are in place. Commenters are encouraged to include the question number enumerated below in their response. Although all comments are welcome, DEA is particularly interested in comments regarding the questions listed below. These questions are separated into groups by area of interest. The groups are:

- Ultimate Users
- State and Local Law Enforcement Agencies & Publicly Owned Treatment Works
- Concerned Interest Groups
- Long Term Care Facilities
- Hospices and In-Home Care Groups
- Pharmacies
- Narcotic Treatment Programs
- Reverse Distributors
- State Regulatory Agencies
- All Interested Parties

For Ultimate Users (Patients or Family Members of Patients Who Possess Controlled Substances Which Have Been Legally Dispensed)

1. Can you distinguish a controlled substance from a non-controlled substance?
2. Why do you have unwanted or outdated controlled substances in your possession?
3. What method, if any, do you currently use to dispose of your unwanted or outdated pharmaceuticals, including controlled substances?
4. Are you willing to seek locations outside of your home to dispose of unwanted pharmaceuticals?
5. Does your community, county, or State have laws, regulations, or policies in place that prohibit medications, including controlled substances, from being flushed or placed in the garbage?
6. Does your community have take-back programs during which you can provide pharmaceuticals to an entity for disposal? If so, do you know whether these programs accept controlled substances?
7. If your community has take-back programs, who sponsors the program?
8. If you participated in a take-back program, please describe how the program worked.
9. If you participated in a take-back program, was a law enforcement agency involved?
10. If you participated in a take-back program, did you encounter any problems? Please explain.
11. What do you believe is the best method of disposing of unwanted or outdated pharmaceuticals, including controlled substances dispensed to ultimate users?
12. Would you be willing to pay a fee to have your medication disposed of in a manner that minimizes the possibility of the diversion of legally obtained controlled substance medications for illegal purposes and is environmentally safe? If so, how much would you be willing to pay?
13. Would you consider using a postage paid mailing container to dispose of unwanted medications?
14. Where would you be willing to go to obtain such a postage paid mailing container (e.g., local pharmacy, police department, take-back event)?
15. Would you be willing to pay the postage on a mailing container used to ship controlled substances and other pharmaceuticals to another location for disposal? If so, how much would you be willing to pay?
16. Would you consider the use of a mailing container more convenient or less convenient than taking unwanted

[3] Office of National Drug Control Policy, Executive Office of the President. Proper Disposal of Prescription Drugs. February 2007. *http://www.whitehousedrugpolicy.gov/publications/pdf/prescrip_disposal.pdf.*

[4] Office of National Drug Control Policy, Executive Office of the President. Prescription for Danger, A Report on the Troubling Trend of Prescription and Over-the-Counter Drug Abuse Among the Nation's Teens. January 2008.

[5] Partnership for a Drug-Free America, The Partnership Attitude Tracking Study (PATS): Teens in grades 7 through 12 (2005). May 16, 2006.

controlled substances to a pharmacy or to a take-back event?

17. What other means of disposal would you consider convenient?

For State and Local Law Enforcement Agencies and Publicly Owned Treatment Works

18. Is the disposal of unwanted or outdated pharmaceuticals a problem in your area?

19. Do individuals bring their unwanted or outdated pharmaceuticals, including controlled substances which have been legally obtained, to your department for disposal?

20. Does your department encourage or discourage such activity? Please explain.

21. If individuals bring their unwanted or outdated pharmaceuticals, including controlled substances which have been legally obtained, to your department for your department to dispose of, how does that process work? Do individuals drop the pharmaceuticals in a container, hand them to a department employee, or hand them to a law enforcement officer?

22. Have you ever had any challenges or difficulties with taking individuals' unwanted or outdated pharmaceuticals, including controlled substances, for disposal? If so, please explain.

23. Does your department/facility participate in take-back programs?

24. If your department/facility participates in take-back programs, what is the nature of your participation?

25. Have you ever encountered any challenges or difficulties when participating in such programs? Please explain.

26. If your department/facility does not participate in take-back programs, what, if anything, prevents such participation?

27. Does your department/facility have the staffing and resources to participate in take-back programs?

28. Is your department aware of any cases of diversion involving take-back programs? If so, did the diversion result in the arrest or prosecution of any individuals?

29. Regardless of how you receive the medications (e.g., take-back program, individual drop off) for disposal, do you differentiate between controlled substances and noncontrolled substances? If so, how?

30. Regardless of how you receive the medications for disposal, what would you estimate to be the percentage, quantity, or other measurable unit of controlled substances as compared to noncontrolled substances?

31. Regardless of how you receive the medications for disposal, prior to disposal, where do you store these pharmaceuticals and under what security?

32. How do you dispose of the controlled substances that you receive?

33. What records do you generate regarding what you receive and what you dispose of?

34. How far must you travel to dispose of pharmaceuticals, including controlled substances?

35. What do you do if the landfill or incinerator you plan to use is closed, nonoperational, or otherwise unavailable?

36. How much money has your participation in pharmaceutical disposal cost your department/facility in the previous year?

37. How many man-hours has your participation in drug disposal cost your department/facility in the previous year?

38. If you are receiving unwanted or outdated pharmaceuticals for disposal, are you doing so as a result of local or State policy, law, or regulation?

39. If your department does not currently receive pharmaceuticals for disposal, would it be interested in receiving them?

40. Would your department/facility be willing to make available postage paid envelopes to be used by the public to mail pharmaceuticals to a reverse distributor or a law enforcement agency for disposal?

41. What do you believe is the best method of safely disposing of unwanted or outdated controlled substances held by DEA nonregistrants?

For Concerned Interest Groups

42. What prompted you to get involved in the issue of drug disposal?

43. What is your group doing to address this issue?

44. What have been your successes?

45. What challenges or difficulties have you encountered?

46. If you accept medications for disposal, what records do you maintain, if any?

47. If you accept medications for disposal, how do you store and secure these medications prior to disposal?

48. If you accept medications for disposal, do you differentiate between controlled substances and noncontrolled substances? If so, how?

49. What has been law enforcement's involvement in the disposal of these medications, if any?

50. What would you estimate to be the percentage, quantity, or other measurable unit of controlled substances as compared to noncontrolled substances that your disposal programs received?

51. If you have a pharmaceutical disposal program in place, how is it funded?

52. There is concern that residue from pharmaceuticals is being found in drinking water. What is your understanding of the percentage of this problem that is due to ultimate users flushing their unused or unwanted medications?

For Long Term Care Facilities

53. Is the issue of unwanted or unused pharmaceuticals, including controlled substances, a concern at your facility?

54. What are the reasons why your facility is in possession of unwanted or outdated pharmaceuticals, including controlled substances?

55. At the end of each month is your facility in possession of a significant amount of unwanted or outdated pharmaceuticals? How much? Of those pharmaceuticals, what would you estimate the percentage of controlled substances to be?

56. How do you normally dispose of these pharmaceuticals, including controlled substances?

57. Does law enforcement, or some other State agency, assist you in disposing of controlled substances?

58. Are you mandated by any local or State law or regulation to dispose of these medications, including controlled substances, in a specific manner? If so, how?

59. Does your facility take unwanted or outdated pharmaceuticals to local take-back programs?

60. Are you aware of automated dispensing systems? If so, does your facility use them? Have they reduced the amount of excess medications at the facility?

61. Has the ability of a pharmacy to receive faxed schedule II prescriptions for patients in long term care facilities helped to reduce the amount of excess medications at your facility?

62. How do you believe the accumulation of unwanted or outdated pharmaceuticals at long term care facilities can be better addressed?

63. What do you believe is the best method for disposing of these pharmaceuticals?

For Hospices and In-Home Care Groups

64. Is the accumulation of unwanted or outdated controlled substances a problem for your business?

65. If you dispose of unwanted or outdated pharmaceuticals, what methods do you currently use to dispose of such pharmaceuticals, including controlled substances?

66. If you dispose of pharmaceuticals, including controlled substances, what have been your successes?

67. If you dispose of pharmaceuticals, including controlled substances, what challenges or difficulties have you encountered?

68. What do you believe is the best method of disposing of these unwanted or outdated pharmaceuticals, including controlled substances?

69. Has the ability of a pharmacy to receive faxed schedule II prescriptions for patients enrolled in hospice programs helped to reduce the amount of excess medications?

70. How do you believe the accumulation of unwanted or outdated pharmaceuticals by patients enrolled in hospice programs can be better addressed?

For Pharmacies

71. Is the disposal of unwanted or outdated pharmaceuticals by ultimate users a problem in your area?

72. Does your State permit your pharmacy to take unwanted or outdated pharmaceuticals, including dispensed controlled substances, from ultimate users?

73. Does your State permit your pharmacy to place unwanted or outdated pharmaceuticals obtained from ultimate users, including dispensed controlled substances, back into stock?

74. If you provide pharmaceuticals, including controlled substances, to long term care facilities, does your State permit your pharmacy to take back unwanted, unused, or outdated medications from those facilities?

75. Does your State permit your pharmacy to place unwanted or outdated pharmaceuticals obtained from long term care facilities, including dispensed controlled substances, back into stock?

76. Does your pharmacy participate in any pharmaceutical take-back programs? If so, please describe.

77. If your pharmacy participates in pharmaceutical take-back programs, what have been the successes?

78. If your pharmacy participates in pharmaceutical take-back programs, what challenges or difficulties have you encountered?

79. Would your pharmacy be willing to make available postage paid envelopes to be used by the public to mail unwanted or outdated pharmaceuticals to a reverse distributor or law enforcement agency for disposal? Would your pharmacy consider paying for any costs associated with this activity? If so, how much would your pharmacy be willing to pay?

80. Would your individual pharmacy or chain consider contributing financially to offset the expense of a pharmaceutical disposal program? If so, what type of program is your pharmacy interested in?

81. What do you believe is the best method to dispose of unwanted or outdated pharmaceuticals obtained from ultimate users, including dispensed controlled substances?

82. Has the ability of a pharmacy to receive faxed schedule II prescriptions for patients enrolled in hospice programs or residing at long term care facilities helped to reduce the amount of excess medications?

83. How can the accumulation of unwanted or outdated pharmaceuticals, including controlled substances, at long term care facilities and hospice programs be better addressed?

For Narcotic Treatment Programs

84. What are the concerns of narcotic treatment programs regarding the disposal of controlled substances used in maintenance or detoxification treatment?

85. Would your narcotic treatment program consider contributing financially to offset the expense of a pharmaceutical disposal program? If so, what type of program would best meet your needs?

86. What do you believe is the best method to dispose of unwanted or outdated dispensed controlled substances?

87. What are the reasons why NTPs are in possession of controlled substances that require disposal?

88. Have controlled substances awaiting disposal been a source of diversion for your NTP?

For Reverse Distributors

89. Have you been approached by any group or any law enforcement agency requesting that you participate in the disposal of pharmaceuticals, including controlled substances dispensed to ultimate users?

90. Do you currently accept pharmaceuticals, including dispensed controlled substances, from ultimate users for disposal? If so, how?

91. Are your competitors accepting pharmaceuticals, including dispensed controlled substances, from ultimate users for disposal?

92. If you accept pharmaceuticals, including dispensed controlled substances, from ultimate users for disposal, what have your successes been?

93. If you accept pharmaceuticals, including dispensed controlled substances, from ultimate users for disposal, what challenges or difficulties have you encountered?

94. If you were able to accept pharmaceuticals, including dispensed controlled substances, from ultimate users for disposal, would your facility be able to handle this added volume?

95. What does it cost to dispose of controlled substances?

96. What do you estimate it would cost to dispose of controlled substances dispensed to ultimate users? On what basis are costs calculated (e.g., per pound disposed of)?

97. Do you currently accept pharmaceuticals from long term care facilities (LTCFs) for disposal? If so, how?

98. Are your competitors accepting pharmaceuticals from LTCFs for disposal?

99. If you accept pharmaceuticals from long term care facilities for disposal, what have your successes been?

100. If you accept pharmaceuticals from long term care facilities for disposal, what challenges or difficulties have you encountered?

101. If you were able to accept pharmaceuticals, including dispensed controlled substances, from long term care facilities for disposal, would your facility be able to handle this added volume?

102. What do you estimate it would cost to dispose of dispensed controlled substances obtained from long term care facilities? On what basis are costs calculated (e.g., per pound disposed of)?

103. What do you believe is the best method of disposing of unwanted or outdated pharmaceuticals, including controlled substances dispensed to DEA nonregistrants?

104. Would you accept for disposal controlled substances that have been dispensed to ultimate users directly from ultimate users by means of individual mailing containers?

105. Do you perceive any problems with reverse distributors accepting dispensed controlled substances directly from ultimate users by means of individual mailing containers?

106. Would your company be interested in contributing financially to offset the expense of a disposal program for ultimate users that would be instituted at your company?

107. If reverse distributors were permitted to accept controlled substances dispensed to ultimate users for disposal, how do you believe the unwanted or outdated controlled substances should be provided by the ultimate user to the reverse distributor?

For State Regulatory Agencies

108. What current laws or regulations does your State have regarding the disposal of dispensed controlled substances and noncontrolled substances by ultimate users?

109. What laws or regulations, if any, is your State considering regarding the disposal of dispensed controlled or noncontrolled substances by ultimate users?

110. Does your State agency participate in any initiatives (e.g., take-back or mail-back programs) regarding the disposal of dispensed controlled and noncontrolled substances by ultimate users at this time? If so, please describe.

111. Is your State agency aware of any cases of diversion regarding take-back programs? If so, did the diversion result in the arrest or prosecution of any individuals?

112. If your State agency does not participate in any initiatives regarding the disposal of dispensed controlled or noncontrolled substances by ultimate users, why not?

113. If your State agency participates in any initiatives regarding the disposal of dispensed controlled and noncontrolled substances by ultimate users, what would you estimate to be the percentage, quantity, or other measurable unit of controlled substances as compared to noncontrolled substances received?

114. If your State agency participates in any initiatives regarding the disposal of dispensed controlled and noncontrolled substances by ultimate users, does your agency fund all or part of the initiative? If other funding is received, who provides the other funding?

115. If your State agency participates in any initiatives regarding the disposal of dispensed controlled and noncontrolled substances by ultimate users, what successes have you seen regarding these initiatives?

116. If your State agency participates in any initiatives regarding the disposal of dispensed controlled and noncontrolled substances by ultimate users, what challenges or difficulties have you encountered?

For All Interested Parties

117. DEA also seeks comment from all interested parties regarding the funding of the disposal of unwanted or outdated controlled substances held by DEA nonregistrants.

Regulatory Certifications

This action is an Advance Notice of Proposed Rulemaking (ANPRM). Accordingly, the requirement of Executive Order 12866 to assess the costs and benefits of this action does not apply. Rather, among the purposes DEA has in publishing this ANPRM is to seek information from the public on the costs, benefits, and other impacts pertaining to the disposal of controlled substances dispensed to ultimate users and long term care facilities. Similarly, the requirements of section 603 of the Regulatory Flexibility Act do not apply to this action since, at this stage, it is an ANPRM and not a ''rule'' as defined in section 601 of the Regulatory Flexibility Act. Following review of the comments received to this ANPRM, if DEA promulgates a Notice or Notices of Proposed Rulemaking regarding this issue, DEA will conduct all analyses required by the Regulatory Flexibility Act, Executive Order 12866, and any other statutes or Executive Orders relevant to those rules and in effect at the time of promulgation.

Dated: January 13, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. E9–1056 Filed 1–16–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 180

Office of the Secretary

49 CFR Part 80

Federal Railroad Administration

49 CFR Part 261

Federal Transit Administration

49 CFR Part 640

Maritime Administration

49 CFR Part 1700

[Docket No. DOT–OST–2009–0004]

RIN 2105–AD70

Credit Assistance for Surface Transportation Projects

AGENCIES: Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), Federal Transit Administration (FTA), Maritime Administration (MARAD), Office of the Secretary of Transportation (OST), Department of Transportation (DOT).

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

SUMMARY: Recent changes to the Transportation Infrastructure Finance and Innovation Act (TIFIA) statute require changes in the TIFIA rule. In addition, the DOT has gained substantial administrative experience since the TIFIA rule was last amended in 2000. The DOT proposes to amend the TIFIA rule to implement the recent statutory changes and to incorporate certain other changes to the rule that it considers will improve the efficiency of the program and its usefulness to borrowers. In addition, the DOT seeks comment on policy issues with potentially significant impact on the TIFIA project selection process.

DATES: Comments must be received on or before March 23, 2009.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or submit comments electronically at *http://www.regulations.gov,* or fax comments to (202) 493–2251. Alternatively, comments may be submitted via the Federal eRulemaking Portal at *http://www.regulations.gov* (follow the on-line instructions for submitting comments). All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically. All comments received into any docket may be searched in electronic format by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). Persons making comments 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 view the statement at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Mark Sullivan, TIFIA Joint Program Office (202) 366–5785, or Mr. Steven Rochlis, Office of the Chief Counsel (202) 366–1395, Federal Highway Administration; Mr. Michael Bouril, Office of Budget (202) 366–4587, Mr. Jacob Falk, Office of Policy (202) 366–

8165, or Mr. Terence Carlson, Office of the General Counsel (202) 366–9152, Office of the Secretary, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours for the FHWA are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Federal eRulemaking portal at: *http://www.regulations.gov*. The Web site is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded from Office of the Federal Register's home page at: *http://www.archives.gov/federal_register* and the Government Printing Office's Web page at: *http://www.gpoaccess.gov*.

Background

TIFIA was enacted in 1998 as part of the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178, June 1998). TIFIA established a new Federal credit program under which the DOT may provide credit assistance to surface transportation investments of regional or national significance. To be selected for TIFIA assistance, projects must meet a number of statutorily specified criteria. As funding for this program is limited, projects obtaining assistance under the TIFIA program may be selected on a competitive basis. In 1999, the DOT promulgated a rule implementing TIFIA (64 FR 29742, June 2, 1999), and in 2000 amended the rule (65 FR 44936, July 19, 2000). In 2005, Congress enacted the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, Aug. 10, 2005), which made a number of amendments to TIFIA. The DOT proposes to amend the TIFIA rule to implement the changes required by the SAFETEA–LU amendments and to incorporate a number of programmatic features that the DOT considers, based on its experience gained administering the program since the rule was last amended, would improve TIFIA.

In enacting the original TIFIA legislation, Congress found that ''a well-developed system of transportation infrastructure is critical'' to the nation's economy, and it sought to ''attract new investment capital'' to transportation infrastructure projects. Congress further found that TIFIA could fill ''market gaps,'' thereby leveraging additional capital from the private markets: ''a Federal credit program for projects of national significance can complement existing funding resources by filling market gaps, thereby leveraging substantial private co-investment.'' Based on this initial guidance from Congress, the DOT has viewed TIFIA as a means for the Federal Government to attract more private investment capital, to accelerate investment, to encourage a greater cost-beneficial approach to transportation infrastructure investments, and to more efficiently utilize infrastructure once constructed.

This NPRM proposes to amend and partially restate the existing rule; it includes both proposed substantive changes and proposed changes of an editorial, clarifying, or organizational nature. Proposed substantive changes include both those mandated by SAFETEA–LU and those determined by the DOT, based upon several years of administrative experience with the TIFIA program, to improve the program. The DOT seeks comments particularly on proposed changes in the latter category.

The proposed rule would amend the current TIFIA rule to incorporate changes made by SAFETEA–LU to the TIFIA statute. Major changes of this nature include a reduction in the minimum project size eligible for TIFIA assistance and a broadening of the categories of projects eligible to permit TIFIA assistance for private rail facilities providing public benefit to highway users, and surface transportation infrastructure modifications necessary to facilitate direct intermodal transfer and access into and out of a port terminal. Further changes to conform the rule to the statute would limit the amount of TIFIA assistance in certain instances to the amount of the senior project obligations, conform the interest rate setting mechanism for the line of credit to that for secured loans, and eliminate the annual 20 percent cap on line of credit draws.

In the nature of non-statutory administrative improvements, we propose changing the way the DOT will use the term sheet in TIFIA transactions and in how we will apply the TIFIA statute's eight selection criteria. For example, with regard to the selection criteria, the DOT proposes to change ''creditworthiness'' to pass/fail and then reallocate weights for the other seven statutory criteria.

In addition, we propose to reorganize the existing rule to make it more understandable to users. The reorganized rule would generally follow the steps a potential TIFIA user might follow in evaluating the program and applying for assistance.

While the request for comments applies to the entire NPRM, the DOT seeks specific feedback on several key issues noted below.

In order to accommodate emerging financing scenarios using TIFIA's refinancing authority, DOT is seeking comments on the proposed definitions of ''refinance,'' the ''maturity date'' (both defined in section 80.3) associated with a refinancing, and DOT's proposed refinancing procedures (section 80.23), which would require the participation of a guaranteed lender receiving a TIFIA loan guarantee.

To facilitate the financing of projects that may result in significant lease payments or concession fees to a public entity, the proposed rule would clarify that such payments can be considered eligible project costs for the purpose of establishing the maximum amount of TIFIA credit assistance. Several provisons would apply: (1) Such payments must represent a fair market value of the asset acquired, (2) the proceeds of such payments must be dedicated to transportation projects eligible under title 23 or chapter 53 of title 49, United States Code, and (3) such payments must be part of a project in which new capital costs constitute a significant portion of project costs. In other words, the concession fee cannot comprise the only eligible project cost, as in a transaction seeking only to monetize an existing asset. To implement this policy, the DOT proposes to limit its consideration of such payments to no more than 25 percent of total eligible project costs.

To improve its internal credit analysis and capital allocation process, the proposed rule would require (see section 80.11) each applicant and borrower to provide a preliminary rating opinion letter and final investment-grade rating from at least two rating agencies.

Finally, the DOT seeks comment on two additional policy issues with potentially significant impact on the TIFIA project selection process. These two issues are described immediately below.

Use of Benefit-Cost Analysis in Selecting Projects for TIFIA Assistance

In the years since TIFIA was enacted, borrowers have made use of the legislation's inherent flexibility to accelerate creditworthy, public-private projects of regional or national significance. The DOT believes that TIFIA should be targeted to projects where the present value of benefits to the public that result from project completion exceed the costs of delivering the project, and that TIFIA be

targeted to advance user-financed projects instead of projects that rely solely or predominantly on grant assistance. Supporting large-scale projects that eliminate or reduce reliance on Federal grant assistance allows the States to target grant assistance on projects that cannot otherwise be financed.

The National Surface Transportation Policy and Revenue Study Commission (*Transportation for Tomorrow,* 2008), the Government Accountability Office (GAO–04–744, 2004; GAO–05–172, 2005; GAO–08–744T, 2008), the U.S. Department of Transportation (*Refocus. Reform. Renew. A New Transportation Approach in America*, 2008), the Brookings Institution (*A Bridge to Somewhere*, 2008) and other organizations have recommended greater use of benefit-cost analysis (BCA) to maximize the rate of return on Federal funds invested in transportation projects. These recommendations are primarily directed at State and municipal project selection, where application of BCA is currently limited. The Federal Transit Administration and the Federal Aviation Administration already require the use of BCA or similar economic analysis for projects with large capital costs that are subject to Federal funding discretion.

Benefit-cost analysis is conducted by assigning monetary values to benefits (*e.g.*, travel time saving) and costs, discounting future benefits and costs using an appropriate discount rate, and then comparing the sum total of discounted benefits to the sum total of discounted costs. Discounting benefits and costs transforms gains and losses occurring in different time periods to a common unit of measurement in the form of present day dollars. The organizations cited above recognize that BCA is a useful tool to help decision-makers identify projects with the greatest net benefits relative to invested public resources. In particular, the systematic process of BCA helps decision-makers organize information about, and determine trade-offs between, alternative transportation investments.

The DOT has responsibility under Executive Order 12893, *Principles for Federal Infrastructure Investments*, 59 FR 4233, to evaluate its programs using BCA. This requirement has not been construed to apply to individual investments made by States of formula funds, but is deemed to apply to overall programs and to discretionary Federal commitments of budget authority to individual projects. The DOT is considering a requirement that TIFIA applicants conduct BCA on their projects. These analyses would inform Federal decisions to provide TIFIA support to individual projects and would also enable the DOT to establish the cost-beneficial status of the overall TIFIA program, thereby providing a basis for future funding requests. The application of BCA to support TIFIA decisions would be subject to guidance in the Office of Management and Budget's Circular A–94, Revised, SUBJECT: *Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs* [1], and would follow other guidelines incorporated into the TIFIA application process.

○ The DOT therefore requests comment on the following options for applying BCA to TIFIA applications:

○ Require BCA as a threshold condition for TIFIA consideration. Under this option, projects must have public benefits that exceed their costs by a sufficient threshold level. The DOT seeks comment on the application of a threshold in general as well as the appropriate minimum sufficient ratio of benefits divided by costs that projects should be expected to demonstrate; or

○ Use BCA results to help prioritize projects for TIFIA selection by translating the existing TIFIA selection criteria into monetary values for purposes of project comparison, while eliminating criteria weights. For instance, BCA results could be used to assess the costs and benefits related to the project's ''regional or national significance'', proposed in this rule as the highest weighted criteria. Comments are also requested on how this approach might best be applied to other criteria that do not readily lend themselves to such monetization.

Interest Rate Policy

OMB Circular A–129, *Policies for Federal Credit Programs and Non-tax Receivables* [2], states that Federal agencies with credit programs should establish interest and fee structures for direct loans and loan guarantees and should review these structures at least annually. In administering the TIFIA program, the DOT has set the rate, in all transactions to date, regardless of the perceived credit quality of the loan, at the minimum level allowed by the TIFIA statute: The rate on United States Treasury securities of a similar maturity as the loan.

OMB Circular A–129 states that interest and fees should be set at levels that minimize default and other subsidy costs of the direct loan or loan guarantee, while supporting achievement of the program's policy objectives. The OMB guidance goes on to state that, unless inconsistent with program purposes, riskier borrowers should be charged more than those who pose less risk.

The DOT seeks comment regarding the use of its authority to offer different rates to different borrowers. For instance, the DOT could use the selection criteria, including benefit cost analysis, to weight applications by the social return to the public, consistent with Federal credit policies and TIFIA programmatic goals. Those projects with higher scores would receive the lower interest rates. Credit risk should also be factored into final interest rate determinations. Alternatively, some form of competitive loan pricing such as a reverse auction could be used to allocate TIFIA's subsidized credit assistance in a manner that maximizes social returns while protecting the government's interests.

Section-by-Section Discussion of the Proposed Changes

Section 80.1 Purpose

The purpose of the proposed rule is to implement the TIFIA statute. Readers should refer to the statute as well as the rule for a complete understanding of the TIFIA program.

Section 80.3 Definitions

Definitions in the proposed rule generally follow the statutory definitions. Two exceptions are the proposed definitions for ''guaranteed lender,'' which would replace the statutory ''lender,'' and ''borrower,'' which would replace the statutory ''obligor''; the DOT believes both of these proposed changes would enhance the rule's clarity and more closely conform the regulatory language to industry convention.

Other proposed changes to the definitions in the current rule and matters on which the DOT seeks comment include:

''*Borrower*'': For the definition of the newly defined term ''borrower,'' we propose to use the current rule's definition of ''obligor,'' which definition closely follows the language in the TIFIA statute's definition of ''obligor.'' Additionally, we clarify that only non-Federal entities are eligible borrowers.

''*Conditional term sheet*'': We propose to eliminate this definition in light of our proposed change in the use of the defined term ''term sheet,'' which proposed change is discussed in detail below in this section under the heading ''Term sheet.''

[1] *http://www.whitehouse.gov/omb/circulars/a094/a094.html.*

[2] *http://www.whitehouse.gov/omb/circulars/a129/a129rev.html.*

''*Current credit evaluation*'': We propose to add a definition of current credit evaluation and provide clarification related to project monitoring requirements.

''*Eligible project costs*'': We propose to add to the definition of ''eligible project costs'' explicit language implementing current Federal law excluding from eligibility certain project costs incurred prior to environmental clearance. (See 23 CFR 771.113). The proposed definition clarifies the eligibility of costs during construction associated with the operations of a special purpose entity formed solely to construct and operate the facility, in an amount not to exceed 5 percent of total eligible project costs (see 80.25, Limitations of Federal credit assistance). The proposed definition clarifies the eligibility of concession payments made to a government agency by a non-governmental concessionaire for the lease acquisition and right to operate a transportation facility, provided that the concessionaire and the State ensure that payments associated with lease acquisition represent fair market value and are dedicated to transportation projects eligible under title 23 or chapter 53 of title 49, United States Code (see 80.25, Limitations on Federal credit assistance). In addition, lease acquisition payments must be part of a project in which new capital costs constitute a significant portion of project costs. In other words, the concession payment, in and of itself, does not comprise an eligible project cost. In order to implement this policy, the DOT proposes to limit such payments to 25 percent of total eligible project costs and seeks public comment on this proposal. Further, the definition is expanded to include specifically the costs associated with refinancing long-term project obligations under 23 U.S.C. 603(a)(1)(C). In the case of a refinancing, eligible project costs must be consistent with eligible project costs for any TIFIA project. In the case of a refinancing, existing debt would be considered an eligible project cost. Eligible project costs must also be consistent with the Federal cost principles applicable to the borrower: 2 CFR Part 225 (OMB Circular A–87 (State and local governments)), 2 CFR Part 230 (OMB Circular A–122 (non-profit organizations)), or 48 CFR Part 31 (commercial organizations). Lobbying costs would continue to be excluded under existing law. (See 31 U.S.C. 1352, 2 CFR Part 225, App. B, 2 CFR Part 230, App. B, 48 CFR 31.205–22, and 49 CFR 20.100.)

''*Guaranteed lender*'': The proposed definition is identical to the current rule's, and to the TIFIA statute's, definition of ''lender.'' Applicants should note that the limitations the TIFIA statute imposes on the types of institutions which may qualify to be a ''guaranteed lender'' do not affect or limit who may hold project obligations.

''*Investment-grade rating*'': The proposed definition recognizes that some projects receiving TIFIA assistance, particularly those with private developers using bank financing rather than capital markets debt, may not have a public rating, and it makes clear that, although the investment-grade rating requirement still is imposed, the actual rating would not need to be published. The proposed definition also recognizes rating terminology used by rating agencies that have become identified by the Securities and Exchange Commission (SEC) as Nationally Recognized Statistical Rating Organizations (NRSROs) since the TIFIA rule was last published. The SEC engaged in a rulemaking, pursuant to the Credit Rating Agency Reform Act of 2006,[3] which modified the regulatory treatment of NRSROs.[4] The TIFIA statute relies on the SEC's determination of qualifications for NRSROs, irrespective of the regulatory regime the SEC uses for making such determination.

''*Local servicer*'': The DOT services the TIFIA loan portfolio centrally and does not expect ever to use local servicers for TIFIA loans. In response, Congress eliminated the definition of ''local servicer'' from the TIFIA statute and further expressed its intent that TIFIA loan servicing should be managed by a single entity[5]; therefore, we propose to eliminate the definition of local servicer from the rule.

''*Maturity date*'': The proposed definition recognizes that tying scheduled loan repayments to the date of substantial completion is not appropriate for credit assistance used to refinance long-term project obligations under 23 U.S.C. 603(a)(1)(C). Therefore, the proposed definition establishes the final maturity date for repayment of credit assistance used for refinancing purposes as the lesser of not later than 35 years after the date the credit agreement is executed, or the useful life of the overall asset.

''*Project*'': The proposed rule would expand the current rule's definition to reflect the expanded definition contained in 23 U.S.C. 601(a)(8). In accordance with the SAFETEA-LU amendments, the proposed rule would permit TIFIA assistance for private freight-related rail facilities that serve a public benefit for highway users, which the proposed rule defines as the direct freight interchange between highway and rail carriers. In further accordance with the SAFETEA-LU amendments, the proposed rule would make eligible a group of such freight-related projects (*e.g.*, bridge clearances throughout a rail corridor, traffic projects to improve port access) each of which separately might not be large enough to meet the threshold requirements, and surface transportation infrastructure improvements (*e.g.*, road, rail, gate, equipment) necessary to facilitate direct intermodal transfer and access into and out of a port terminal.

''*Project obligation*'': We propose to interpret the statutory definition contained in 23 U.S.C. 601(a)(9) to include a ''loan'' to make clear that a bank loan or other private debt, and not just capital markets debt, can be a ''project obligation'' for purposes of the TIFIA program. With private entities now more frequently seeking TIFIA assistance, the DOT is sometimes presented with plans of finance relying on bank debt rather than capital markets debt for some or all of the non-TIFIA portion of the financing. Adding ''loan'' to the definition would make clear that in such financings bank debt would be treated as a project obligation. This is not intended to add any new forms of debt not currently available; rather it is intended to reflect TIFIA's participation in bank financings.

''*Project sponsor*'': The DOT believes that this definition no longer adequately characterizes those seeking or using TIFIA credit assistance. Generally, such an entity can be characterized as either an applicant or a borrower. If a public agency submits an application on behalf of multiple competing concessionaires, it can be characterized as an applicant. Therefore, we propose to eliminate this definition from the regulation.

''*Rating agency*'': The proposed definition diverges from the statute only in its substitution of the word ''organization'' for the words ''rating agency'' in order to eliminate the statutory language's circularity.

''*Refinance*'': The TIFIA statute at 23 U.S.C. 603(a)(1)(c) uses ''refinance'' without defining the term; the DOT proffers a defined term. The proposed definition permits Borrowers to pay off existing project obligations and any

[3] Public Law 109–291 (Sept. 29, 2006).

[4] The Credit Rating Agency Reform Act of 2006 mandated that firms desiring to be NRSROs register with the SEC and become subject to certain record-keeping and financial reporting requirements. The SEC's Final Rule implementing the Credit Agency Reform Act of 2006 is found at 72 FR 33564 (June 8, 2007). See 17 CFR 240.17g–1 through 240.17g–6.

[5] House of Representatives Report 109–203 (2005), p. 874.

TIFIA credit assistance owed by the Borrower with funds acquired by the same Borrower (or its successor) through the creation of new project obligations and TIFIA credit assistance.

''*Subsidy cost*'': The DOT proposes to change the defined term from ''subsidy amount'' to ''subsidy cost'' to reflect Federal credit terminology.

''*Substantial completion*'': At 23 U.S.C. 601(a)(14), the TIFIA statute defines this term to be ''the opening of a project.'' The DOT believes that the statute's bare simplicity does not, in practice, always provide clear guidance, and that the Secretary has discretion to define, for a particular project, the circumstances constituting ''substantial completion.'' The current rule recognizes that discretion. Since publication of the current rule, the DOT has often, in individual TIFIA credit agreements, found it useful for both the DOT and the borrower to state explicitly in the credit agreement the precise circumstances the occurrence of which would constitute ''substantial completion.'' The proposed definition would continue to incorporate, with clarifying language changes, this beneficial use of Secretarial discretion.

''*Term sheet*'': The proposed change in the definition of ''term sheet'' reflects a significant change in the procedure the DOT would use for entering into TIFIA agreements with borrowers. The term sheet would no longer be executed by both parties, but only by the DOT, and it would no longer serve as the instrument that the DOT uses to obligate Federal funds. The term sheet provides a transactional blueprint between the DOT and the borrower for the purposes of developing the credit agreement. The term sheet is subject to cancellation at any time for any reason at the discretion of the Secretary. Through this proposed administrative change, the DOT would create a single point—the execution of a credit agreement—when funds would be obligated.

Section 80.5 Federal Requirements

The current rule enumerates several specific Federal requirements set out in the TIFIA statute to which TIFIA funds are subject and adds to that list such other ''requirements as applicable.'' While carrying forward the statutorily specified requirements, the proposed rule would clarify the latter provision by providing that any such additional requirements would be imposed by Secretarial determination of applicability to a particular project. Each project would adhere to the requirements associated with the relevant DOT administration's grant program. For example, under the Federal-aid highway program, most construction-related requirements apply only to those highway segments constructed with Federal assistance. A segment constructed without Federal assistance is not subject to these construction requirements. Because many TIFIA projects combine Federal grant and TIFIA assistance, adhering to the associated grant program requirements provides administrative efficiencies to the borrower and the relevant DOT administration.

Section 80.7 Threshold Criteria for TIFIA Projects

Eligibility for TIFIA financial assistance requires that the project satisfies the applicable planning and programming requirements of 23 U.S.C. 134 and 135 at the time an agreement to make available a Federal credit instrument is entered into. 23 U.S.C. 602(a)(1).[6] Prior to the SAFETEA–LU amendments, eligibility required specifically that the project be included in an approved State Transportation Improvement Program (STIP) at the time an agreement to make available a Federal credit instrument was entered into.[7] The NPRM proposes to conform the current threshold eligibility criteria for projects to changes mandated by the SAFETEA–LU amendments.

The STIP is a multi-year[8], statewide listing of all transportation projects proposed for funding—Federal, State, and local. It must include all federally supported transportation expenditures within the State. 23 U.S.C. 123(g)(4)(A). Thus, a project funded by TIFIA financial assistance must be included in the STIP when an agreement to make available a Federal credit instrument is entered.

Congress was apparently concerned that this requirement could be misinterpreted to constrain TIFIA assistance in the case of a project with a construction timetable that extended beyond the typical four-year approved STIP.[9] We note that construction timetables for a project are not limited to the time horizon of a STIP; and multi-phase, large scale projects often appear on updated STIPs. There may be circumstances where the Department, on a case-by-case basis, should exercise the discretion to determine the applicable planning and programming requirements that apply to a TIFIA project at the time a credit assistance agreement is entered into, and we interpret the SAFETEA–LU amendments as providing this discretionary authority.

The new provisions, mandated by the SAFETEA–LU amendments, would permit smaller projects to participate in the TIFIA program. SAFETEA–LU provided that the minimum size for TIFIA projects is $50 million or one-third of a State's apportionment of Federal-aid funds, whichever is less; SAFETEA–LU also provided that the minimum size for TIFIA projects principally involving the installation of an intelligent transportation system is $15 million.[10] The proposed rule would amend the current TIFIA rule to implement these new, lower minimum size thresholds, as applicable.

The NPRM also proposes to amend the current rule to elaborate on the statutory language with respect to security to make clear that the term ''dedicated revenue sources'' encompasses not just user fees, but also taxes pledged to secure the TIFIA instrument. The standard by which taxes are deemed pledged is the same as for any revenue pledged to secure the TIFIA loan, *i.e.*, the legal and commercial terms of the credit agreement. The proposed rule essentially would retain the provision of the current rule under sections 80.13(a)(4) and 80.13(c) permitting use of general obligation pledges or general corporate promissory pledges as security or ''collateral'' for TIFIA credit assistance. The policy of the Department, however, is that preference will be given to user financed projects. The proposed rule would continue the

[6] ''To be eligible to receive financial assistance under this chapter, a project shall meet the following criteria: Inclusion in transportation plans and programs.—The project shall satisfy the applicable planning and programming requirements of sections 134 and 135 at such time as an agreement to make available a Federal credit instrument is entered into under this chapter.'' 23 U.S.C 602(a)(1).

[7] ''The project—(A) shall be included in the State transportation plan required under section 135; and (B) at such time as an agreement to make available a Federal credit instrument is entered into under this chapter, shall be included in the approved State transportation improvement program required under section 134.'' Public Law 109–59, § 1601(b)(1).

[8] Each State must develop a STIP that covers a period of 4 years and is updated at least every 4 years. 23 U.S.C. 135(g)(1).

[9] While the House Bill does not make any change in threshold criteria, the Senate Bill says: ''The change * * * clarifies the provision regarding statewide and metropolitan planning requirements. The existing provision contained language that could be misinterpreted to constrain TIFIA assistance in the case of a project with a construction timetable that extended beyond the typical three-year approved State Transportation Improvement Program (STIP).'' H. Rept. 109–203 (July 28, 2005) at H. 7458. The Conference Substitute accepts the Senate amendment without additional clarification: ''Subsection (b) amends Section 182 of title 23 to clarify the requirements regarding statewide and metropolitan planning.'' *Id.* at H. 7459.

[10] 23 U.S.C. 602(a)(3).

current rule's bar against securing a TIFIA instrument with a pledge of Federal funds from any source, including Federal-aid reimbursements.

Section 80.9 Application Process

The NPRM proposes to re-organize the existing rule's various provisions relating to the TIFIA application and provides greater detail than the current rule about the application process.

The NPRM proposes that, prior to submission of the TIFIA application, the applicant must have submitted a letter of interest satisfactory to the DOT. Although applications would be accepted only during prescribed periods, the DOT would continue to accept letters of interest at any time.

The NPRM maintains the current rule's requirement for the DOT to publish an annual **Federal Register** notice to solicit applications for credit assistance. In maintaining this provision, the DOT intends to return to the practice of specifying timeframes during which it will accept TIFIA applications. This use of application cycles will help DOT manage the TIFIA project pipeline and enable consistent use of the TIFIA selection criteria. This marks a departure from DOT practice since 2001 of accepting applications at any time during the year.

The NPRM proposes to add a requirement that an applicant must submit with its application a working model of the project's comprehensive plan of finance. The DOT's current practice is to ask applicants to submit such models. As many applicants consider such models proprietary in nature, the DOT has not publicly disclosed them, and the DOT will continue to treat them as confidential commercial information. Applicants should prominently mark the model as confidential and proprietary information. Having access to the models has greatly enhanced the ability of the DOT and its financial advisors to analyze and understand the plans of finance for which TIFIA assistance is sought. The DOT believes that requiring applicants to include models with their application is necessary to evaluate applications, and will ensure our continued ability to conduct appropriate analysis of plans of finance for proposed TIFIA projects.

The proposed rule would make clear that the preliminary rating opinion letters must be submitted with the application. The NPRM also proposes to include a provision that the Secretary may request such additional information as necessary to determine whether TIFIA assistance should be provided.

Section 80.11 Preliminary Rating Opinion Letter and Investment-Grade Rating

We propose to add a requirement that each applicant and borrower obtain a preliminary rating opinion letter and subsequent investment-grade rating from at least two rating agencies, and seek public comment on this proposal.

We propose to add a requirement that the preliminary rating opinion letters and the subsequent ratings address the credit quality of the TIFIA instrument; *i.e.*, the preliminary rating opinion letter must address the likely rating category of the TIFIA instrument, and the borrower must obtain a rating for the TIFIA instrument when it obtains the investment-grade rating for the project obligations. The DOT already draws substantially on the credit analysis work of the rating agencies, and this requirement would assist the internal capital allocation process that results in a subsidy cost estimate for each TIFIA transaction.

To provide flexibility for a governmental agency seeking to make TIFIA assistance available to multiple potential borrowers as part of its solicitation of a private concession, the DOT is proposing to require submission of the credit ratings at a later stage in the process. In such an instance, the governmental agency must submit a TIFIA application that addresses the seven statutory criteria, and the selected concessionaire must provide the preliminary rating opinion letters with its submission of the project's finance plan.

The proposed rule would make clear that all debt senior to the TIFIA instrument must receive an investment-grade rating, not just the senior project obligations. While the DOT accepts multi-lien debt structures, it believes that a non-investment-grade lien senior to the TIFIA lien would not comport with the legislative intent underlying the investment-grade rating requirement. Thus, the DOT considers this proposed change a clarification of the TIFIA statute's requirement.

The proposed rule would require that the borrower deliver final ratings, and other such evidence related to the most current project financial plan upon which the rating evidence is based, to the DOT *at least* two weeks before the credit agreement closing in order to give the DOT adequate time to analyze any credit issues those ratings identify. This requirement will be restated in the project term sheet.

The DOT believes that implicit in the statute's investment-grade rating provision is a requirement that the TIFIA instrument itself attain an investment-grade rating if there are no project obligations senior to the TIFIA instrument. The statute, at 23 U.S.C. 602(b)(2)(B), imposes such a requirement with respect to the preliminary rating opinion letter. The proposed rule would make that requirement explicit for both the preliminary rating opinion letter and the investment-grade rating.

The proposed rule would elaborate and clarify the current rule's specification that all TIFIA program credit rating requirements pertain to ''underlying'' ratings.

Section 80.13 Selection Criteria for TIFIA Projects

As noted above, the DOT seeks comment on potential methods of incorporating benefit-cost analysis into the project selection process.

The statute prescribes eight criteria for project evaluation, without specifying any relative weighting or whether any of the criteria is mandatory. The current rule assigns weights, ranging from 5 percent to 20 percent, to each of the 8 statutory criteria. In the past, the DOT has assigned scores on a scale of zero to four to each of the eight criteria for all projects for which it has received applications and then weighted those scores to arrive at a composite score.

The NPRM proposes to make several important changes to this framework: First, a project's ''creditworthiness'' would now be evaluated separately. For every TIFIA project, the DOT analyzes the project economics and legal provisions supporting the Government's credit security. This analysis is fundamentally important and should be treated separately from the other seven statutory criteria. The proposed rule would make creditworthiness a requirement. In order for a project to be selected for TIFIA assistance under the proposed rule, the Secretary must determine that it is creditworthy. This proposed requirement that a project must be determined to be creditworthy does not mean that a project's TIFIA instrument, if subordinated to project obligations which are investment-grade itself, would be required to be investment-grade. Guidelines on how DOT will evaluate and determine creditworthiness will be published and updated regularly in the TIFIA program guidance.

In addition, should project selection and ranking continue to consist of a weighted scoring of statutory criteria, the DOT proposes to realign the weights assigned to the remaining seven criteria to match national transportation

policies and the goals of reducing congestion and improving system performance. Because creditworthiness would be evaluated separately, the weights attached to these criteria would be changed so that the seven weightings, as revised, would total 100 percent. The DOT retains the discretion not to advance projects that rate low in these seven criteria even if the project is creditworthy.

Under the current rule, the extent to which a project is nationally and regionally significant is weighted at 20 percent of the total score, and is scored based on the extent to which a project generates economic benefits, supports international commerce, or otherwise enhances the national transportation system. The proposed change would increase the weight to 40 percent and reorganize the evaluation factors by creating 2 subcategories, and assigning each subcategory a percentage of the total weight for this criterion. Under the proposed revision, national and regional significance would be assessed based on: (A) The ability of a project to enhance the national or regional transportation system by reducing congestion and improving overall system performance on a sustainable basis (30 percent), and (B) the extent to which the project generates economic benefits beyond those captured under (A) and furthers interstate or international commerce (10 percent).

To accommodate the increased emphasis on national and regional significance, the DOT proposes to reassign the weights given to the following criteria: Likelihood that Federal credit assistance would enable the project to proceed at an earlier date than the project would otherwise be able to proceed (5 percent; currently 12.5 percent); extent to which the project helps maintain or protect the environment (10 percent; currently 20 percent); extent to which the project uses new technologies (10 percent; currently 5 percent); and amount of budget authority required to fund the Federal credit instrument made available (10 percent; currently 5 percent). The DOT proposes to evaluate the budget authority criterion by measuring the amount of TIFIA budget authority required to fund the Federal credit instrument relative to the total project investment.

Weights for the remaining two criteria—private participation (20 percent) and reduced Federal grant assistance (5 percent)—would remain as under the current rule.

The proposed rule would clarify the DOT's preference for applications for TIFIA loan guarantees over applications for secured loans and lines of credit. Such a preference is in accordance with Federal credit policies, as expressed in OMB Circular A–129, and is further reflected in proposed section 80.23(d)(6) below concerning refinancing of existing debt. The DOT seeks comments on how to increase the participation of private sector lenders in providing guaranteed loans consistent with the TIFIA statute and government-wide credit policy.

Section 80.15 Term Sheet

We propose to add a new section on term sheets that would make significant changes in how the DOT uses the TIFIA program term sheet and in how we obligate Federal funds for TIFIA projects.

Currently, the term sheet is a letter contract between the DOT and the borrower, and the DOT uses it to obligate budget authority. The DOT proposes to streamline loan administration and use the term sheet as an expression of the DOT's intent to proceed to negotiation of a credit agreement with the borrower. Budget authority would be obligated at the time the credit agreement is executed rather than, as is the current practice, at the time the term sheet is executed.

Because the term sheet would no longer be used to obligate current year budget authority, we propose to eliminate the ''conditional term sheet'' provided for in the current rule. To aid budgetary planning, the DOT may issue future-year term sheets which, like current-year term sheets, also would be cancellable at any time by the DOT at its own discretion.

Section 80.17 Interest Rate on Federal Credit Instruments

The proposed rule contains language that would implement the TIFIA statute's various interest rate provisions. Under the amended TIFIA statute, the interest rate on both TIFIA secured loans and TIFIA lines of credit is set at the time the credit agreement is executed, and this requirement is set forth in the proposed rule. The proposed rule provides that the rate on a guaranteed loan would be negotiated between the borrower and the guaranteed lender, but in accordance with the TIFIA statute, makes such negotiated rate subject to the Secretary's approval.

The proposed rule provides, in accordance with Federal credit policies,[11] that all TIFIA credit agreements impose an interest rate penalty on outstanding loan balances in the event of a development default. DOT will publish guidelines on development default penalties in its program guidance.

The TIFIA statute specifies only a lower bound on the interest rate for a TIFIA instrument: The rate on United States Treasury securities of a similar maturity. The current rule contains no provision implementing the statute's rate-setting provisions. Under both the statute and the current rule, therefore, the DOT currently has broad discretion to set the interest rate so long as the rate is at or above the statutory minimum. In administering the TIFIA program, however, the DOT has set the rate, in all transactions to date, at the statutory minimum. As noted above, the DOT seeks comment regarding the use of its authority to charge different interest rates to different borrowers, on the basis of program policy goals and guidance in OMB Circular A–129.

The current rule is silent on the calculation method by which the statutory minimum is determined. The DOT has determined the statutory minimum for a specific transaction by reference on the closing date to the rate table, published daily by the Treasury Department, for State and Local Government Series (SLGS) securities, and we have previously noted in the TIFIA Program Guide that we use this method of determining interest rate minimums. The NPRM proposes to incorporate into the regulation the calculation method for interest rate minimums heretofore noted in the Program Guide.[12]

Section 80.19 Guaranteed Loans; Eligibility Requirements for Guaranteed Lenders

The NPRM proposes to include a new section to provide that the terms of a guaranteed loan, including the interest rate, would be subject to approval by the Secretary. The proposed new section also specifies eligibility requirements for guaranteed lenders and would require that the Secretary approve all guaranteed lenders. Currently, eligibility standards for guaranteed lenders are set

[11] See section V, paragraph 4 of OMB Circular A–129, ''Managing Federal Credit Programs'' (November 2000). This Circular is available at the following URL: *http://www.whitehouse.gov/omb/circulars/a129/a129rev.html.*

[12] The DOT publishes detailed guidance for TIFIA borrowers in a Program Guide. The Program Guide also includes the TIFIA application form and the text of both the TIFIA statute and the TIFIA rule, and will post a form loan template. The Program Guide may be found on the TIFIA Web site at: *http://tifia.fhwa.dot.gov/.*

forth in the TIFIA Program Guide.[13] The DOT believes these eligibility standards should instead be incorporated in the regulation.

Section 80.21 Draws on Line of Credit

The proposed rule would move the current rule's line of credit provisions, contained in 49 CFR 80.5, into a new section with modifications to implement the changes made by the SAFETEA–LU amendments to the TIFIA statute. The proposed rule would limit draws that are made to pay debt service on project obligations to the payment of debt service on those project obligations which financed eligible project costs, and it requires that draws for the purpose of paying debt service may not be made until any capitalized interest fund is exhausted. Consistent with the changes in SAFETEA–LU, the proposed rule would make clear that a draw for payment of debt service may be made even if a debt service reserve fund is available, thereby enabling borrowers to use a line of credit to avoid the default which usually arises when a debt service reserve fund is drawn.

There would be no limitation in the amount that may be drawn under a line of credit in any one year, reflecting an amendment to the TIFIA statute.

Section 80.23 Refinancing

This proposed rule creates a new section on refinancing to implement the new TIFIA refinancing authority created by SAFETEA–LU and contained in 23 U.S.C. 603(a)(1). In addition, the current rule's provision dealing with refinancing of interim construction financing not more than one year after substantial completion is moved into this proposed new section.

SAFETEA–LU amended TIFIA to permit the use of TIFIA secured loans and loan guarantees in certain refinancing transactions. In general, the new provision authorizes the Secretary to enter into TIFIA secured loan agreements, or loan guarantee agreements, to refinance long-term project obligations, or Federal credit instruments, if such refinancing will provide additional funding capacity that will be used to fund the completion, enhancement, or expansion of a project. This proposed new section provides guidance on the types of refinancing transactions the DOT will consider for TIFIA credit assistance and specifies application requirements and certain refinancing terms that the DOT believes are consistent with Federal credit policies. In addition, in order to minimize displacement of private sector credit markets while achieving program goals, the DOT proposes to participate in a qualified refinancing only by means of a TIFIA loan guarantee. As noted in the section 80.13 discussion above, the DOT seeks comments on how to increase the participation of private sector lenders in providing guaranteed loans consistent with the TIFIA statute and government-wide credit policy.

The DOT's new refinancing authority continues the TIFIA program's principle emphasis: Stimulating investment in new transportation infrastructure.

The DOT will require the applicant to demonstrate that the refinancing will increase available funding capacity for the completion, enhancement, or expansion of a project that qualifies for funding under 23 U.S.C. 602. The new improvement facilitated as part of the TIFIA refinancing must cost at least $50 million (in eligible project costs) consistent with the SAFETEA–LU statutory minimum threshold for a new TIFIA project. The DOT notes that certain selection criteria tend to favor a project comprised entirely of new construction over one that includes the refinancing of existing project debt. While the new transportation project must follow the same Federal requirements as any TIFIA project, the DOT believes that an asset previously financed with the debt being refinanced under the TIFIA program is subject to those Federal requirements to which it was previously subject, including applicable Federal requirements concerning operations, maintenance, and design standards for future construction for a project receiving TIFIA refinancing assistance.

A borrower will have the flexibility to apply the proceeds of a TIFIA guaranteed loan to the refinancing, the new project, or apportion an amount to each element of the transaction. It is not required that guaranteed loan proceeds be used to build the new project. If the guaranteed loan is made available for both the refinancing and the new project, the assistance will be structured in two tranches. The proposed rule establishes a maximum maturity date of 35 years from the date the credit agreement is executed for the portion of credit assistance used for the refinancing. The maximum maturity date for the new project will be 35 years from the date of substantial completion, the same as for any new project receiving TIFIA credit assistance. In no case will the term of the loan guarantee exceed the useful life of the asset being financed.

The DOT is proposing to provide credit assistance in connection with a refinancing in an amount no greater than the eligible project costs of the new transportation investment that is facilitated through the additional funding capacity provided by the refinancing. However, to provide an incentive to the private sector to invest in transportation infrastructure, consistent with the objectives of the TIFIA program, DOT may approve an increase in this limit up to an amount equal to the amount of equity actually committed at financial close. For any refinancing transaction, the maximum amount of credit assistance is limited to 33 percent of the combined total of eligible project costs of the refunding and new project.

The DOT considers that generating new investment in transportation is the essential purpose of a TIFIA-assisted refinancing transaction. For that reason, it will require that construction of the new project commence within a reasonable period of time. This requirement will apply even if the new construction is financed from sources other than TIFIA. To ensure timely advancement and completion of project construction, the DOT will require a penalty interest rate in the guaranteed loan in the event there is a development default. Guidelines on development default penalties for refinancing transactions will be published in the TIFIA program guidance.

An applicant seeking TIFIA refinancing assistance must submit an application, including the new transportation asset construction project, using the TIFIA application form contained in the DOT's TIFIA Program Guide. The application should describe in detail the refinancing plan of finance and demonstrate that it conforms to statutory and regulatory requirements. The fee for a refinancing application is proposed to be the same as the fee for a new TIFIA project application.

Section 80.25 Limitations on Federal Credit Assistance

The proposed rule would impose certain limitations on TIFIA assistance.

Amount of credit assistance: The current rule incorporates the statutory limitation of 33 percent of reasonably anticipated eligible project costs, and the proposed rule would retain that provision. In addition, we propose to incorporate the new statutory provision, contained in 23 U.S.C. 603(b)(2), further limiting the amount of TIFIA credit assistance to the sum of project obligations senior to the TIFIA instrument when the TIFIA instrument

[13] For information about the TIFIA Program Guide, see the preceding note 13 and section 80.35 of the proposed rule.

does not have an investment-grade rating.

Look-back in determining project costs: The current rule permits costs incurred prior to submission of the TIFIA application to be included in the calculation of eligible project costs if approved by the Secretary. The proposed rule would permit costs incurred up to three years prior to the TIFIA application to be used in the calculation of eligible project costs, while allowing for further look-backs only in exceptional circumstances and if approved by the Secretary. However, the proposed rule would limit the consideration of such total costs to no more than 20 percent of total eligible project costs.

Operating costs during construction: The proposed rule clarifies that the operating costs of a special purpose entity formed solely to construct and operate the facility for which the TIFIA credit assistance is provided would be included in the calculation of eligible project costs. The proposed rule would limit the consideration of such total costs to no more than 5 percent of total eligible project costs.

Lease acquisition payments or concession fees: To be considered eligible project costs, payments to a public entity associated with the lease acquisition or concession fee must be dedicated to transportation projects eligible under title 23 or chapter 53 of title 49, United States Code. Lease acquisition payments must be part of a project in which new capital costs constitute a significant portion of project costs and represent fair market value. In other words, the concession fee, in and of itself, does not comprise an eligible project cost. In order to implement this policy, the DOT proposes to limit its consideration of such concession payments to 25 percent of total eligible project costs and seeks public comment on this proposal.

Timing of funding of assistance: The current rule specifies that the DOT will fund a secured loan ''based on a project's funding needs.'' In practice, the DOT has funded TIFIA loans on a reimbursement basis; *i.e.*, borrowers may draw funds only for the payment of costs already incurred. This reimbursement practice aligns TIFIA assistance with assistance provided to Federal-aid grant-funded projects. In addition, the DOT has typically included in the credit agreement a provision specifying the maximum frequency (*e.g.*, monthly or quarterly) with which draw requests can be submitted. Therefore, we propose to incorporate these practices into the regulation.

Section 80.27 Credit Agreement Closing and Obligation of Funds

The proposed new section states that obligation of Federal funds would occur at the closing of the credit agreement, thus making clear that the DOT is changing its current practice of obligating funds at the time a term sheet is executed.

Section 80.29 Reporting Requirements and Credit Monitoring

The proposed rule reorganizes the current rule to consolidate within a single section all reporting and monitoring requirements. The NPRM proposes to provide that the DOT may impose, in a particular credit agreement, additional reporting requirements which it considers necessary in order to properly monitor the credit performance of the specific project.

The proposed rule moves the current rule's annual credit reporting requirement to this section. It would require borrowers to maintain a credit rating at their own expense and furnish it annually to the DOT. The current rule requires borrowers to provide ongoing credit evaluations to the DOT annually. The proposed rule makes clear that such credit evaluations must be current credit ratings. It is not the intent of this provision to require borrowers with project obligations that have published credit ratings to obtain new ratings, but rather merely to require that the borrower establish that such ratings are still in effect. Borrowers which do not have project obligations with published credit ratings, such as borrowers which use bank debt and fulfill the statutory investment-grade rating requirement by obtaining a private rating, would be required to obtain a credit rating each year.

The current rule provides that the DOT may conduct periodic financial and compliance audits of TIFIA borrowers. The proposed rule would make clear that such audits conducted by the DOT are at the borrower's expense.

Section 80.31 Fees

Consistent with section 603(b)(7), section 604(b)(9), and 605(b) of title 23, United States Code, the proposed rule identifies several fees the DOT would assess program participants to recover the program's various administrative and transactional costs. The following fees cannot be considered eligible project costs for the purpose of calculating the maximum amount of credit assistance.

The proposed rule would not specify amounts for fees that are fixed, *i.e.*, fees that are not transaction-based, namely the application fee and the servicing fee. The DOT needs to retain the flexibility to change these fixed fees from time to time, in response to changes in its own costs. Thus, rather than specify the fee amounts in the regulation, the DOT would announce changes in these fees by notice published from time to time in the **Federal Register**. A schedule of fees currently in effect will also be posted on the TIFIA Web site.

The current rule prohibits payment of the application fee or the processing fee by anyone other than the applicant. The DOT is not aware of any circumstance where such fees were not paid by the applicant or an affiliated entity; even if a third party were to pay such fees, the DOT does not believe the TIFIA program would be adversely affected. The DOT has concluded this prohibition is unnecessary, and thus proposes to eliminate it.

The NPRM proposes that the DOT would assess the following fees:

1. Application fee. The applicant would be required to remit the application fee with its application for TIFIA assistance. There would be a single application fee for each application, irrespective of the number of TIFIA instruments the applicant is seeking. The current rule provides that the application fee is non-refundable, and the proposed rule would leave that provision unchanged. The purpose of the application fee is to cover, in part, the DOT's cost for outside consulting services engaged to assist in reviewing the application. The amount of the application fee will be posted on the TIFIA Web site. The DOT may change the amount of the application fee from time to time, and will publish these changes in the **Federal Register** and post on the TIFIA Web site. The application fee is not considered an eligible project cost for the purpose of calculating the maximum amount of credit assistance.

2. Subsidy fee. As authorized by section 603(b)(7) and section 604(b)(9) of Title 23, United States Code, the current rule, in section 80.17(c), permits the payment of a supplemental fee to reduce the subsidy cost of a project. The proposed rule would identify this as a ''subsidy fee'' and restate the current rule's language. If, in any given year, there is insufficient budget authority to fund the credit instrument for a qualified project that has been selected to receive assistance under TIFIA, the DOT and the approved applicant may agree upon a supplemental fee to be paid by or on behalf of the approved applicant at the time of execution of the term sheet to reduce the subsidy cost of

that project. Although such a fee has yet to be imposed, the DOT anticipates use of this provision as the demand for TIFIA assistance increases. The subsidy fee is not considered an eligible project cost for the purpose of calculating the maximum amount of credit assistance.

3. Transaction fee. The transaction fee would be a one-time fee, set at an amount sufficient to reimburse the DOT for the actual costs, other than Federal employee costs, incurred in evaluating the application and negotiating the credit agreement. Such costs consist principally of fees the DOT pays to its consultants and outside legal advisors. The transaction fee would be due at closing of the credit agreement or within 30 days of financial close as specified in the credit agreement. The proposed rule provides that the transaction fee would be an obligation of the applicant, payable irrespective of whether or not the credit agreement was ever executed. The transaction fee is not considered an eligible project cost for the purpose of calculating the maximum amount of credit assistance.

4. Servicing fee. The DOT would assess the servicing fee annually in accordance with section 605(b)(1)(B) of SAFETEA–LU. There would be a servicing fee for each credit instrument so that a single borrower could be assessed more than one servicing fee. The servicing fee would offset, in part, the DOT's costs in servicing its portfolio of TIFIA loans. The amount of the servicing fee will be posted on the TIFIA Web site. The DOT may change the amount of the servicing fee from time to time, and will publish these changes in the **Federal Register** and post on the TIFIA Web site. The servicing fee is not considered an eligible project cost for the purpose of calculating the maximum amount of credit assistance.

5. Monitoring fee. The DOT would include in each credit agreement a provision obligating the borrower to reimburse the DOT for costs incurred in connection with monitoring the credit performance of a project, the enforcement of credit agreement provisions, amendments to the credit agreement and related documents, and other performance-related activities in accordance with section 603(b)(7) of SAFETEA–LU. The monitoring fee is not considered an eligible project cost for the purpose of calculating the maximum amount of credit assistance.

The proposed rule provides that the DOT would seek administrative offset to recoup the above fees in the event the applicant or borrower fails to pay them.

Section 80.33 Use of Administrative Offset

The proposed rule carries forward the current rule's provision making clear that the DOT does not intend to recoup by means of administrative offset losses incurred through TIFIA credit instruments except under circumstances relating to fraud, misrepresentation, false claims or similar acts. It clarifies the DOT's intent, as stated in the rule, to recover through administrative offset any fees assessed under the TIFIA program and not paid.

Section 80.35 Program Guide; TIFIA Web site

The proposed rule would establish a new section advising those interested in the TIFA program of the TIFIA Program Guide and the TIFIA Web site (*http://tifia.fhwa.dot.gov*). The proposed new section would be informational only, intended to notify the public of where to find additional program information, including information relating to a fee schedule.

Section 80.37 Applicant Information Requirements

The proposed rule would establish a new section addressing certain requirements that apply to all recipients of Federal assistance, including entities receiving credit assistance. First, an applicant must obtain a Data Universal Number System (DUNS) number. The DUNS number, which is a unique nine-character number that identifies an organization, is a tool used by the Federal Government to track how Federal money is distributed. Second, an applicant must register with the Central Contractor Registration (CCR). The Federal Government requires that Federal agencies collect certain information from recipients of Federal assistance. This information is collected through the CCR system, which is the primary registrant database for the Federal Government. Registration in the CCR requires a DUNs number.

Distribution and Derivation Tables

For ease of reference, distribution and derivation tables are provided for the current sections of the proposed rule as follows.

DERIVATION TABLE

New section	Old section
80.1	80.1.
80.3	80.3 Administrative offset.
80.3 Borrower	None.
80.3 Budget authority	None.
None	80.3 Conditional term sheet.
80.3	80.3 Credit Agreement.
80.3 Current Credit Evaluation	80.3 None.
80.3	80.3 Eligible project costs.
80.3	80.3 Federal credit instrument.
80.3 Guaranteed lender	None.
80.3	80.3 Investment-grade rating.
None	80.3 Lender.
80.3	80.3 Line of credit.
80.3	80.3 Loan guarantee.
None	80.3 Local servicer.
80.3 Maturity Date	None.
None	80.3 Obligor.
80.3 Preliminary rating opinion letter	None.
80.3	80.3 Project.
80.3	80.3 Project obligation.
None	80.3 Project sponsor.
80.3	80.3 Rating agency.
80.3 Refinance	None.

DERIVATION TABLE—Continued

New section	Old section
80.3 Secretary	None.
80.3	80.3 Secured loan.
80.3	80.3 State.
80.3 Subsidy cost	80.3 Subsidy amount.
80.3	80.3 Substantial completion.
80.3	80.3 Term sheet.
80.3	80.3 TIFIA.
80.5(a)–(e)	80.3(a)–(e).
80.7(a)	80.13(a).
80.7(a)(1)	80.13(a)(1) and (a)(5).
80.7(a)(2) through (a)(2)(i)	80.13(a)(3).
80.7(a)(2)(ii)	80.13(b).
80.7(a)(3)	80.13(a)(4).
80.7(b) through (c)	80.13(c).
80.9(a)	80.7(d) Added to new section.
80.9(b)	None.
80.9(c)	80.7(b).
80.9(c)(1)	80.7(b)(1).
80.9(c)(2)	None.
80.9(c)(3)	80.7(b)(1).
80.9(c)(4)	80.7(b)(2).
80.9(c)(5)	80.7(b)(3).
80.9(c)(6)	80.7(b)(4).
80.9(c)(7)	80.7(b)(5).
80.9(c)(8)	None.
80.9(c)(9)	None.
80.9(c)(10)	None.
80.9(d)	80.7(c).
80.11(a) through (a)(1)	80.11(a).
80.11(a)(2)	None.
80.11(b)	None.
80.11(c)(1) through 80.11(c)(1)(i)	80.11(b).
80.11(c)(1)(ii)	None.
80.11(c)(2)	None.
80.11(d)	None.
80.11(e)	80.11(c).
80.13(a)	80.15(a)(2).
80.13(b)	80.15(a).
80.13(b)(1)	80.15(a)(1).
80.13(b)(2)	80.15(a)(3).
80.13(b)(3)	80.15(a)(4).
80.13(b)(4)	80.15(a)(5).
80.13(b)(5)	80.15(a)(6).
80.13(b)(6)	80.15(a)(7).
80.13(b)(7)	80.15(a)(8).
80.13(c)	80.15(c).
80.15(a) through (b)	80.5(d)(1) through (d)(2).
80.17(a) through (d)	None.
80.19(a) through (c)	None.
80.21(a) through (b)	80.5(e).
80.23(a)	80.5(c).
80.23(b) through (e)(7)	None.
80.25(a) through (a)(1)	80.5(a).
80.25(a)(2)	None.
80.25(b)(1)	80.5(b).
80.25(b)(2)	None.
80.25(b)(3)	None.
80.25(c)	None.
80.25(d)	80.5(g) in part.
80.27 Heading	None.
80.27(a)	None.
80.27(a)(1)	80.13(a)(1).
80.27(a)(2)	80.5(f).
80.27(a)(3)	80.11(b).
80.27(a)(4)	None.
80.27(b)	80.5(d)(2).
80.29 Heading	80.19.
80.29(a)	80.11(d).
80.29(b)	80.19 First sentence.
80.29(c) through (c)(2)	None.
80.29(d)	80.19 Second sentence.
80.29(e)	80.19(d) Last sentence.

DERIVATION TABLE—Continued

New section	Old section
80.31 Heading	80.17.
80.31	None.
80.31(a)	80.17(a).
80.31(b)	80.17(c).
80.31(c)	80.17(a).
80.31(d)	80.17(d).
80.31(e)	None.
80.33	80.21.
80.35	None.
80.37	None.

DISTRIBUTION TABLE

Old section Part 80	New section Part 80
80.1 Heading	80.1 Heading text unchanged.
Purpose	80.1 Revised.
80.3 Heading	80.3 Heading text unchanged.
Administrative offset	Revised.
None	80.3 Borrower replaced obligor; definition revised.
None	80.3 Budget authority added.
Conditional term sheet	80.3 Removed.
Credit Agreement	80.3 Revised.
None	80.3 Current Credit Evaluation added.
Eligible project costs	80.3 Revised.
Federal credit instrument	80.3 Revised.
None	80.3 Guaranteed lender replaces lender.
Investment-grade rating	80.3 Revised.
Lender	Removed, replaced by Guaranteed lender.
Line of credit	80.3 Revised.
Loan guarantee	80.3 Revised.
Local Servicer	80.3 Removed.
None	80.3 Maturity date added.
Obligor	Removed, replaced by Borrower.
None	80.3 Preliminary rating opinion letter added.
Project	80.3 Revised.
Project obligation	80.3 Revised.
Project sponsor	80.3 Removed.
Rating agency	80.3 Revised.
None	80.3 Refinance added
None	80.3 Secretary added.
Secured loan	80.3 Revised.
State	80.3 "States"capitalized.
Subsidy amount	80.3 Changed to Subsidy cost.
Substantial completion	80.3 Revised.
Term sheet	80.3 Revised.
TIFIA	80.3 Revised.
80.5 Heading	80.25 Heading redesignated and revised.
80.5(a)	80.25(a) through (a)(1) Redesignated and revised.
None	80.25(a)(2) Added.
80.5(b)	80.25(b)(1) Redesignated and revised.
None	80.25(b)(2) Added.
None	80.25(b)(3) Added.
80.5(c)	80.23(a) Redesignated and revised.
80.5(d)(1) through (d)(2)	80.15(a) through (b) Conditional term sheet deleted; redesignated and revised with regard to term sheet.
80.5(e)	80.21(a) through (b) Redesignated and revised.
80.5(f)	80.27(a)(2) Redesignated and revised.
None	80.25(c) Added.
80.5(g)	80.25(d) Redesignated and revised.
80.7 Heading	80.9 Heading redesignated.
80.7(a)	Removed.
None	80.9(a) Added; language from 80.7(d) incorporated.
None	80.9(b) Added.
80.7(b)	80.9(c) Redesignated and revised.
80.7(b)(1)	80.9(c)(1) and (c)(3) Redesignated and revised.
None	80.9(c)(2) Added.
80.7(b)(2)	80.9(c)(4) Redesignated and revised.
80.7(b)(3)	80.9(c)(5) Redesignated and revised.
80.7(b)(4)	80.9(c)(6) Redesignated and revised.
80.7(b)(5)	80.9(c)(7) Redesignated and revised.

DISTRIBUTION TABLE—Continued

Old section Part 80	New section Part 80
80.7(c)	80.9(d) Redesignated and revised.
80.7(d)	80.9(a) Language incorporated.
80.9 Heading	80.5 Redesignated and heading text unchanged.
80.9	80.5 Redesignated and revised.
80.9(a)	80.5(a) Redesignated and revised.
80.9 through (d)	80.5(b) through (d) Redesignated and text unchanged.
80.9(e)	80.5(e) Redesignated.
80.11 Heading	80.11 Heading revised.
80.11(a)	80.11(a) through (a)(1) Revised.
None	80.11(a)(2) Added.
None	80.11(b) Added.
80.11(b)	80.11(c)(1) through (c)(1)(i) Redesignated and revised.
None	80.11(c)(1)(ii) Added.
None	80.11(c)(2) Added.
None	80.11(d) Added.
80.11(c)	80.11(e) Redesignated and revised.
80.11(d)	80.29(a) Redesignated and revised.
80.13 Heading	80.7 Redesignated and heading revised.
80.13(a)	80.7(a) Redesignated and revised.
80.13(a)(1)	80.7(a)(1) Redesignated and revised.
80.13(a)(2)	Removed.
80.13(a)(3)	80.7(a)(2)(i) Redesignated and revised.
80.13(a)(4)	80.7(a)(3) Redesignated and revised.
80.13(a)(5)	80.7(a)(1) Redesignated and revised.
80.13(b)	80.7(a)(2)(ii) Redesignated and revised.
80.13(c)	80.7(b) through (c) Redesignated and revised.
80.15 Heading	80.13 Redesignated and heading revised.
80.15(a)	80.13(b) Redesignated and revised.
80.15(a)(1)	80.13(b)(1) Redesignated
80.15(a)(2)	80.13 Redesignated and revised.
80.15(a)(3)	80.13(b)(2) Redesignated and revised.
80.15(a)(4)	80.13(b)(3) Redesignated and revised.
80.15(a)(5)	80.13(b)(4) Redesignated and revised.
80.15(a)(6)	80.13(b)(5) Redesignated and revised.
80.15(a)(7)	80.13(b)(6) Redesignated and revised.
80.15(a)(8)	80.13(b)(7) Redesignated.
80.15(b)	80.11(a) Redesignated and revised.
80.15(c)	80.13(c) Redesignated and revised.
80.17 Heading	80.31 Redesignated and revised.
None	80.31 Added.
80.17(a)	80.31(a) and (c) Redesignated and revised.
80.17(b)	Removed.
80.17(c)	80.31(b) Redesignated.
80.17(d)	80.31(d) Redesignated and revised.
None	80.31(e) Added.
80.19 Heading	80.29 Redesignated and revised.
80.19 First sentence	80.29(b) Redesignated and revised.
None	80.29(c)(1) through (c)(2) Added.
80.19 Second sentence	80.29(d) Redesignated and revised.
80.19 Last sentence	80.29(e) Redesignated and revised.
80.21 Heading	80.33 Redesignated.
80.21	80.33 Redesignated and revised.
None	8015 New heading added.
80.5(d)(1) through (d)(2)	80.15(a) through (b) Redsignated and revised.
None	80.17 New heading added.
None	80.17(a) through (d) Added.
None	80.19 New heading added.
None	80.19(a) through (c) Added.
None	80.21 New heading added
80.5(e)	80.21(a) through (b) Redesignated and revised.
None	80.23 New heading added.
80.5(c)	80.23(a) Redesignated and revised.
None	80.23(b) through (e)(7) Added.
None	80.27 New heading added.
None	80.27(a) Added
80.13(a)(1)	80.27(a)(1) Redesignated and revised.
80.5(f)	80.27(a)(2) Redesignated and revised.
80.11(b)	80.27(a)(3) Redesignated and revised.
None	80.27(a)(4) Added.
80.5(d)(1) through (d)(2)	80.27(b) Redesignated and revised.
None	80.35 New heading added.
None	80.35(a) through (c) Added.

DISTRIBUTION TABLE—Continued

Old section Part 80	New section Part 80
None	80.37 Added.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the DOT will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material. A final rule may be published at any time after close of the comment period.

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

The DOT has determined preliminarily that this action would be an economically significant regulatory action within the meaning of Executive Order 12866, and that it would it be significant within the meaning of Department of Transportation regulatory policies and procedures because it implements important changes made to statutory law and makes a number of substantive changes to the current TIFIA regulation. Our determination is based on the activity to date of the program, which has had an annual effect on the economy of $100 million or more.

This action proposes to update and streamline the DOT's regulation on Credit Assistance for Surface Transportation Projects. It implements the changes SAFETEA–LU made to the TIFIA statute, and reorganizes the current rule to make it more comprehensible to users.

As of May 2008, the TIFIA program has provided approximately $4.8 billion in Federal credit assistance which has supported an aggregate of $18.6 billion in combined public and private sector capital investment, at a budgetary cost of approximately $346 million.

The proposed regulation would affect only those entities that elect to apply for TIFIA assistance and are selected to receive a Federal credit instrument. It would not impose any direct costs on non-participants.

Recognizing the significant impact of this program, SAFETEA–LU directed the Secretary of Transportation to submit biannually to Congress a report summarizing the financial performance of the projects receiving assistance under the TIFIA credit program. Two reports have been submitted to date, and a June 2008 report was recently submitted. The June 2006 report briefly updates financial information originally presented in the Department's comprehensive June 2002 report to Congress.[14]

The DOT and industry research has indicated that there are economic productivity gains to be derived from efficient capital investment in surface transportation facilities. According to a 2005 GAO report, ''[t]ransportation improvements also lead to increased productivity and economic growth, through improving access to goods and services for businesses and individuals and increasing the geographic size of potential labor pools for employers and potential jobs for individuals.'' [15] This GAO report cited a September 2003 study, which estimated that average annual returns on highway investment of approximately 14 percent between 1990 and 2000.[16] The DOT continues research, updating the returns on highway capital investment for 2000–2005. Preliminary results show positive returns but lower than the 1990–2000 time period. TIFIA can serve to efficiently allocate public and private investment in surface transportation infrastructure and encourage de-politicizing investments. In addition to the direct returns it produces, transportation capital investment typically generates spillover benefits, which may yield financial and non-financial benefits, such as reduced pollution, increased safety, improved international competitiveness, and enhanced accessibility.

Just as transportation investment produces benefits, failure to invest results in cost increases. According to the DOT, ''transportation system congestion is one of the single largest threats to our nation's economic prosperity and way of life.'' [17] In 2003, Americans lost 3.7 billion hours and 2.3 billion gallons of fuel due to traffic jams, resulting in an estimated cost of $200 billion per year.[18] According to the Texas Transportation Institute, ''The solutions to this problem will require commitment by the public and by national, state and local officials to increase investment levels and identify projects, programs and policies that can achieve mobility goals.'' [19]

According to a recent study by the American Association of State Highway and Transportation Officials (AASHTO), the U.S. population will grow at a more rapid pace in the next 50 years than during the previous 50 years when the nation's modern highway system was first being constructed. As a result of this growth, the number of vehicles on U.S. highways, estimated at 246 million in 2007 (compared to 65 million cars and trucks in 1955), could rise to nearly 400 million by 2055. The AASHTO report also estimated that between 2004 and 2035 truck tonnage could increase 114 percent and rail tonnage could increase 63 percent; truck traffic, measured in trucks per day, per mile, is expected to more than double in the same period.[20]

The TIFIA program was established to provide fractional credit assistance to major transportation infrastructure projects—such as highway, transit, passenger rail, certain freight facilities, and certain port projects—that have the potential of generating substantial economic benefits both regionally and nationally. In many cases, such projects are capable of being supported through direct user charges or dedicated revenue streams that can be used to access private capital and other non-Federal funding sources. The TIFIA program is designed to fill market gaps through providing supplemental and/or subordinate capital to such projects,

[14] These reports to Congress are available on the TIFIA Web site: *http://tifia.fhwa.dot.gov*.

[15] Government Accountability Office, *Highway and Transit Investments: Options for Improving Information on Projects' Benefits and Costs and increasing Accountability for Results* (GAO)–05–172), Washington, DC, January 2005.

[16] Theofanis P. Mamuneas and M. Ishaq Nadiri, ''Production, Consumption and the rates of Return to Highway Infrastructure Capital,'' (September 2003).

[17] See *http://www.fightgridlocknow.gov*.

[18] United States Department of Transportation, *http://www.fightgridlocknow.gov*.

[19] ''Urban Traffic Congestion Costs the USA $63 Billion per Annum,'' September 14, 2004, Texas Transportation Institute. (*http://www.citymayors.com/transport/congestion_usa.html*;).

[20] ''Transportation Investment in our Future Needs of the U.S. Transportation System'' by the American Association of State Highway and Transportation Officials, *http://www.transportationl.org/tiflreport/*, March 2007.

facilitating access to the capital markets or other financing sources for the majority of project funding needs. Through the TIFIA program's leverage of limited Federal funds with private capital, these capital-intensive projects can be advanced without displacing smaller, more traditional grant-supported projects. Federal risk exposure is mitigated by substantial co-investment from non-Federal parties and the use of objective, market-based credit evaluation criteria.

Through SAFETEA–LU, Congress authorized $122 million for each Federal Fiscal Year (FFY) from 2005 through 2009. Under TEA–21, Congress had authorized up to a total of $530 million for FFY 1999 through FFY 2003. These funds pay the subsidy cost to the Federal Government of providing credit assistance, and are available until expended by the DOT or reprogrammed by Congress. Based on experience, this funding amount can support more than $2 billion of average annual credit assistance. Under the terms of the legislation, the Federal share is limited to 33 percent of total eligible project costs. In many cases, however, the actual share of TIFIA assistance is considerably less. For example, the average request for TIFIA assistance by applicants to the TIFIA program between October 1998 and March 2007 was approximately 26 percent of total project cost.

Under the Federal Credit Reform Act of 1990 (FCRA), the amount of budget authority necessary to support a Federal credit instrument depends upon the subsidy cost (i.e., the estimated present value cost of estimated losses that will be incurred as a result of defaults, net of any fee income or recoveries on default). Each project is assigned a subsidy cost based upon an evaluation of its creditworthiness and the specific terms and conditions of the loan or loan guarantee agreement. As noted previously, since the inception of the TIFIA program, total subsidy costs have amounted to nearly $346 million, supporting approximately $4.8 billion in Federal credit with an aggregate of $18.6 billion in public and private capital investment.

The TIFIA program can promote the efficient functioning of project delivery and the private markets, and can generate both direct and indirect benefits, including reduced congestion, greater mobility, improved safety, an enhanced environment, and greater economic growth, all of which further interstate commerce.

Regulatory Flexibility Act

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

The TIFIA program is generally intended to assist large transportation projects and large entities and has little effect on small entities. This action proposes to extend availability of TIFIA credit assistance to smaller projects than those heretofore eligible; thus, to the degree they affect small entities, the changes will have a positive effect on small entities by making it possible for such smaller projects to obtain Federal credit assistance. The DOT expects, nevertheless, that the bulk of TIFIA assistance will go to large projects and that most small entities will be unaffected by the proposed action.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). The proposed updates are applicable only to Federal and federally-assisted programs. This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $128.1 million or more in any one year (2 U.S.C. 1532).

Executive Order 13132 (Federalism)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the DOT has determined that this proposed action would not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. The DOT has also determined that this proposed action would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

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

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. This proposed rule does not contain information collection requirements for the purpose of the PRA. Since the inception of the TIFIA program, the DOT has never received 10 or more applications for Federal credit assistance in a single year. During the years the program has been in existence, the DOT has received an average of three TIFIA applications per year. Preparing a TIFIA application requires a significant commitment of resources on the part of the applicant, and even with the lower project-size thresholds enacted by the SAFETEA–LU amendments, the DOT does not expect to receive 10 or more applications for TIFIA assistance in a single year. If in the future it appears that there will be 10 or more applications in a year, the DOT will take immediate steps to seek approval from OMB for an information collection control number, as required under the PRA.

National Environmental Policy Act

This proposed rule would make a number of changes in the way the TIFIA Federal credit assistance program is administered. As specified under 23 U.S.C. 602(c)(2), each project obtaining such assistance under the TIFIA program is required to adhere to the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) (NEPA). None of the changes this NPRM proposes would affect the applicability of NEPA to TIFIA projects. Therefore, this proposed rule would not have any effect on the quality of the environment.

Executive Order 12630 (Taking of Private Property)

This proposed action would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Government Actions and Interface with Constitutionally Protected Property Rights.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

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

Executive Order 13175 (Tribal Consultation)

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

Executive Order 13211 (Energy Effects)

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a significant energy action under that order because although it is a significant regulatory action under Executive Order 12866, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Regulation Identification Number

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

List of Subjects

23 CFR Part 180

Credit programs—transportation, Highways and roads, Investments.

49 CFR Part 80

Credit programs—transportation, Highways and roads, Investments, Public transportation, Railroads, Reporting and recordkeeping requirements.

49 CFR Part 261

Credit programs—transportation, Investments, Railroads.

49 CFR Part 640

Credit programs—transportation, Investments, Mass transit.

49 CFR Part 1700

Credit programs—transportation.

Issued on: January 13, 2009.

Mary E. Peters,

Secretary of Transportation.

For the reasons set forth in the preamble, and under the authority of 23 U.S.C. 601–609 it is proposed to amend Chapter I of Title 23, Code of Federal Regulations by amending part 180, and to amend Title 49, Code of Federal Regulations, by revising part 80, and amending parts 261 and 640, and adding Chapter XIII consisting of part 1700 respectively as set forth below:

Title 23—Highways

CHAPTER I

PART 180—CREDIT ASSISTANCE FOR SURFACE TRANSPORTATION PROJECTS

1. Revise the authority citation for part 180 to read as follows:

Authority: Secs. 1501 *et seq.*, Pub. L. 105–178, 112 Stat. 107, 241, as amended; sec. 1601, 1602 Pub. L. 109–59, 119 Stat. 1144; 23 U.S.C. 601–609 and 315; 49 CFR 1.48.

Title 49—Transportation

Subtitle A—Office of the Secretary of Transportation

2. Revise Part 80 to read as follows:

PART 80—CREDIT ASSISTANCE FOR SURFACE TRANSPORTATION PROJECTS

Sec.

80.1 Purpose.
80.3 Definitions.
80.5 Federal requirements.
80.7 Threshold criteria for TIFIA projects.
80.9 Application process.
80.11 Preliminary rating opinion letter and investment-grade rating.
80.13 Selection criteria for TIFIA projects.
80.15 Term sheet.
80.17 Interest rate on Federal credit instruments.
80.19 Guaranteed loans; eligibility requirements for guaranteed lenders.
80.21 Draws on line of credit.
80.23 Refinancing.
80.25 Limitations on Federal credit assistance.
80.27 Credit agreement closing and obligation of funds.
80.29 Reporting requirements and credit monitoring.
80.31 Fees.
80.33 Use of administrative offset.
80.35 Program Guide; TIFIA Web site.
80.37 Applicant Information Requirements.

Authority: Secs. 1501 *et seq.*, Pub. L. 105–178, 112 Stat. 107, 241, as amended; Sec. 1601, 1602, Pub. L. 109–59. 119 Stat. 1144; 23 U.S.C. 601–609 and 315; 49 CFR 1.4, 1.48, 1.49, and 1.51.

§ 80.1 Purpose.

This part implements TIFIA (as defined within), a statute establishing a Federal credit assistance program for surface transportation projects.

§ 80.3 Definitions.

The following definitions apply to this part:

Administrative offset means the withholding of funds, otherwise payable by the government, to satisfy a claim due the government from a debtor.

Borrower means an obligor primarily liable for payment of the principal of or interest on a Federal credit instrument, which obligor may be a corporation, partnership, joint venture, trust, or a non-Federal governmental entity, agency, or instrumentality.

Budget authority means the authority provided by Federal law for the government to incur financial obligations.

Credit agreement means the definitive agreement between the DOT and the borrower (or between the DOT and the guaranteed lender, for the benefit of the borrower) pursuant to which the DOT provides a Federal credit instrument to, or for the benefit of, the borrower.

Current credit evaluation means:

(1) In the case of a project with a published rating, either a current rating or the borrower's certification stating the rating and outlook then in effect, and;

(2) In the case of a project without a published rating, a current rating of the project obligations and the Federal credit instrument.

Eligible project costs mean amounts substantially all of which are paid by, or for the account of, a borrower in connection with a project, including the cost of:

(1) Development phase activities, including planning, feasibility analysis, technical studies, revenue forecasting, environmental review and related engineering studies, preliminary engineering and preliminary design work, and other pre-construction activities that are eligible for funding consistent with 23 CFR 771.113 and 771.117;

(2) Final design, construction (including the associated operating costs during construction of a special purpose entity formed solely to construct and operate the facility), reconstruction, rehabilitation, replacement, permitting, acquisition of real property (including land related to the project and improvements to land), lease acquisition

payments (including concession payments acceptable to the Secretary) made under an acquisition agreement, environmental mitigation, construction contingencies, and acquisition of equipment after the project has completed the National Environmental Policy Act (NEPA) process and the DOT has made an environmental finding, unless the cost activity is eligible for a categorical exclusion under 23 CFR 771.117;

(3) Capitalized interest necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses, other carrying costs during construction; and

(4) Refinancing of long-term project obligations or Federal credit instruments pursuant to 23 U.S.C. 603(a)(1)(C).

Federal credit instrument means Federal credit assistance in the form of a secured loan, loan guarantee, or line of credit authorized to be made available under TIFIA with respect to a project.

Guaranteed lender means any non-Federal qualified institutional buyer (as defined in 17 CFR 230.144A(a), known as Rule 144A(a) of the Securities and Exchange Commission and issued under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*)), including:

(1) A qualified retirement plan (as defined in section 4974(c) of the Internal Revenue Code of 1986, 26 U.S.C. 4974(c)) that is a qualified institutional buyer; and

(2) A governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986, 26 U.S.C. 414(d)) that is a qualified institutional buyer.

Investment-grade rating means a rating, published or unpublished, not lower than BBB minus, Baa3, bbb minus, BBB (low), or an equivalent assigned by a rating agency.

Line of credit means an agreement entered into by the Secretary with a borrower under section 604 of Title 23, United States Code to provide a secured loan at a future date upon the occurrence of certain events.

Loan guarantee means an agreement by the Secretary under section 603 of Title 23, United States Code to pay all or part of the principal of and interest on a loan or other debt obligation issued by a borrower and funded by a guaranteed lender.

Maturity date means the final maturity date of the Federal credit instrument which shall be the lesser of not later than 35 years after the date of substantial completion of the project, or the remaining useful life of the project. For a refinancing pursuant to 23 U.S.C. 603(a)(1)(C), the final maturity date for the repayment of that portion of the TIFIA credit assistance applied to the refinancing of long-term obligations shall not be later than 35 years after the date the credit agreement is executed.

Preliminary rating opinion letter is a letter from an NRSRO that assigns a preliminary rating opinion of the project's creditworthiness as described in section 80.11 of this Part.

Project means:

(1) Any surface transportation project eligible for Federal assistance under Title 23, United States Code or under chapter 53 of Title 49, United States Code;

(2) An international bridge or tunnel for which an international entity authorized under Federal or State law is responsible;

(3) Intercity passenger bus or rail facilities and vehicles, including facilities and vehicles owned by the National Railroad Passenger Corporation, and components of magnetic levitation transportation systems; and

(4) A project that:

(i) Is a project:

(A) For a public freight rail facility or a private facility providing public benefit for highway users via direct freight interchange between highway and rail carriers

(B) For an intermodal freight transfer facility

(C) For a means of access to a facility described in subparagraph (A) or (B);

(D) For a service improvement for a facility described in subparagraph (A) or (B) (including a capital investment for an intelligent transportation system); or

(E) That comprises a series of projects described in subparagraphs (A) through (D) with the common objective of improving the flow of goods;

(ii) May involve the combining of private and public sector funds, including investments of public funds in private sector facility improvements;

(iii) If located within the boundaries of a port terminal, includes only such surface transportation infrastructure modifications as are necessary to facilitate direct intermodal interchange, transfer, and access into and out of the port.

Project obligation means any note, bond, debenture, loan, or other debt issued by a borrower in connection with the financing of a project, other than a Federal credit instrument.

Rating agency means an organization identified by the Securities and Exchange Commission as a Nationally Recognized Statistical Rating Organization.

Refinance means to pay off existing project obligations and any TIFIA credit assistance owed by the Borrower with funds acquired by the same Borrower (or its successor) through the creation of new project obligations and TIFIA credit assistance, pursuant to section 603(a)(1) of Title 23, United States Code.

Secretary means the United States Secretary of Transportation.

Secured loan means a direct loan or other debt obligation issued to a borrower and funded by the Secretary in connection with the financing of a project under section 603 of Title 23, United States Code.

State means any one of the fifty States, the District of Columbia, or Puerto Rico.

Subsidy cost means the amount of budget authority sufficient to cover the estimated long-term cost to the Federal Government of a Federal credit instrument, calculated on a net present value basis, excluding administrative costs and any incidental effects on governmental receipts or outlays in accordance with the provisions of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 *et seq.*).

Substantial completion means the opening of a project to vehicular or passenger traffic or, if determined by the Secretary and specified in the Credit Agreement, the occurrence of a comparable event.

Term sheet means a letter from the Secretary or the Secretary's designee to the borrower (and the guaranteed lender, if applicable) that sets forth the essential terms and conditions of a Federal credit instrument. A term sheet may be cancelled at any time by the Secretary for any reason, and does not obligate budget authority.

TIFIA means the Transportation Infrastructure Finance and Innovation Act of 1998, Pub. L. 105–178, 112 Stat. 107, 241 (1998), as amended by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Pub. L. 109–59, 119 Stat. 1239 (2005).

§ 80.5 Federal requirements.

All projects receiving Federal credit assistance must comply with:

(a) The relevant requirements of Title 23, United States Code, for highway projects; chapter 53 of Title 49, United States Code, specifically including, without limitation, section 5333(b) dealing with employee protective arrangements, for transit projects; and section 5333(a) of Title 49, United States Code, for rail projects, as appropriate;

(b) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, *et seq.*);

(c) The National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*);

(d) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601, *et seq.*); and

(e) Other Federal and compliance requirements as may be applicable.

§ 80.7 Threshold criteria for TIFIA projects.

(a) To be eligible to receive a Federal credit instrument, a project must meet the following threshold criteria:

(1) The project must have satisfied the applicable planning and programming requirements of section 134 and 135 of Title 23 of the United States Code;

(2) The project must have eligible project costs that are reasonably anticipated to equal or exceed the lesser of $50 million or one-third of the amount of Federal-aid highway funds apportioned for the most recently completed fiscal year to the State in which the project is located, provided that:

(i) In the case of a project principally involving the installation of Intelligent Transportation Systems (ITS), eligible project costs shall be reasonably anticipated to equal or exceed $15 million; and

(ii) In the case of a project located in more than one State, eligible project costs must be reasonably anticipated to equal or exceed the lesser of $50 million or one-third of the amount of Federal-aid highway funds apportioned for the most recently completed fiscal year to the participating State that receives the least amount of such funds; and

(3) The proposed Federal credit instrument must be secured by and payable from, in whole or in part, tolls, user fees, rentals, taxes, or other dedicated revenue sources. In order to fulfill the requirements of § 80.11, any of these dedicated revenue sources that secure any project obligations senior to or on a parity with the Federal credit instrument must also secure, in similar proportion, the Federal credit instrument.

(b) In addition to or in lieu of the dedicated revenue sources specified in paragraph (a)(3) of this section, the Secretary may accept municipal general obligation pledges, general corporate promissory pledges, or other pledges and forms of collateral as security for a Federal credit instrument.

(c) A pledge of Federal funds, regardless of source, may not be used to secure a Federal credit instrument.

§ 80.9 Application process.

(a) Letter of interest. Prior to submission of an application for Federal credit assistance, the applicant must have submitted to the DOT a letter of interest and been notified by the DOT that the letter of interest adequately addresses threshold criteria discussed in this paragraph. The letter of interest required by this section should describe the project, the project's plan of finance, and the amount and type of Federal credit instrument(s) sought. An applicant who has been notified by the DOT that its letter of interest is satisfactory may apply for Federal credit assistance in accordance with the schedule set forth by the DOT.

(b) At least once each fiscal year for which Federal assistance is available under this part, the DOT shall publish a **Federal Register** notice to solicit applications for credit assistance. Such notice will specify the relevant due dates, the estimated amount of funding available to support TIFIA credit instruments for the current and future fiscal years, contact name(s), and other details for that cycle of application submissions and funding approvals.

(c) Application. An application for Federal credit assistance must provide:

(1) Documentation sufficient to demonstrate that the project satisfies each of the threshold criteria in 49 CFR 80.7;

(2) The applicant's confirmation that it has complied with the environmental clearance requirement of 49 CFR 80.9(a);

(3) A description of the extent to which the project satisfies each of the selection criteria in 49 CFR 80.13;

(4) A description of the project for which Federal credit assistance is sought, status of environmental and other major governmental permits and approvals, and the construction schedule;

(5) A description of the applicant and borrower;

(6) Historical information, if applicable, concerning the applicant's financial condition, including, for example, independently audited financial statements and certifications concerning bankruptcies or delinquencies on other debt;

(7) Current financial information concerning both the project and the applicant, and a comprehensive project plan of finance, including sources and uses of funds for the project and a forecast of cash flows available to service all project obligations and the Federal credit instrument(s). Spreadsheets and cash flows must be submitted in both hard copy and in the form of a working computer model. Computer models should include among other things intact logic functions and assumption drivers, all business cases considered by the borrower and project sponsors, and an analysis of expected returns for each source of capital;

(8) If the Federal credit assistance applied for is not a loan guarantee, a statement as to why a loan guarantee would not be as useful as the Federal credit assistance sought;

(9) Preliminary rating opinion letters from at least two rating agencies; and

(10) Such additional information as the Secretary may from time to time prescribe.

(d) An application for a project located in or sponsored by more than one State or other entity may be submitted to the DOT. The sponsoring States or entities must designate a single borrower for purposes of receiving and repaying the Federal credit instrument.

§ 80.11 Preliminary rating opinion letter and investment-grade rating.

(a) An applicant must submit with its application preliminary rating opinion letters from at least two rating agencies. The letters must be current and based on the same project plan of finance that is submitted as part of the TIFIA application per § 80.9(b)(7). Each preliminary rating opinion letter must provide a conditional credit assessment of the project's overall creditworthiness and must specifically address:

(1) The potential of all project obligations having a lien senior to that of the Federal credit instrument on the pledged security to achieve an investment-grade rating; and,

(2) The likely credit rating category of the Federal credit instrument.

(b) If a governmental agency is submitting an application on behalf of potential borrowers in connection with a concession procurement process, the governmental entity does not need to submit a preliminary rating opinion letter. Rather, the DOT will require the selected concessionaire seeking TIFIA assistance to provide the preliminary rating opinion letters, which meet all of the requirements of § 80.11(a), with its submission of its comprehensive financial plan.

(c) Not later than 14 days prior to the closing of the credit agreement, the borrower must cause to be delivered to the DOT:

(1) Satisfactory evidence, such as a rating letter or rating confirmation letter, that at least two rating agencies have assigned ratings:

(i) To all project obligations that have a lien senior to that of the Federal credit instrument on the pledged security, which ratings must be investment-grade; and

(ii) To the Federal credit instrument.

(2) Other such evidence related to the most current project financial plan upon which the rating evidence is based.

(d) If no project obligations have a lien senior to that of the Federal credit

instrument, then the requirements of paragraphs (a) and (b) of this section apply to the Federal credit instrument.

(e) The ratings required by this section are underlying ratings. Neither the preliminary rating opinion letter, nor the investment-grade rating, may reflect the effect of bond insurance or other private credit enhancement, unless such private credit enhancement secures the Federal credit instrument.

§ 80.13 Selection criteria for TIFIA projects.

(a) For a project to be selected for Federal credit assistance, the Secretary must have determined that it is creditworthy. The Secretary's determination will ensure that any financing for the project has appropriate security features, such as a rate covenant, to ensure repayment. Notwithstanding the creditworthiness of the project, the Secretary retains the discretion not to advance a project that is not highly rated under the criteria discussed below.

(b) In addition to making a determination with respect to creditworthiness, the Secretary will consider the degree to which a project advances the policy objectives embodied in the following seven criteria. The Secretary will assign weights as indicated in evaluating and selecting which eligible projects will receive Federal credit assistance:

(1) The extent to which the project is nationally or regionally significant, in terms of:

(i) The ability of the project to enhance the national or regional transportation system by reducing congestion and improving overall system performance (30 percent); and

(ii) The extent to which the project generates economic benefits not accounted for above in 80.13(b)(1)(i), and supports interstate and international commerce (10 percent). (Total: 40 percent);

(2) The extent to which Federal credit assistance would foster innovative public-private partnerships and attract private debt or equity investment (20 percent);

(3) The likelihood that Federal credit assistance would enable the project to proceed at an earlier date than the project would otherwise be able to proceed (5 percent);

(4) The extent to which the project uses new technologies, including Intelligent Transportation Systems (ITS), that enhances the efficiency of the project (10 percent);

(5) The amount of budget authority, relative to total dollars invested in the project, required to fund the Federal credit instrument made available (10 percent);

(6) The extent to which the project helps maintain or protect the environment (10 percent); and

(7) The extent to which such assistance would reduce the contribution of Federal grant assistance to the project (5 percent).

(c) The Secretary will give preference to applications for loan guarantees rather than other forms of Federal credit instruments. Such preference is consistent with Federal credit policies under OMB Circular A–129 that state when Federal credit assistance is necessary to meet a Federal objective, loan guarantees should be favored over loans, unless attaining the Federal objective requires a subsidy, as defined by the Federal Credit Reform Act of 1990 (2 U.S.C. 661, *et seq.*), deeper than can be provided by a loan guarantee.

§ 80.15 Term sheet.

(a) When the Secretary has approved the project for Federal credit assistance processing, the Secretary will issue a term sheet to the approved applicant. Although the term sheet will be used to administratively reserve the requisite budget authority, it is subject to cancellation at the discretion of the Secretary.

(b) Subject to the limitation of 33 percent of eligible project costs, the Secretary may make a future-year administrative reservation of budget authority and the associated commitment of Federal credit assistance. This reservation will ensure that a project with a future reservation will have a priority (along with the priority of any other projects receiving such future reservations) on budget authority becoming available in the specified year(s).

§ 80.17 Interest rate on Federal credit instruments.

(a) Except as described in section (b) below, the interest rate on secured loans and lines of credit will be set at the discretion of the Secretary.

(b) The minimum interest rate on secured loans and lines of credit will be set as follows:

(1) The interest rate on a secured loan will be not less than the yield on United States Treasury securities of a similar maturity to the final maturity of the secured loan on the date of execution of the credit agreement.

(2) The interest rate on any draw made on a line of credit will be not less than the yield on United States Treasury securities of a 30-year maturity on the date of execution of the credit agreement.

(c) The interest rate on a guaranteed loan is the rate agreed to by the borrower and the guaranteed lender, subject to approval by the Secretary.

(d) For purposes of this section, the DOT may determine the ''yield on United States Treasury securities'' by reference to the published rate for State and Local Government Series (''SLGS'') securities, adjusted as appropriate to reflect the market yield of publicly traded United States Treasury securities.

(e) Consistent with Section V, Paragraph 4, of OMB Circular A–129, and 31 U.S.C. 3717, the DOT will include in the credit agreement a provision imposing a default interest rate.

§ 80.19 Guaranteed loans; eligibility requirements for guaranteed lenders.

(a) Terms of a guaranteed loan must be approved by the Secretary.

(b) To participate in this program, a guaranteed lender must be approved by the Secretary and must:

(1) Not be debarred or suspended from participation in any Federal program;

(2) Not be delinquent on any Federal debt or loan;

(3) Be duly organized and legally authorized to enter into the transaction;

(4) Demonstrate experience in originating and servicing loans for large-scale developments; and

(5) Have sufficient capital to originate the loan and disburse its own portfolio.

(c) The Secretary will periodically review lender eligibility, consistent with Federal credit policies under OMB Circular A–129.

§ 80.21 Draws on line of credit.

(a) Use of proceeds. A borrower may draw on a line of credit to pay debt service on project obligations, extraordinary repair and replacement costs, operation and maintenance expenses, and costs associated with unexpected Federal or State environmental restrictions imposed after credit agreement closing; provided, however, that when the line of credit is drawn to pay debt service, it may be applied only to debt service on project obligations which were used to finance eligible project costs.

(b) Eligibility to draw. A draw on the line of credit may be made only if net revenues from the project are insufficient to pay the costs specified in the preceding paragraph. With respect to any shortfall in the sufficiency of net revenues to pay debt service, a draw on the line of credit may be made only after application of any funds in a capitalized interest account. The borrower may draw on the line of credit before

drawing on a debt service reserve fund. A draw on the line of credit may not be made to replenish a debt service reserve fund.

§ 80.23 Refinancing.

(a) Proceeds of a secured loan provided under 23 U.S.C. 603 may be used to refinance interim construction financing of eligible project costs, provided that such refinancing is completed not later than one year after substantial completion. Otherwise secured loans used for this purpose are generally made available under the same provisions as loans under 23 U.S.C. 603(a)(1)(A).

(b) Except for the purpose described in section (a) above, proceeds of a secured loan provided under section 603 of Title 23, United States Code may not be used to refinance long-term project obligations or Federal credit instruments.

(c) Proceeds of a loan provided by a guaranteed lender receiving a TIFIA loan guarantee may be used to refinance long-term project obligations or Federal credit instruments if the project applicant demonstrates to the DOT's satisfaction that such refinancing will provide at least $50 million of additional funding capacity and that such capacity will be used to fund the completion, enhancement, or expansion of a project that:

(1) Is selected under section 602 of Title 23, United States Code, or

(2) Otherwise meets the requirements of section 602 of Title 23, United States Code.

(d) The fee for a refinancing application is the same as the fee for a new TIFIA project application.

(e) The following special provisions, terms, and limitations are applicable to the Federal loan guarantee for a refinancing made available under 23 U.S.C. 603(a)(1)(C):

(1) The borrower will have the flexibility to apply the guaranteed loan proceeds to the refinancing, the new project, or apportion an amount to each element of the transaction. It is not required that the guaranteed loan proceeds be used to build the new project. However, Federal requirements (see § 80.5) will apply to the new project.

(2) The loan guarantee made available in connection with a refinancing under this paragraph will be in an amount not larger than the greater of:

(i) The amount applied to funding the completion, enhancement, or expansion of the project; and

(ii) The amount of equity invested in the project, provided that in no event will the amount of the secured loan exceed 33 percent of the amount of the financing.

(3) Returns and payouts on equity investments in a financing transaction under this paragraph must be subordinated to the Federal credit instrument for so long as the TIFIA debt is outstanding, consistent with OMB Circular A–129 requirements that business borrowers have equity at risk. (Appendix A, section II, 3a. (2)).

(4) If the guaranteed loan proceeds are disbursed to fund both the refinancing of the long-term obligations and the completion, enhancement, or expansion of the project, the following provisions apply to the repayment:

(i) The guaranteed loan will be structured in two tranches. The first tranche will be that portion funding the refinancing of the long-term obligations and the second tranche will be that portion funding the project.

(ii) Repayments of principal or interest on the first tranche shall be scheduled to commence six months following the first disbursement of funds and to conclude, with full repayment of principal and interest, by the date that is the lesser of not later than 35 years after the date the credit agreement is executed, or the remaining useful life of the asset.

(iii) Repayments of principal or interest on the second tranche shall be scheduled based on project cash flow and shall commence not later than five years after substantial completion of the capital improvement. The final maturity of the tranche shall be the lesser of no later than 35 years after substantial completion of the project, or the remaining useful life of the asset.

(5) For improvements financed with guaranteed loan proceeds under this section, terms and conditions will be incorporated into the guaranteed loan agreement to ensure that the completion, enhancement, or expansion of the refinanced facility will commence and be completed within a reasonable period after the closing of the transaction. The DOT will require a binding commitment assuring the project will be completed and shall require a penalty interest rate on the guaranteed loan in the event of a development default.

(6) An applicant seeking a TIFIA loan guarantee under this section must submit an application that addresses the proposed refinancing and the improvement(s) facilitated by the refinancing using the TIFIA application form contained in the DOT's TIFIA Program Guide, describing in detail the plan of finance associated with the refinancing, and demonstrate conformance with TIFIA requirements, and how the refinancing will increase the funding capacity and enable the completion, enhancement, or expansion of the facility.

(7) The improvement being financed with proceeds of a guaranteed loan must adhere to the requirements in § 80.5.

§ 80.25 Limitations on Federal credit assistance.

(a) The total dollar amount of Federal credit assistance offered to a project in the form of Federal credit instruments will not exceed the lesser of:

(1) 33 percent of the reasonably anticipated eligible project costs, as measured on an aggregate cash (year-of-expenditure) basis; or

(2) If the Federal credit instrument does not receive an investment-grade rating, the amount of project obligations senior to the Federal credit instrument.

(b) The costs used to calculate eligible project costs may not include:

(1) Costs incurred more than three years prior to the submission of an application for a Federal credit instrument unless exceptional circumstances exist, and inclusion of such costs is approved by the Secretary.

(2) Costs incurred prior to submission of an application for a Federal credit instrument that are in excess of 20 percent of total eligible project costs.

(3) Operating costs incurred prior to substantial completion of the project by a special purpose entity formed solely to construct and operate the facility that are in excess of 5 percent of total eligible project costs.

(c) To be considered eligible project costs, payments to a public entity associated with the lease acquisition or concession fee must reflect fair market value and be dedicated to transportation projects eligible under title 23 or chapter 53 of title 49, United States Code. Further, the eligibility of such payments is limited to 25 percent of total eligible project costs. The final amount of eligible project costs associated with such payments is subject to the approval of the Secretary.

(d) Any loan made in connection with a credit agreement, whether a secured loan, a guaranteed loan, or a loan made by drawing on a line of credit, will be funded on a reimbursement basis, at such intervals as specified in the credit agreement. In the case of a secured loan or a guaranteed loan, the credit agreement will include the anticipated schedule for such loan disbursements, which schedule the parties may amend from time to time.

§ 80.27 Credit agreement closing and obligation of funds.

(a) Closing conditions. The DOT will enter into a credit agreement only when

the project to receive Federal credit assistance meets the following requirements:

(1) The project or project elements, as appropriate, comply with applicable planning and programming requirements in 23 U.S.C. 134 and 135;

(2) The project has received an environmental Categorical Exclusion, Finding of No Significant Impact, or Record of Decision;

(3) The requirements of 49 CFR 80.11 with respect to the investment-grade rating must have been satisfied; and

(4) The project, if eligible pursuant to Section 5302 of 49 U.S.C., Chapter 53, has complied with 49 U.S.C. 5333(b) as evidenced by a letter from the U.S. Department of Labor.

(b) Obligation of Federal funds. The DOT will obligate the subsidy amount at the time it executes the credit agreement.

§ 80.29 Reporting requirements and credit monitoring.

(a) Credit rating maintenance. Throughout the life of the Federal credit instrument, the borrower must obtain annually, at no cost to the Federal government, current credit evaluations of the project, the project obligations, and the Federal credit instrument. The current credit evaluations must be performed by a rating agency. In the case of an unpublished rating, the credit evaluation must consist of a formal credit rating letter.

(b) Annual financial plan. Each recipient of Federal credit assistance must submit an annual financial plan, elements of which may be specified in the credit agreement, and audited financial statements to the DOT not later than 180 days following the recipient's fiscal year-end for each year during which the Federal credit instrument remains outstanding. The annual financial plan must include a current credit evaluation, as described in the preceding paragraph 80.29(a).

(c) The borrower will furnish the DOT with:

(1) Any information it submits to any rating agency; and

(2) Any report of which the borrower has knowledge relating to the project credit, whether prepared by a rating agency or other institution and irrespective of whether prepared at the direction of the borrower or otherwise.

(d) Periodic audits. The DOT may periodically conduct, so long as a Federal credit instrument is outstanding, such financial and compliance audits as it deems necessary. Such audits will be at the borrower's expense.

(e) Additional reporting requirements. The DOT may require additional reporting requirements in the credit agreement which it deems necessary to enable it properly to monitor the credit performance of the project.

§ 80.31 Fees.

Section 603(b)(7) and section 604(b)(9) of Title 23, United States Code, and Appendix A, Part II, Section 3b of OMB Circular A–129 authorize the Secretary to establish fees at a level sufficient to recover all or a portion of the cost of making credit assistance available under the TIFIA program. The following fees are not considered eligible project costs for the purpose of calculating the maximum amount of credit assistance.

(a) Application fee. An applicant must remit with its application for Federal credit assistance a non-refundable application fee. The amount of the application fee will be posted on the TIFIA Web site. The DOT may change the application fee from time to time by notice published in the **Federal Register**.

(b) Subsidy fee. If, in any given year, there is insufficient budget authority to fund the credit instrument for a qualified project that has been selected to receive assistance under TIFIA, the DOT and the approved applicant may agree upon a supplemental fee to be paid by or on behalf of the approved applicant at the time of execution of the credit agreement to reduce the subsidy cost of that project. No such fee may be included among eligible project costs for the purpose of calculating the maximum 33 percent credit amount referenced in § 80.25(a).

(c) Transaction fee. The DOT will assess each borrower a transaction fee to reimburse the DOT for its actual costs incurred in evaluating the application and processing the transaction, which transaction fee the borrower must pay not later than thirty days after closing. In the event a transaction does not result in a credit agreement closing, the approved applicant must pay the transaction fee not later than 30 days after notifying the DOT that it will no longer seek credit assistance, or if the approved applicant fails to give the DOT such notice, the Secretary establishes by objective evidence that the approved applicant is no longer seeking credit assistance and so notifies the approved applicant, not later than 30 days after such notification.

(d) Servicing fee. The DOT will assess each borrower a servicing fee for each Federal credit instrument to reimburse the DOT for the costs of servicing Federal credit instruments. The amount of the servicing fee will be posted on the TIFIA Web site. The DOT may change the servicing fee from time to time by notice published in the **Federal Register**.

(e) Monitoring fee. The DOT will include in each credit agreement terms and conditions obligating the borrower to reimburse the DOT for costs incurred in connection with monitoring the credit performance of a project, the enforcement of credit agreement provisions, amendments to the credit agreement and related documents, and other performance-related activities.

§ 80.33 Use of administrative offset.

(a) The DOT will not apply an administrative offset to recover any losses to the Federal Government resulting from project risk the DOT has assumed under a Federal credit instrument.

(b) The DOT will employ an administrative offset to recover fees assessed under 49 CFR 80.31 and also in cases of fraud, misrepresentation, false claims, or similar criminal acts or acts of malfeasance or wrongdoing.

§ 80.35 Program Guide; TIFIA Web site.

(a) Program Guide. The DOT will from time to time publish updates to a TIFIA Program Guide, which will include updated information, a loan template, and may reflect modifications to the application process to provide more flexibility to project sponsors who are advancing projects as private concessions. Reference should be made to the Program Guide for additional information about the TIFIA program.

(b) Web site. The DOT maintains a Web site for the TIFIA program: *http://tifia.fhwa.dot.gov.* The DOT will post on the TIFIA Web site:

(1) Amounts of application fee and monitoring fee assessed under 49 CFR 80.31;

(2) Promptly after execution, each term sheet, and;

(3) Promptly after closing of each credit agreement, the credit agreement for such transaction to the extent that the credit agreement does not contain confidential commercial information.

(c) Additional information. Additional DOT records related to the TIFIA program may be requested through a Freedom of Information Act request pursuant to 49 CFR Part 7.

§ 80.37 Applicant Information Requirements.

An applicant must obtain a Data Universal Number System (DUNS) number and register on the Central Contractor Registration (CCR) site. These requirements apply to all recipients of Federal assistance, including entities receiving credit

assistance. If an applicant does not have a DUNS number, it can be obtained free of charge through the Dun & Bradstreet (D&B) online Web process at *http://fedgov.dnb.com/webform.* Information on CCR's on-line registration can be found at *http://www.ccr.gov.* Additional information on these requirements can be found at *http://www.grants.gov/applicants/register_your_organization.jsp.*

CHAPTER II—FEDERAL RAILROAD ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

PART 261—CREDIT ASSISTANCE FOR SURFACE TRANSPORTATION PROJECTS

3. Revise the authority citation for part 261 to read as follows:

Authority: secs. 1501, *et seq.*, Pub. L. 105–178, 112 Stat. 107, 241, as amended; sec. 1601, 1602, Pub. L. 109–59, 119 Stat.1144; 23 U.S.C. 601–609 and 315; 49 CFR 1.49.

CHAPTER VI—FEDERAL TRANSIT ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

PART 640—CREDIT ASSISTANCE FOR SURFACE TRANSPORTATION PROJECTS

4. Revise the authority for Part 640 to read as follows:

Authority: secs. 1501, *et seq.*, Pub. L. 105–178, 112 Stat. 107, 241, as amended; sec. 1601, 1602, Pub. L. 109–59, 119 Stat.1144; 23 U.S.C. 601–609 and 315; 49 CFR 1.51.

5. Add 49 CFR Chapter XIII to read as follows:

CHAPTER XIII—MARITIME ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

PART 1700—CREDIT ASSISTANCE FOR SURFACE TRANSPORTATION PROJECTS

Sec.
1700.1 Cross-reference to credit assistance.

Authority: secs. 1501, *et seq.*, Pub. L. 105–178, 112 Stat. 107, 241, as amended; sec. 1601, 1602, Pub. L. 109–59, 119 Stat. 1144; 23 U.S.C. 601–609 and 315; 49 CFR 1.66.

§ 1700.1 Cross-reference to credit assistance.

The regulations in 49 CFR Part 80 shall be followed in complying with the requirements of this part. Title 49, CFR Part 80 implements the Transportation Infrastructure Finance and Innovation Act of 1998, secs. 1501, *et seq.*, (Pub. L. 105–178, 112 Stat. 107, 241), as amended; sec. 1601, 1602, Pub. L. 109–59, 119 Stat. 1144; 23 U.S.C. 601–609.

[FR Doc. E9–1117 Filed 1–16–09; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–150670–07]

RIN 1545–BH49

Guidance Regarding the Treatment of Stock of a Controlled Corporation Under Section 355(a)(3)(B); Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains a correction to a notice of proposed rulemaking by cross-reference to temporary regulations (REG–150670–07) that was published in the **Federal Register** on Monday, December 15, 2008 (73 FR 75979) giving guidance regarding the distribution of stock of a controlled corporation acquired in a transaction described in section 355(a)(3)(B) of the Internal Revenue Code. This action is necessary in light of amendments to section 355(b). The text of those regulations also serves as the text of these proposed regulations. These regulations will affect corporations and their shareholders.

FOR FURTHER INFORMATION CONTACT: Russell P. Subin, (202) 622–7790 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the subject of this document is under section 355 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking by cross-reference to temporary regulations (REG–150670–07) contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking by cross-reference to temporary regulations (REG–150670–07), which was the subject of FR Doc. E8–29545, is corrected as follows:

On page 75980, column 2, under the CFR part heading ''PART 1—INCOME TAXES'', line 2 of the authority citation, the language ''Section 1.355–2(g) also issued under 26'' is corrected to read ''Section 1.355–2(g) and (i) also issued under 26''.

LaNita Van Dyke,

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

[FR Doc. E9–1104 Filed 1–16–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–149519–03]

RIN 1545–BC63

Section 707 Regarding Disguised Sales, Generally

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws proposed regulations relating to the treatment of transactions between a partnership and its partners as disguised sales of partnership interests between the partners under section 707(a)(2)(B) of the Internal Revenue Code. The withdrawal affects partnerships and their partners.

FOR FURTHER INFORMATION CONTACT: Deane M. Burke or Allison R. Carmody, (202) 622–3070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 707(a)(2)(B) provides that, under regulations prescribed by the Secretary, if transfers of property between a partner or partners and a partnership, when viewed together, are properly characterized as a sale or exchange of property, such transfers shall be treated as either transactions between the partnership and one who is not a partner or between two or more partners acting other than in their capacity as partners. The legislative history of section 707(a)(2)(B) indicates the provision was adopted as a result of Congressional concern that taxpayers were deferring or avoiding tax on sales of partnership property, including sales of partnership interests, by characterizing sales as contributions of property, including money, followed or preceded by related partnership distributions. *See* H.R. Rep. No. 861, 98th Cong. 2nd Sess. 861 (1984), 1984–3 (Vol. 2) CB 115. Specifically, Congress was concerned about court decisions that allowed tax-free treatment in cases that were economically

indistinguishable from sales of property to a partnership or another partner, and believed that these transactions should be treated for tax purposes in a manner consistent with their underlying economic substance. *See* H.R. Rep. No. 432, 98th Cong. 2nd Sess. 1218 (1984) (H.R. Rep.), and S. Prt. No. 169 (Vol. I), 98th Cong. 2nd Sess. 225 (1984) (S. Prt.) (discussing *Communications Satellite Corp.* v. *United States,* 625 F.2d 997 (Ct. Cl. 1980), and *Jupiter Corp.* v. *United States,* 2 Cl. Ct. 58 (1983), both of which involved disguised sales of a partnership interest).

On October 9, 2001, the IRS and the Treasury Department issued Notice 2001–64 (2001–2 CB 316), (*see* § 601.601(d)(2)(ii)(*b*)), announcing that the IRS and the Treasury Department were considering issuing proposed regulations under section 707(a)(2)(B), relating to disguised sales of partnership interests. The IRS and the Treasury Department requested comments on the scope and substance of guidance concerning disguised sales of partnership interests, including any applicable safe harbors or exceptions. Written comments in response to Notice 2001–64 were received and considered in drafting proposed regulations.

In response to requests, on November 26, 2004, the Treasury Department and the IRS published in the **Federal Register** (69 FR 68838) a notice of proposed rulemaking under section 707(a)(2)(B), (REG–149519–03) relating to disguised sales of partnership interests. The proposed regulations sought to amend the existing regulations for disguised sales of property (existing property regulations) by adding rules for disguised sales of partnership interests and by revising the rules relating to disguised sales of property. The proposed regulations for disguised sales of partnership interests include a framework similar to that in the existing property regulations, with a general rule that would apply based on all of the facts and circumstances.

The Treasury Department and the IRS received written comments on the proposed regulations from interested parties. The Treasury Department and the IRS, having now thoroughly considered those comments, have decided to withdraw the proposed regulations. The Treasury Department and the IRS will continue to study this area and may issue guidance in the future. Until new guidance is issued, any determination of whether transfers between a partner or partners and a partnership is a transfer of a partnership interest will be based on the statutory language, guidance provided in legislative history, and case law.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (REG–149519–03) that was published in the **Federal Register** on November 26, 2004 (69 FR 68838) is withdrawn.

L.E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E9–1101 Filed 1–16–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–143686–07]

RIN 1545–BH35

The Allocation of Consideration and Allocation and Recovery of Basis in Transactions Involving Corporate Stock or Securities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations under sections 301, 302, 304, 351, 354, 356, 358, 368, 861, 1001, and 1016 of the Internal Revenue Code (Code). The proposed regulations provide guidance regarding the recovery of stock basis in distributions under section 301 and transactions that are treated as dividends to which section 301 applies, as well as guidance regarding the determination of gain and the basis of stock or securities received in exchange for, or with respect to, stock or securities in certain transactions. The proposed regulations affect shareholders and security holders of corporations. These proposed regulations are necessary to provide such shareholders and security holders with guidance regarding the allocation and recovery of basis on distributions of property.

DATES: Written or electronic comments, and a request for a public hearing, must be received by April 21, 2009.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–143686–07), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–143686–07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at *www.regulations.gov* (IRS#REG–143686–07).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations under sections 301, 302, and 304, Theresa M. Kolish, (202) 622–7530; concerning the proposed regulations under sections 351, 354, 356, 358, 368, 1001, and 1016, Rebecca O. Burch, (202) 622–7550; concerning the proposed regulations under section 861, Jeffrey L. Parry, (202) 622–4476; concerning submission of comments or to request a hearing, Richard Hurst (202) 622–7180 (not toll free numbers).

Background

The primary objective of these proposed regulations is to provide a single model for stock basis recovery by a shareholder that receives a constructive or actual distribution to which section 301 applies and a single model for sale and exchange transactions to which section 302(a) applies, including certain elements of a reorganization exchange. Further to this objective, these proposed regulations define the scope of the exchange that must be analyzed under particular Code provisions, and provide a methodology for determining gain realized under section 356 and stock basis under section 358.

In addition, these proposed regulations respond to comments received by the IRS and Treasury Department regarding the current section 358 regulations, such as suggestions to expand the tracing rules to stock transfers that are subject to section 351 but do not qualify as reorganizations, questions regarding whether (and, if so, to what extent) shareholder elections constitute terms of an exchange, and whether the terms of an exchange control for purposes of qualifying a transaction as a reorganization under section 368. Finally, these proposed regulations include amendments to the section 304 regulations that import the statutory amendments to that section. See section 226 of the Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97–248 (96 Stat. 325, 490) (September 3, 1982), section 712(l) of the Deficit Reduction Act of 1984, Public Law 98–369 (98 Stat. 494, 953–55) (July 18, 1984), section 1875(b) of the Tax Reform Act of 1986, Public Law 99–514 (100

Stat. 2085, 2894) (October 22, 1986), and section 1013 of the Taxpayer Relief Act of 1997, Public Law 105–34 (111 Stat. 788, 918) (August 5, 1997).

Explanation of Provisions

I. Introduction—Exchanges and Distributions to Which Sections 301 and 302 Apply

Section 301 provides rules for the treatment of a distribution with respect to stock but does not specify how to identify the shares upon which a distribution is made. Furthermore, the tax law does not provide rules concerning whether a shareholder recovers its stock basis in the aggregate, or alternatively, whether a shareholder is required to recover stock basis share-by-share. Finally, the tax law does not provide specifically that transactions treated as section 301 distributions (i.e., redemptions under section 302(d), certain section 304 transactions, and certain reorganizations) should be subject to the same rules as actual section 301 distributions. In the reorganization context, the Code provides consequences resulting from different types of exchanges, but does not specify whether the exchange is based on a shareholder's aggregate stock holdings, or alternatively, based on particular elements of the overall exchange.

Rules related to stock basis recovery and stock basis determinations have evolved independently over many years on a transactional basis. Ad hoc development of these authorities has lead to the possibility of variant treatment of economically similar transactions to which section 301 or 302(a) applies either directly or through the operation of other Code provisions. Moreover, because there has not been a comprehensive review of these issues, many questions lack definitive answers. Prior guidance attempted to address particular areas of uncertainty within the subject matter of basis recovery and basis identification. Without the benefit of addressing all related issues, however, certain of this prior guidance was needed reconsidered. See REG–150313–01. Other guidance built the framework for basis identification that has encouraged the development of these proposed regulations.

Building on themes developed in § 1.358–2 and comments received from the tax community, this proposal is intended to be a comprehensive approach to stock basis recovery and stock basis identification to produce consistent results among economically similar transactions, regardless of the transaction type or the specific Code provision that results in the application of section 301 or 302(a).

The cornerstone of this proposal is that a share of stock is the basic unit of property that can be disposed of and, accordingly, the results of a transaction should generally derive from the consideration received in respect of that share. This guiding principle has section 1012 as its underpinning and has become fundamental to the tax treatment of shareholders, regardless of the specific nature of a shareholder's exchange. See § 1.358–2 and § 1.367(b)–13. A corollary to this basic premise is that a reorganization exchange is not an event that justifies alteration of a shareholder's tax position beyond what is necessary to reflect the results of the reorganization.

To harmonize the tax treatment of economically similar transactions, these proposed regulations adopt a single model for section 301 distributions (dividend equivalent transactions) and a single model for sale or exchange transactions to which section 302(a) applies (non-dividend equivalent transactions), regardless of whether section 301 or section 302(a) applies directly or by reason of section 302(d), 304 or 356.

II. Distributions With Respect to Stock and Dividend Equivalent Transactions

A. Section 301 Distributions

Consistent with the fundamental notion that a share of stock is the basic unit of property, the results of a section 301 distribution should derive from the consideration received in respect of each share of stock, notwithstanding designations otherwise. *Johnson* v. *United States,* 435 F.2d 1257 (4th Cir. 1971). Accordingly, these proposed regulations treat a section 301 distribution as received on a pro rata, share-by-share basis with respect to the class of stock upon which the distribution is made. Thus, a distribution that is not a dividend within the meaning of section 301(c)(1) can result in gain with respect to some shares of a class while other shares have unrecovered basis.

B. Dividend Equivalent Redemptions

To promote consistency among transactions treated as section 301 distributions under the Code, these proposed regulations apply the same basis recovery rules described above to both dividend equivalent redemptions and certain section 304 transactions. Accordingly, under these proposed regulations, a dividend equivalent redemption results in a pro rata, share-by-share distribution to all shares of the ''redeemed class'' held by the redeemed shareholder immediately before the redemption. The proposed regulations define the term ''redeemed class'' to mean all of the shares of that class held by the redeemed shareholder. Similar to an actual section 301 distribution, the proportional approach to basis recovery in dividend equivalent redemptions can produce gain with respect to some shares while other shares have unrecovered basis.

The constructive section 301 distribution is limited to the shares of the redeemed class (instead of constructing a pro rata distribution among all shares of various classes held by the redeemed shareholder) because different classes of stock have distinct legal entitlements that are respected for federal income tax purposes. *H.K. Porter Co.,* 87 T.C. 689 (1986); *Comm'r* v. *Spaulding Bakeries,* 252 F.2d 693 (2d Cir. 1958). Accordingly, a constructive section 301 distribution is conformed to an actual section 301 distribution by identifying those shares with respect to which an actual section 301 distribution would have been received, and by reducing the basis of only those shares.

i. Basis Adjustments in Dividend Equivalent Redemptions if Less Than All of the Shares of a Single Class Held by the Taxpayer Are Redeemed

If less than all of the shares of a class of stock held by the taxpayer are redeemed, the proposed regulations provide that in a hypothetical recapitalization described in section 368(a)(1)(E), the redeemed shareholder is deemed to exchange all its shares in the class, including the redeemed shares, for the actual number of shares held after the redemption transaction. The tracing rules of the section 358 regulations apply to preserve the basis of the shares exchanged in the recapitalization in the remaining shares of the redeemed class held by the shareholder. Thus, under these proposed regulations, a dividend equivalent redemption is generally treated in the same manner, and its results are the same as, a section 301 distribution in which no shares were cancelled.

ii. Basis Recovery in Dividend Equivalent Redemptions in Which the Taxpayer Surrenders All of Its Shares in a Single Class

Under current law, if all of the shares of a single class held by a shareholder are redeemed in a dividend equivalent redemption, any unrecovered basis in the redeemed shares is permitted to shift to other shares in certain circumstances. See § 1.302–2(c). The

IRS and Treasury Department believe that the shifting of stock basis is inconsistent with the fundamental principle that each share is a separate unit of property, and can lead to inappropriate results. Accordingly, these proposed regulations do not permit the shifting of basis to other shares held (directly or by attribution) by the redeemed shareholder. Instead, the proposed regulations preserve the tax consequences of the unrecovered basis for the redeemed shareholder by treating the amount of the unrecovered basis as a deferred loss of the redeemed shareholder that can be accessed when the conditions of sections 302(b)(1), (2), or (3) are satisfied, or alternatively, when all the shares of the issuing corporation (or its successor) become worthless within the meaning of section 165(g).

C. Dividend Equivalent Reorganization Exchanges

If, pursuant to a reorganization, a shareholder receives qualifying property and boot in exchange for its target corporation stock, the tax consequences of the receipt of the boot under these proposed regulations will depend upon whether the reorganization exchange is dividend equivalent or not. See section III. of this Preamble for a description of the proposed rules that would apply if the reorganization is not dividend equivalent.

In general, the determination of whether an exchange has the effect of the distribution of a dividend for purposes of section 356(a)(2) is determined by examining the effect of the shareholder's ''overall exchange.'' *Commissioner* v. *Clark*, 489 U.S. 726, 738 (1989). Thus, the key to this determination is the scope of the exchange. For example, if the shareholder exchanges shares of preferred stock solely for boot and shares of common stock solely for qualifying property pursuant to a plan of reorganization, is the determination of whether the exchange of the preferred stock for boot is dividend equivalent based solely on that particular exchange or on the overall exchange of the preferred and common stock for the qualifying property and the boot? The same question would arise with respect to each particular exchange if the shareholder exchanged the preferred and common stock for a combination of qualifying property and boot. The *Clark* decision examined a reorganization exchange involving a single class of stock, and does not provide guidance in the context of multiple classes of stock.

In the case of a section 302 redemption, the exchanging shareholder determines dividend equivalency based on all the facts and circumstances. See *Zenz* v. *Quinlivan*, 213 F.2d 914 (C.A.6 1954). To promote consistency between sale or exchange transactions, these proposed regulations provide that the overall reorganization exchange shall be taken into account in determining whether a particular exchange is dividend equivalent. Thus, a shareholder that exchanges a class of stock solely for boot and another class of stock solely for nonqualifying property shall consider the overall exchange (the exchange of the two classes of stock for boot and qualifying property) in determining whether each particular exchange is dividend equivalent.

If it is determined that a reorganization exchange is dividend equivalent, because different classes of stock have distinct legal entitlements that are respected for federal income tax purposes, the proposed regulations provide that an exchange of a class of stock solely of boot is an exchange to which section 302(d) (and not section 356(a)(2)) applies.

To ensure similar tax treatment of dividend equivalent reorganization exchanges and dividend equivalent redemptions, if the reorganization exchange is dividend equivalent the proposed regulations limit the ability of the exchanging shareholder to specify the terms of the exchange. Specifically, if the shareholder receives more than one class of stock or surrenders one class of stock and securities, the shareholder may specify the terms of the exchange between the classes of stock surrendered (or between one or more classes of stock and securities surrendered), provided the designation is economically reasonable, but not between particular shares of the same class of stock.

As with the redemption of shares of a redeemed class in a dividend equivalent redemption, a shareholder's receipt solely of boot with respect to a class of stock in a reorganization exchange is treated as received pro rata, on a share-by-share basis, with respect to each share in the class—under the principles of *Johnson,* the shareholder cannot specify that the boot is received with respect to particular shares within the class. Consequently, such an exchange could result in gain recognition with respect to some shares while other shares in the class could have recovered basis.

In formulating the proposed regulations, the IRS and Treasury Department considered different alternatives. For example, in a dividend equivalent reorganization exchange pursuant to section 356(a)(2), the IRS and Treasury Department considered whether gain realized with respect to a class should be determined in the aggregate (for example, with respect to all shares within a class). Under this approach, no gain would be realized with respect to a class that has a block of built-in gain stock and block of built-in loss stock where the built-in loss is at least equal to the built-in gain. The IRS and Treasury Department rejected such an approach because it would contradict the fundamental principle that a share is a discrete unit of property, and also would compromise the principle that a reorganization exchange is not an event that justifies stock basis averaging. The IRS and Treasury Department also considered eliminating a shareholder's ability to specify the terms of a dividend equivalent reorganization exchange based on the premise that under *Johnson*, all consideration received in such an exchange should be considered received pro rata among all shares, regardless of whether more than one class is surrendered. The IRS and Treasury Department rejected this approach in favor of the approach of the proposed regulations that is analogous to the proposed treatment of dividend equivalent redemptions, under which each share of the redeemed class is treated as receiving a pro rata share of the proceeds, and shares outside of the redeemed class are not treated as receiving any part of the distribution.

D. Special Rules Related to Apportionment of Interest and Other Expenses

Under section 864(e), taxpayers apportion interest expense between statutory and residual groupings on the basis of the relative values of their assets in each grouping. For this purpose, taxpayers may choose to value their assets using either fair market value or tax book value (adjusted basis). The proposed regulations provide that for purposes of apportioning expenses on the basis of the tax book value of assets, the adjusted basis in any remaining shares of the redeemed class owned by the redeemed shareholder, any shares that are not in the redeemed class, or any shares owned by certain affiliated corporations shall be increased by the amount of the unrecovered basis of redeemed shares. Thus, under the proposed regulations, the interest expense allocation and apportionment consequences of a dividend equivalent redemption are the same as an actual section 301 distribution.

E. Section 1059

Section 1059(a) provides that if a corporation receives an extraordinary dividend with respect to any share of stock and such corporation has not held such stock for more than two years before the dividend announcement date, then the corporation's basis in such stock shall be reduced (but not below zero) by the non-taxed portion of such dividends.

Except as provided in regulations, in the case of any redemption of stock which would not have been treated (in whole or in part) as a dividend if any options had not been taken into account under section 318(a)(4), or section 304(a) had not applied, any amount treated as a dividend is treated as an extraordinary dividend, without regard to the taxpayer's holding period in the stock. Section 1059(e)(1)(A)(iii). In the case of these types of redemptions, section 1059(e)(1)(A) (flush language) provides that only the basis of the stock redeemed shall be taken into account under section 1059(a). These proposed regulations do not affect the basis reduction provided for in section 1059(e)(1)(A) if section 1059(e)(1)(A)(iii) otherwise applies. Accordingly, to the extent of an extraordinary dividend described in section 1059(e)(1)(A)(iii), a redeeming shareholder would first reduce basis as prescribed by section 1059(e)(1)(A). These proposed regulations would then apply to the extent the distribution is not a dividend within the meaning of section 301(c)(1).

F. Redemptions of Stock Held by Partnerships, Trusts, and S Corporations

The treatment of unrecovered basis as a deferred loss raises special issues where the redeemed shareholder is an S corporation, a partnership, or a trust (each a flow-through entity). These proposed regulations reserve with respect to the issues relating to redeemed shareholders that are flow-through entities pending further study and comment. The primary issue under study is whether an ''outside'' basis adjustment that reflects the deferred loss should occur at the time of the dividend equivalent redemption, or alternatively, when there is an inclusion date with respect to the deduction.

In general, a deferred loss is reflected in the outside basis of an interest in a flow-through entity when the deduction can be accessed by the entity. Accordingly, as a general matter, disconformity can exist between inside attributes and outside basis where an inside attribute is a deferred loss. Conversely, a net operating loss of a flow-through entity reduces the outside basis of an interest in the entity in the year that the net operating loss arises.

Although disconformity generally can exist where a flow-through entity has a deferred loss, the IRS and Treasury Department are concerned that deferred losses arising from unrecovered basis presents an opportunity to separate the deferred loss from the dividend income resulting from the redemption. The IRS and Treasury Department question whether such a separation would be appropriate, and believe that treating the deferred loss as a net operating loss in the year of the redemption for basis adjustment purposes may be the better approach. However, the IRS and Treasury Department acknowledge that it may be inappropriate to require the owners of a flow-through entity to reduce outside basis before the deferred loss can be accessed, simply because the owners of the flow-through entity cannot access the deferred loss. The IRS and Treasury Department request comments on this issue.

Flow-through entities also present the question of when it is appropriate to treat an owner of the flow-through entity as the redeemed shareholder, and when it is appropriate to treat the flow-through entity itself as the redeemed shareholder. For example, where the owner completely divests of its interest in the flow-through entity, it may be appropriate to treat the owner as the redeemed shareholder for determining whether the sale of the flow-through entity interest is an inclusion date with respect to that owner. This treatment may be more appropriate if the deferred loss is treated as a net operating loss that already has reduced the outside basis of the entity's owner. Conversely, if the deferred loss is not treated as a net operating loss, it may be more appropriate to treat the flow-through entity as the redeemed shareholder in all cases. The IRS and Treasury Department request comments on this issue.

G. Consolidated Groups and Basis Recovery in Dividend Equivalent Redemptions

The IRS and Treasury Department continue to study the issues raised when a redeemed shareholder with a deferred loss files a consolidated return. The IRS and Treasury Department believe that certain of the concerns raised by REG–150313–01 are addressed in these proposed regulations by the deemed recapitalization mechanic described in section II.B.i. of this Preamble.

III. Redemptions Treated as a Sale or Exchange Pursuant to Section 302(a)

A. In General

Under current law for redemptions characterized under section 302(a), a shareholder that owns shares of stock with different bases can decide whether to surrender for redemption high basis shares, low basis shares or any combination thereof. See § 1.1012–1(c). Consistent with treating a share as a discrete unit of property, the proposed regulations do not limit this electivity. Additionally, as further discussed below, these proposed regulations affirm the ability of a shareholder to specify the terms of a reorganization exchange where the receipt of boot results in sale or exchange treatment.

B. Reorganization Exchanges That Result in Sale or Exchange Treatment

If it is determined that the reorganization exchange is not dividend equivalent (as described in section II.C. of this Preamble), section 302(a) will apply to the extent shares are exchanged solely for boot. Just as a shareholder can elect to surrender high basis shares, low basis shares or any combination thereof in a non-dividend equivalent redemption, a shareholder engaging in a reorganization exchange that is not dividend equivalent can specify the receipt solely of boot for a share, provided that the terms of the exchange are economically reasonable. In such case, the shareholder will recognize gain or loss with respect to that share pursuant to section 302(a), and section 356(a)(1) will not apply.

IV. Extension of Tracing Principles To Determine Basis in Certain Stock Transfers That Are Not Reorganizations, and Other Proposals in Response to Specific Comments

A. Application of Tracing Principles to Certain Section 351 Exchanges and Capital

The current section 358 regulations apply tracing principles to determine the basis of stock received in a section 351 exchange only where the section 351 exchange also qualifies as a reorganization and no liabilities was assumed in the exchange. The principal reason for this limitation is the interaction of the basis tracing rules with the aggregate approach to gain determination under section 357(c). The IRS and Treasury Department continue to study this issue, but have concluded that the resolution of this issue is not necessary to broaden the application of the tracing rules to transfers of stock in section 351 exchanges in which no

liabilities are assumed. Thus, for example, in an exchange to which section 351 applies where the transferor transfers two blocks of stock with disparate basis and other property, the separate bases will be preserved under section 358, provided that liabilities are not assumed in the exchange.

In addition, these proposed regulations incorporate the deemed issuance and recapitalization approach of the current section 358 regulations to section 351 exchanges to preserve basis if insufficient shares, or no shares at all, are actually issued in the exchange. These proposed regulations also extend the deemed issuance and recapitalization approach to shareholder capital contributions to which section 118 applies.

B. Miscellaneous

The IRS and Treasury Department have received a number of comments on the current section 358 regulations. These proposed regulations make a number of clarifying, but nonsubstantive, modifications to the current section 358 regulations. Specifically, the proposed regulations add headings throughout the existing final §§ 1.358–1 and 1.358–2 regulations without substantive change. In addition, the proposed regulations address the following comments received with respect to the current section 358 regulations.

Commentators questioned how shareholder elections factor into the terms of the exchange. These proposed regulations include two new examples illustrating the effect of such elections.

Commentators questioned the effect of the terms of an exchange on the determination of whether a transaction qualifies as a reorganization, and therefore is not subject to the general rule of section 1001. These proposed regulations include cross-references in the regulations under sections 368 and 1001 to clarify that, to the extent the terms of the exchange specify that a particular property is received in exchange for a particular property, such terms shall control for purposes of determining whether a transaction qualifies as a reorganization provided such terms are economically reasonable.

Finally, in addition to provisions relating to the determination of basis, these proposed regulations add a rule that addresses certain issues considered in Rev. Rul. 68–55 (1968–1 CB 140). Specifically, consistent with Rev. Rul. 68–55, these regulations provide that, for purposes of determining gain under section 351(b), the fair market value of each category of consideration received in a section 351 exchange is allocated between the transferred assets in based on relative fair market values.

V. Specifically Requested Comments

In addition to the comments requested throughout this Preamble, the IRS and Treasury request comments on the following areas.

The proposed regulations under section 302 do not apply to a redemption of stock described in section 306(c). Pursuant to section 306(a)(2), a redemption of stock described in section 306(c) is treated as a distribution of property to which section 301 applies. *Example 2* of § 1.306–1 suggests that the unrecovered basis of redeemed section 306 stock is added to the basis of the stock with respect to which the section 306 stock was distributed. The IRS and Treasury Department request comments on whether such treatment is appropriate or whether an alternative regime should apply when such a section 306(c) redemption is treated as a section 301 distribution.

Comments are also requested regarding whether, after a section 355 pro rata split-up, the controlled corporations are the same as or different from the distributing corporation for purposes of determining whether the date of distribution would be an inclusion date for a deferred loss attributable to unrecovered basis.

Finally, the IRS and Treasury Department recognize that the proposed regulations may not address all related issues arising in all cash ''D'' reorganizations. Specifically, these proposed regulations may heighten the importance of whether the nominal share deemed issued in such a reorganization is received in respect of particular shares surrendered by the exchanging shareholder. The IRS and Treasury Department request comments with respect to this issue.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Further, it is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations provide clarifying guidance of existing law and do not create additional obligations for, or impose an economic impact on small entities. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. All comments will be available for public inspection and copying. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Theresa M. Kolish and Rebecca O. Burch of the Office of Associate Chief Counsel (Corporate). Other personnel from offices of the IRS and Treasury Department participated in their development.

Availability of IRS Documents

IRS revenue rulings, procedures, and notices cited in this preamble are made available by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR Part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.301–2 is added to read as follows:

§ 1.301–2 Application to basis.

(a) *Application to basis.* That portion of a distribution which is not a dividend shall be applied pro rata, on a share-by-share basis, to reduce the adjusted basis of each share of stock held by the shareholder within the class of stock upon which the distribution is made. The following example illustrates this paragraph (a):

Example. (i) *Facts.* Corporation X, a calendar year taxpayer, has only common stock outstanding. A, an individual, owns all 100 shares; 25 were acquired on Date 1 for $25 (Block 1) and 75 were acquired on Date

2 for $175 (Block 2). On December 31, when Corporation X had earnings and profits of $100, it made a $3 distribution on each share of common stock.

(ii) *Analysis.* A is treated as receiving $75 of the distribution on block 1 and $225 on block 2. On Block 1, A will have a $25 dividend under section 301(c)(1), a $25 return of capital under section 301(c)(2) and a $25 gain under section 301(c)(3). On Block 2, A will have a $75 dividend under section 301(c)(1), a $150 return of capital under section 301(c)(2) and will have a remaining basis of $25 in the shares of block 2.

(b) *Effective/applicability date.* This section applies to transactions that occur after the date these regulations are published as final regulations in the **Federal Register**.

§ 1.302–2 [Amended]

Par. 3. In § 1.302–2, paragraph (c) is removed and reserved.

Par. 4. Section 1.302–5 is added to read as follows:

§ 1.302–5 Redemptions under section 302(d).

(a) *In general*—(1) *Share-by-share basis reduction.* In any case in which an amount received in redemption of stock (as defined in section 317(b)) is treated as a distribution to which section 301 applies, that portion of a distribution that is not a dividend shall be applied to reduce the adjusted basis of each share held by the redeemed shareholder (as defined in paragraph (b) of this section) in the redeemed class (as defined in paragraph (b) of this section). Such reduction shall be applied pro rata, on a share-by-share basis, to all shares of the redeemed class held by the redeemed shareholder. Gain, if any, on a share shall be determined under section 301(c)(3).

(2) *Deemed recapitalization.* Except as provided in paragraph (a)(3) of this section, immediately following the reduction of basis as provided in section 301(c)(2) and paragraph (a)(1) of this section, all shares of the redeemed class, including the redeemed shares, held by the redeemed shareholder will be treated as surrendered in a reorganization described in section 368(a)(1)(E) in exchange for the number of shares of the redeemed class directly held by the redeemed shareholder after the redemption. The basis of the shares deemed received in the reorganization described in section 368(a)(1)(E) will be determined under the rules of section 358 and § 1.358–2.

(3) *Redemption of all shares of redeemed class*—(i) *Remaining basis treated as loss.* If all the shares of the redeemed class held by the redeemed shareholder are redeemed, an amount equal to the basis of the redeemed stock, after adjusting such basis to reflect the application of section 301(c)(2) as provided in paragraph (a)(1) of this section, will be treated as a loss on a disposition of the redeemed stock on the date of the redemption. Such loss is taken into account on the inclusion date as defined in paragraph (b) of this section.

(ii) *Attributes of loss.* Notwithstanding that a loss described in paragraph (a)(3)(i) of this section may be deferred and taken into account on a date later than the date of the redemption, the attributes (for example, character and source) of such loss are determined on the date of the redemption that gave rise to such loss.

(b) *Definitions*—(1) *Redeemed shareholder.* Except as provided in paragraph (c) of this section, the term *redeemed shareholder* means the person whose stock is redeemed in a transaction. If the redeemed shareholder is a corporation, and the assets of the redeemed shareholder are acquired in a transaction described in section 381(a) (other than transactions described in paragraph (b)(4)(ii) of this section), the acquiring corporation (within the meaning of section 381) thereafter is treated as the redeemed shareholder.

(2) *Redeemed class.* With respect to a shareholder whose stock has been redeemed, the term *redeemed class* means all of the shares of that class held by the redeemed shareholder. For this purpose, a class is defined with respect to economic rights to distributions rather than the labels attached to shares or rights with respect to corporate governance.

(3) *Redeeming corporation.* The term *redeeming corporation* means the corporation that issued the stock that is redeemed.

(4) *Inclusion date*—(i) *Definition.* The term *inclusion date* means the earlier of—

(A) The first date on which the redeemed shareholder would satisfy the criteria of section 302(b)(1), (2), or (3), if the facts and circumstances that exist at the end of such day had existed immediately after the redemption; or

(B) The first date on which all classes of stock of the redeeming corporation become worthless within the meaning of section 165(g). Solely for purposes of this paragraph, if the assets of the redeeming corporation (or its successor) are acquired by another corporation in a transaction described in section 381(a), the inclusion date for the redeemed shareholder is determined by treating all of the facts and circumstances that exist at the end of the day that includes the section 381 transaction (including the acquisition of the assets of the redeeming corporation or its successor) as existing immediately after the redemption. A successor for this purpose means a corporation that acquires the assets of the redeeming corporation in a transaction to which section 381(a) applies.

(ii) *Special rules for corporate shareholders.* If the redeemed shareholder is a corporation, the inclusion date includes the date such corporation has disposed of all of its assets in a transaction in which all gain and loss with respect to its assets is recognized in whole, and the corporation ceases to exist for tax purposes. If the redeemed shareholder is a foreign corporation, the inclusion date includes the date such corporation transfers its assets to a domestic corporation in either a liquidation described in section 332 or a reorganization described in section 368(a)(1) to which section 381 applies. If the redeemed shareholder is a foreign corporation that is not a controlled foreign corporation within the meaning of section 957(a) on the date of the redemption, the inclusion date includes the date such corporation transfers its assets to a controlled foreign corporation in a liquidation described in section 332 or a reorganization described in section 368(a)(1) to which section 381 applies.

(c) *Rules for special shareholders*—(1) *Redeemed shareholder is a partnership.* [Reserved]

(2) *Redeemed shareholder is an S corporation.* [Reserved]

(3) *Redeemed shareholder is an estate or trust.* [Reserved]

(d) *Operating rules for treatment of loss attributable to basis of redeemed stock*—

(1) *Treatment as a deferred loss.* Any loss attributable to the basis of redeemed stock under paragraph (a) of this section that has not been permitted to be taken into account under such section shall be treated as a deferred loss. The character of the deferred loss as ordinary or capital is determined at the time of the redemption.

(2) *Effect of loss attributable to basis of redeemed stock on earnings and profits.* If the redeemed shareholder is a corporation, any deferred loss attributable to the basis of redeemed stock is not reflected in such corporation's earnings and profits before it is taken into account pursuant to the rules of paragraph (a)(3) of this section. See, for example, §§ 1.312–6(a) and 1.312–7.

(e) *Examples.* For the purposes of the examples in this section, Corporations X, Y and Z are domestic corporations

that file U.S. tax returns on a calendar-year basis. The examples are as follows:

Example 1. (i) *Facts.* A and B, husband and wife, each own 100 shares (50 percent) of the common stock of Corporation X which they hold as a capital asset. On Date 1, A acquired 50 shares for $100 (block 1) and 50 shares on Date 2 for $200 (block 2). On December 31, Corporation X, which has no current or accumulated earnings and profits, redeems all of A's block 2 shares for $300. Under section 302(d), the redemption proceeds are treated under section 301 as a recovery of basis.

(ii) *Analysis.* Under this section, immediately before the redemption, the distribution of property is applied on a pro rata, share-by-share basis with respect to each of the shares in the redeemed class held directly by A, the redeemed shareholder. Accordingly, A will have a $50 capital gain on block 1 ($150–100) under section 301(c)(3) and $50 of basis remaining on block 2 ($150–200). To reflect the actual number of shares held by A after the redemption, A's shares in the redeemed class, including the shares actually surrendered, will be treated as exchanged in a recapitalization under section 368(a)(1)(E). The basis in A's recapitalized shares will be determined under § 1.358–2. Accordingly, A will have 25 shares with a zero basis (attributable to block 1) and 25 shares with a basis of $50 (attributable to block 2).

Example 2. (i) *Facts.* The facts are the same as in *Example 1,* except that, Corporation X, on the following December 31, when it has no current or accumulated earnings and profits, redeems all of A's remaining 50 shares for $40. A does not file an agreement described in section 302(c)(2)(A)(iii) waiving family attribution under section 318.

(ii) *Analysis.* Since A is treated under section 318(a)(1) as owning B's shares, the redemption is described in section 302(d) and is treated as a distribution to which section 301 applies. As in *Example 1,* immediately before the redemption, the distribution is applied on a pro rata, share-by-share basis with respect to each of the shares in the redeemed class held by A. Accordingly, A recognizes a $20 gain and a $30 loss. The $30 deferred loss under § 1.302–5(a)(3) may be taken into account by A on the inclusion date (see § 1.302–5(a)(3)(ii)).

Example 3. (i) *Facts.* Corporation X has both common and preferred stock outstanding. A, an individual, has 100 shares of common stock with a basis of $100 and 100 shares of preferred stock with a basis of $200. The 100 shares of common stock represent voting control of Corporation X. Corporation X, when it has no current or accumulated earnings and profits, redeems all of A's preferred stock for $150. Section 302(d) applies to the redemption, and therefore the distribution is treated as a distribution of property to which section 301 applies.

(ii) *Analysis.* If Corporation X had declared a distribution under section 301 with respect to the redeemed preferred stock, the distribution would have been limited to the shares of common stock. Therefore, the only basis recovered under section 301(c)(2) is the basis of A's preferred stock. A has $50 in excess basis after the redemption of all its preferred stock which will not shift to the common stock held by A. Under § 1.302–5(a)(3), the excess basis will be treated as a deferred loss until the inclusion date.

Example 4. (i) *Facts.* Corporation Z has 100 shares of stock outstanding, 50 shares of which are owned by each of A and his son, B. A's basis in each of his shares of Corporation Z stock is $1. In Year 1, Corporation Z redeems all of A's shares of Corporation Z stock for $200. A does not file an agreement described in section 302(c)(2)(A)(iii) waiving family attribution under section 318. At the end of Year 1, Corporation Z has current and accumulated earnings and profits in excess of $200. Section 302(d) applies to the redemption, and therefore the distribution is treated as a distribution to which section 301 applies. A recognizes dividend income of $200. In Year 6, Corporation Y, a publicly traded corporation acquires all of Corporation Z's assets in exchange solely for voting stock in a reorganization described in section 368(a)(1)(C). In the reorganization, B surrenders his shares of Corporation Z stock which, at the time of the reorganization have an aggregate fair market value of $200, and receives in exchange 5,000 shares of common stock of Corporation Y representing less than one percent of the fair market value of all the stock of Y.

(ii) *Analysis.* Under this section, an amount equal to A's basis in the redeemed stock after the Year 1 redemption, $50, is treated as a deferred loss on a disposition of the redeemed stock on the date of the redemption. Under paragraph (b)(3) of this section, solely for purposes of determining whether a particular date on or after the date of the reorganization is the inclusion date, Corporation Y, the acquiring corporation, is treated as the redeeming corporation. If the facts and circumstances that exist at the end of the day of the reorganization had existed on the date of the redemption, the redemption would have been treated as a distribution in part or full payment in exchange for the redeemed stock pursuant to section 302(a). Therefore, the date of the reorganization is the inclusion date and A is permitted to take into account the deferred loss of $50 attributable to his basis in the redeemed stock in Year 6.

(f) *Effective/applicability date.* This section applies to transactions that occur after the date these regulations are published as final regulations in the **Federal Register**.

Par. 5. Section 1.304–1 is revised to read as follows:

§ 1.304–1 In general.

(a) *In general.* Section 304 is applicable where a shareholder sells stock of one corporation to a related corporation as defined in section 304. Sales to which section 304 is applicable shall be treated as redemptions subject to sections 302 and 303.

(b) *Effective/applicability date.* This section applies to transactions that occur after the date these regulations are published as final regulations in the **Federal Register**.

Par. 6. Section 1.304–2 is amended by revising paragraphs (a) and (c), and adding paragraph (d) to read as follows:

§ 1.304–2 Acquisition by related corporation (other than a subsidiary).

(a) *In general* (1) If a corporation (the acquiring corporation), in return for property, acquires the stock of another corporation (the issuing corporation) from one or more persons, and such person or persons from whom the stock was acquired were in control of both such corporations, then such property shall be treated as received in redemption of the common stock of the acquiring corporation. As to each person transferring stock, the amount received shall be treated as a distribution to which section 301 applies, if section 302(a) or 303 does not apply. For the amount constituting a dividend in such cases, see § 1.304–6.

(2) *Section 302(b).* In applying section 302(b), reference shall be made to the ownership of stock in the issuing corporation and not to the ownership of the acquiring corporation (except for the purposes of applying section 318(a)). Section 318(a) shall be applied without regard to the 50 percent limitation contained in section 318(a)(2)(C) and (3)(C).

(3) *Section 302(d).* If, pursuant to section 302(d), section 301 applies to the property received in redemption of the common stock of the acquiring corporation pursuant to paragraph (a)(1) of this section, the transferor and the acquiring corporation shall be treated, for all Federal income tax purposes, in the same manner as if the transferor had transferred the stock of the issuing corporation to the acquiring corporation in exchange for the common stock of the acquiring corporation in a transaction to which section 351 applies, and then the acquiring corporation had redeemed the common stock it was treated as issuing in an exchange for property. Accordingly, the acquiring corporation's basis in the stock of the issuing corporation is determined under section 362, and, under section 358, the transferor's basis in the common stock of the acquiring corporation deemed issued to the transferor in the deemed section 351 transaction is equal to the transferors basis in the stock of the issuing corporation it surrendered.

(4) *Basis of redeemed shares.* To the extent that section 301(c)(2) applies to the redemption of the common stock of the acquiring corporation issued in the deemed section 351 exchange, the amount distributed in such redemption

shall be applied to reduce the adjusted basis of each share of common stock directly held or deemed held by the transferor on a pro rata, share-by-share basis. See § 1.302–5(a).

(5) *Sale or exchange treatment.* If section 301 does not apply to the property treated as received in redemption of the common stock of the acquiring corporation pursuant to paragraph (a)(1) of this section, the property received by the transferor shall be treated as received in a distribution in full payment in exchange for such common stock of the acquiring corporation under section 302(a). The basis and the holding period of the common stock of the acquiring corporation that is treated as redeemed will be the same as the basis and holding period of the stock of the issuing corporation actually surrendered. The acquiring corporation shall take a cost basis in the stock of the issuing corporation that it acquires under section 1012.

* * * * *

(c) *Examples.* For purposes of the examples in this section, each of corporation is a domestic corporation that files a U.S. tax return on a calendar-year basis and in each instance the fair market value of the issuing corporation stock is in excess of its adjusted basis. The principles of this section are illustrated by the following examples:

Example 1. (i) *Facts.* Corporation X and Corporation Y each has 100 shares of common stock outstanding. A, an individual, owns one-half of the stock of each corporation, B owns one-half of the stock of Corporation X, and C owns one-half of the stock of Corporation Y. A, B, and C are unrelated. A sells 30 shares of the stock of Corporation X, which have an adjusted basis of $10, to Corporation Y for $50.

(ii) *Analysis.* Section 304(a)(1) applies to A's sale of 30 shares of Corporation X stock to Corporation Y because A controls both Corporation X and Corporation Y within the meaning of section 304(c), and Corporation Y acquires the 30 shares of Corporation X stock from A in exchange for property ($50 of cash). Pursuant to section 304(a)(1), the cash received by A is treated as a redemption of the stock of Corporation Y. Because before the sale A owns 50 percent of the stock of Corporation X and after the sale A owns only 35 percent of such stock (20 shares directly and 15 constructively because one-half of the 30 shares owned by Corporation Y are attributed to A), the redemption is substantially disproportionate as to A pursuant to the provisions of section 302(b)(2). A, therefore, recognizes a gain of $40 ($50 minus $10). If the stock surrendered is a capital asset, such gain is long-term or short-term capital gain depending on the period of time that A held such stock. A's basis in the stock of Corporation Y is not changed as a result of the sale. Under section 1012, the basis that Corporation Y takes in the acquired stock of Corporation X is its cost of $50.

Example 2. (i) *Facts.* Corporation X and Corporation Y each has 200 shares of common stock outstanding, all of which are owned by H, an individual. H has a basis $100 in his Corporation X stock and $30 in his Corporation Y stock. Corporation X has $40 and Corporation Y has $20 of current and accumulated earnings and profits. H sells his 200 shares of Corporation X stock to Corporation Y for $150 at a time when Corporation Y stock also has a fair market value of $150.

(ii) *Analysis.* Section 304(a)(1) applies to H's sale of his 200 shares of Corporation X stock to Corporation Y because H controls both Corporation X and Corporation Y within the meaning of section 304(c), and Corporation Y acquires the 200 shares of Corporation X stock from H in exchange for property. Pursuant to section 304(a)(1), the cash received by H is treated as a redemption of the stock of Corporation Y. Because before the sale H directly owns 100 percent of Corporation X and after the sale H is treated as owning 100 percent of Corporation X, section 302(a) does not apply to the deemed redemption distribution. Under section 302(d), the proceeds of the deemed redemption are treated as a distribution to which section 301 applies. Therefore, H is treated as transferring the Corporation X stock to Corporation Y in exchange for Corporation Y common stock in a transaction to which section 351(a) applies. Corporation Y's basis in the Corporation X stock acquired is $100 under section 362(a), the same basis that H had in the Corporation X stock surrendered. H takes a basis of $100 in the Corporation Y common stock H is treated as receiving in the deemed section 351 exchange. Corporation Y is then treated as redeeming such Corporation Y common stock from H for $150 in a transaction to which section 301 applies. H is treated as receiving a dividend of $60 ($20 from the current and accumulated earnings and profits of Corporation Y and then $40 from the current and accumulated earnings and profits of Corporation X) (see section 304(b)). Under § 1.302–5, the remaining $90 of the distribution will be applied to and reduce the basis of each share of Corporation Y stock held by H. Accordingly, H will have no gain on the shares deemed received in the section 351 exchange which have a $100 basis, but will have a $15 gain on the Corporation Y shares with a $30 basis. After the redemption transaction, all of H's shares in Corporation Y, including the deemed shares that are redeemed, are treated as exchanged in a recapitalization described in section 368(a)(1)(E). The basis of the redeemed shares and the shares actually outstanding in Corporation Y are allocated pursuant to § 1.358–2(a). Accordingly, of H's 200 shares in Corporation Y common stock, 100 will have a basis of $55, and 100 will have a zero basis.

Example 3. (i) *Facts.* Corporation W acquired all of the outstanding stock of Corporation X stock for $75 (100 shares of common) and then acquired all of the outstanding stock of Corporation Y (50 shares of common stock for $75 and 50 shares of common stock for $100). Only corporation Y has current or accumulated earnings and profits ($100). Corporation W sells all the shares in Corporation X to Corporation Y for $300. At the time of the transaction, the Corporation X and Corporation Y stock have the same fair market value.

(ii) *Analysis.* Section 304(a)(1) applies to Corporation W's sale of Corporation X to Corporation Y because Corporation W is in control of both Corporation X and Corporation Y within the meaning of section 304(c), and Corporation Y acquires the Corporation X stock in exchange for property. Because before the sale Corporation W owns 100 percent of Corporation X, and after the sale is treated as owning 100 percent of Corporation X, section 302(a) does not apply to the deemed redemption distribution. Under section 302(d), the proceeds of the deemed redemption are treated as a distribution to which section 301 applies. Section 1059(e)(1)(A)(iii) also applies. Corporation W is treated as transferring the Corporation X stock to Corporation Y in exchange for Corporation Y common stock in a transaction to which section 351(a) applies. Corporation Y's basis in the Corporation X stock is $75 under section 362(a), the same basis that Corporation W had in the stock it surrendered. Corporation W takes a $75 basis in the Corporation Y common stock it is deemed to receive in the deemed section 351 transaction. Corporation Y is then treated as redeeming such Corporation Y common stock from Corporation W for $300. In a redemption to which section 301 applies, Corporation W is treated as receiving a dividend of $100 (from the current and accumulated earnings and profits of Corporation Y) (see section 304(b)). Under section 1059, the $100 dividend is treated as an extraordinary dividend which, under the flush language of section 1059(e)(1)(A)(iii), reduces only the basis of the stock deemed redeemed, which has a basis of $75. Accordingly, Corporation W recognizes a $25 gain. Under § 1.302–5, the remaining $200 of the distribution is applied to reduce the basis of the Corporation Y stock held by Corporation W on a pro rata, share-by-share basis, including the basis in the shares deemed redeemed. Accordingly, $100 is allocated to the Corporation Y stock that Corporation W deemed received in the section 351 transaction that now has a zero basis after the application of section 1059 and the remaining $100 is allocated to Corporation W's other two blocks of Corporation Y stock. Corporation W has a total gain of $125 on the Corporation Y stock deemed received and redeemed; and $25 and $50, respectively, of remaining basis in the other 2 blocks of corporation Y shares. After the redemption transaction, all of Corporation W's shares in corporation Y, including the deemed shares that are redeemed, are treated as exchanged in a recapitalization described in section 368(a)(1)(E). As a result, corporation W will have 100 shares in corporation Y, 50 shares will have a zero basis, 25 shares will have a $25 basis, and 25 shares will have a $50 basis.

(d) *Effective/applicability date.* This section applies to transactions that

occur after the date these regulations are published as final regulations in the **Federal Register**.

Par. 7. Section 1.304–3 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 1.304–3 Acquisition by a subsidiary.

(a) *In general.* If a subsidiary, in return for property, acquires stock of its parent corporation from a shareholder of the parent corporation, the acquisition of such stock will be treated as if the parent corporation had redeemed its own stock in exchange for the property. For the purposes of this section, a corporation is a parent corporation if it meets the 50 percent ownership requirements of section 304(c). The determination of whether the amount received shall be treated as received in payment in exchange for the stock will be made by applying section 302(b) with reference to the stock of the issuing parent corporation, or by applying section 303.

* * * * *

(c) *Effective/applicability date.* This section applies to transactions that occur after the date these regulations are published as final regulations in the **Federal Register**.

Par. 8. Section 1.304–5 is amended by adding a sentence at the end of paragraph (a) and revising paragraph (c) to read as follows:

§ 1.304–5 Control.

(a) * * * Specifically, section 318(a) will be applied by substituting ''5 percent'' for ''50 percent'' in section 318(a)(2)(C) and by substituting ''5 percent'' for ''50 percent'' in section 318(a)(3)(C), except that if section 318(a)(3)(C) would not have applied but for this substitution, by considering a corporation as owning the stock (other than stock in such corporation) owned by or for any shareholder of such corporation in that proportion which the value of the stock which such shareholder owned in such corporation bears to the value of all stock in such corporation.

* * * * *

(c) *Effective/applicability date.* This section applies to transactions that occur after the date these regulations are published as final regulations in the **Federal Register**.

Par. 9. Section 1.351–2 is amended by redesignating paragraphs (b), (c), (d) and (e) as paragraphs (c), (d), (e) and (f), respectively and adding new paragraphs (b) and (g) to read as follows:

§ 1.351–2 Receipt of property.

* * * * *

(b) To determine the amount of gain recognized under section 351(b), the fair market value of each category of consideration received by each transferor is allocated to the properties transferred in proportion to each property's relative fair market value. The application of this paragraph (b) is illustrated by the following example:

Example. C transfers $2,000 in exchange for 200 shares of stock. D transfers Asset I, Asset II, and Asset III in exchange for $100 cash and 100 shares of stock. The exchange is subject to section 351. At the time of the exchange, Asset I has a fair market value of $220 and a basis of $400, Asset II has a fair market value of $330 and a basis of $200, and Asset III has a fair market value of $550 and a basis of $250. No gain or loss is recognized to C. Gain, but not loss, is recognized by D. To determine the gain recognized by D under section 351(b), the fair market value of each category of consideration received is allocated to the properties transferred in proportion to the relative fair market values of the properties transferred. Asset I represents 20 percent of the total fair market value of assets transferred (220/1100), Asset II represents 30 percent (330/1100), and Asset III represents 50 percent (550/1100). Under paragraph (b) of this section, the amount of gain recognized by D is determined by allocating a pro rata portion of each class of consideration received to each property transferred as follows: (A) $20 cash and 20 shares of stock to Asset I (20 percent of 100 shares of stock and 20 percent of $100 (B) $30 cash and 30 shares of stock to Asset II (30 percent of 100 shares of stock and 30 percent of $100); and (C) $50 cash and 50 shares of stock to Asset III (50 percent of 100 shares of stock and 50 percent of $100). D realizes a loss of $180 on Asset I, none of which is recognized, a gain of $130 on Asset II, $30 of which is recognized, and a gain of $300 on Asset III, $50 of which is recognized.

* * * * *

(g) This section applies to exchanges that occur after the date these regulations are published as final regulations in the **Federal Register**, except for exchanges which occur pursuant to a written agreement that is binding on or before the date these regulations are published as final in the **Federal Register**. For exchanges that occur on or before the date that these regulations are published as final regulations in the **Federal Register**, see this section as contained in 26 CFR part 1 revised April 1, for the year before these regulations are published as final regulations in the **Federal Register**.

Par. 10. Section 1.354–1 is amended by:

1. Revising the section heading.
2. Redesignating paragraphs (d), (e) and (f) as paragraphs (e), (f) and (g), respectively.
3. Adding new paragraphs (d) and (h).
4. Adding *Example 5* to the end of newly designated paragraph (e).

The additions and revisions read as follows:

§ 1.354–1 Exchanges of stock, securities and other property in certain reorganizations.

* * * * *

(d) *Exchanges solely or partly for money or other property*—(1) *Determination of consideration for a share of stock or a security.* In determining the consideration received for a share of stock or a security, except as otherwise provided in this paragraph (d)(1), a pro rata portion of any other property and money received shall be treated as received in exchange for each share of stock and security surrendered, based on the fair market value of such surrendered share of stock or security. However, to the extent the terms of the exchange specify the other property or money that is received in exchange for a particular share of stock or security surrendered or a particular class of stock or securities surrendered, such terms shall control provided that the terms are economically reasonable, unless the shareholder's exchange has the effect of a distribution of a dividend. If the exchange has the effect of a distribution of a dividend and the terms of an exchange specify the other property or money that is received with respect to a particular share of stock and such specification would otherwise be economically reasonable, such other property or money shall be treated as received pro rata in exchange for each share of stock within that class (as defined in section 1.302–5(b)(2)) held by the exchanging shareholder. Notwithstanding the preceding sentence, economically reasonable designations between classes of stock or securities (as opposed to within a class) shall generally control. All exchanges made by an exchanging shareholder, whether governed by section 354, 356, or 302, are taken into account to determine whether the shareholder's exchange has the effect of a distribution of a dividend.

(2) *Treatment of exchanges of stock solely for money or other property.* Neither section 354 nor so much of section 356 as relates to section 354 applies to a shareholder's surrender of a share of stock in exchange solely for money or other property that is not permitted to be received without the recognition of gain, even though such exchange is pursuant to a plan of reorganization described in section 368(a), and even though section 354, section 356 or both sections 354 and 356 apply to the exchange of other shares by that shareholder or other shareholders. See section 302 and the regulations

under that section for the treatment of such an exchange.

(e) * * *

Example 5. D owns shares of Class A common stock, Series 1 preferred stock, and Series 2 preferred stock in Corporation T. The Series 1 preferred stock and the Series 2 preferred stock are different classes of stock. Pursuant to a reorganization described in section 368(a) to which corporations T and V are parties, D surrenders all of D's Class A common stock in Corporation T in exchange for common stock in Corporation V, all of D's Series 1 preferred stock in Corporation T in exchange for both cash and common stock in Corporation V, and all of D's Series 2 preferred stock in Corporation T in exchange solely for cash. Section 354 applies to the exchange of the Class A common stock in Corporation T for Corporation V common stock. Section 356 applies to the exchange of Series 1 preferred stock for Corporation V common stock and cash. Neither section 354 (nor so much of section 356 as relates to section 354) applies to the exchange of Series 2 preferred stock in Corporation T solely for cash (see section 302 and regulations thereunder).

* * * * *

(h) This section applies to exchanges that occur after the date these regulations are published as final regulations in the **Federal Register**, except for exchanges which occur pursuant to a written agreement that is binding on or before the date these regulations are published as final in the **Federal Register**. For exchanges that occur on or before the date these regulations are published as final regulations in the **Federal Register**, see this section as contained in 26 CFR part 1 revised April 1, for the year before these regulations are published as final regulations in the **Federal Register**.

Par. 11. Section 1.355–1 is amended by adding new paragraph (e) to read as follows:

§ 1.355–1 Distribution of stock and securities of a controlled corporation.

* * * * *

(e) *Exchanges solely or partly for money and other property*—(1) *Determination of consideration for a share of stock or a security.* In determining the consideration received for a share of stock or a security, except as otherwise provided in this paragraph (e)(1), a pro rata portion of any other property and money received shall be treated as received in exchange for each share of stock and security surrendered, based on the fair market value of such surrendered share of stock or security. However, to the extent the terms of the exchange specify the other property or money that is received in exchange for a particular share of stock or security surrendered or a particular class of stock or securities surrendered, such terms shall control provided that the terms are economically reasonable, unless the shareholder's exchange has the effect of a distribution of a dividend. If the exchange has the effect of a distribution of a dividend and the terms of an exchange specify the other property or money that is received with respect to a particular share of stock and such specification would otherwise be economically reasonable, such other property or money shall be treated as received pro rata in exchange for each share of stock within that class (as defined in § 1.302–5(b)(2)) held by the exchanging shareholder. Notwithstanding the preceding sentence, economically reasonable designations among classes of stock (as opposed to within a class) shall generally control. All exchanges made by an exchanging shareholder, whether governed by section 355, 356, or 302, are taken into account to determine whether the shareholder's exchange has the effect of a distribution of a dividend.

(2) *Treatment of exchanges of stock solely for money or other property.* Neither section 355 nor so much of section 356 as relates to section 355 applies to a shareholder's surrender of a share of stock in exchange solely for money or other property that is not permitted to be received without the recognition of gain, even though such exchange is pursuant to a plan of reorganization described in section 368(a), or even though section 355, section 356 or both sections 355 and 356 apply to the exchange of other shares by that shareholder or other shareholders. See section 302 and the regulations under that section for the treatment of such an exchange. Any such exchange is treated as occurring immediately before any distribution of or exchange for the stock of the controlled corporation to which section 355 (or so much of section 356 as relates to section 355) applies.

(3) *Effective/applicability date.* This paragraph (e) applies to transactions that occur after the date these regulations are published as final regulations in the **Federal Register**, except for exchanges which occur pursuant to a written agreement that is binding on or before the date these regulations are published as final in the **Federal Register**.

Par. 12. Section 1.356–1 is amended by revising paragraph (b), Examples 3 and 4 to paragraph (d), and paragraph (g) to read as follows:

§ 1.356–1 Receipt of additional consideration in connection with an exchange.

* * * * *

(b) The rules of § 1.354–1(d)(1) or § 1.355–1(e)(1), as the case may be, apply for purposes of computing the gain, if any, recognized pursuant to section 356(a) and paragraph (a)(1) of this section.

* * * * *

(d) * * *

Example 3. (i) *Facts.* J, an individual, acquired 10 shares of stock of Corporation X on Date 1 for $3 each (Block 1) and 10 shares of stock of Corporation X on Date 2 for $9 each (Block 2). On Date 3, Corporation Y acquires the assets of Corporation X in a reorganization under section 368(a)(1)(A). Pursuant to the terms of the plan of reorganization, J surrenders all of J's shares of Corporation X stock for 10 shares of Corporation Y stock and $100 of cash. On the date of the exchange, the fair market value of each share of stock of Corporation X is $10 and the fair market value of each share of Corporation Y stock is $10. The terms of the exchange do not specify that shares of Corporation Y stock or cash are received in exchange for particular shares of stock of Corporation X. In addition, the distribution of the $100 of cash does not have the effect of a distribution of a dividend.

(ii) *Analysis.* Under paragraph (b) of this section, because the terms of the exchange do not specify that the cash is received in exchange for particular shares of stock of Corporation X, a pro rata portion of the cash received is treated as received in exchange for each share of stock of Corporation X based on the fair market value of the surrendered shares. Therefore, J is treated as receiving shares of Corporation Y stock with a fair market value of $100 and $100 of cash in exchange for each block of J's stock of Corporation X. J realizes a gain of $70 on the exchange of the Block 1 shares of Corporation X stock, $50 of which is recognized under section 356 and paragraph (a) of this section, and J realizes a gain of $10 on the exchange of the Block 2 shares of Corporation X stock, all of which is recognized under section 356 and paragraph (a) of this section. Because J's gain recognized is not treated as a dividend under section 356(a)(2), such gain shall be treated as gain from the exchange of property.

Example 4. (i) *Facts.* The facts are the same as in *Example 3*, except that the terms of the plan of reorganization specify that J receives 10 shares of stock of Corporation Y in exchange for J's Block 1 shares of stock of Corporation X and $100 of cash in exchange for J's Block 2 shares of stock of corporation X.

(ii) *Analysis.* Under paragraph (b) of this section, because the terms of the exchange specify that J receives 10 shares of stock of Corporation Y in exchange for J's Block 1 shares of stock of Corporation X and $100 of cash in exchange for J's Block 2 shares of stock of Corporation X and such terms are economically reasonable, such terms control. J realizes a gain of $70 on the exchange of the Block 1 shares of stock, none of which is recognized under section 354. J realizes a gain of $10 on the exchange of the Block 2 shares of stock of Corporation X, all of which is recognized under section 302(a).

* * * * *

(g) This section applies to exchanges and distributions that occur after the date these regulations are published as final regulations in the **Federal Register**, except for exchanges which occur pursuant to a written agreement that is binding on or before the date these regulations are published as final in the **Federal Register**. For exchanges and distributions that occur on or before the date these regulations are published as final regulations in the **Federal Register**, see this section as contained in 26 CFR part 1 revised April 1, for the year before these regulations are published as final regulations in the **Federal Register**.

Par. 13. Section 1.358–1 is revised to read as follows:

§ 1.358–1 Basis to distributees.

(a) *Certain exchanges or distributions in which only nonrecognition property is received*—(1) *Exchanges to which section 354 or 355 applies.* In the case of an exchange to which section 354 or 355 applies in which only nonrecognition property is received, the sum of the basis of all of the stock and securities received in the transaction shall be the same as the basis of all of the stock and securities in such corporation surrendered in the transaction, allocated in the manner described in § 1.358–2.

(2) *Distributions to which section 355 applies.* In the case of a distribution to which section 355 applies in which only nonrecognition property is received, the sum of the basis of all of the stock and securities with respect to which the distribution is made plus the basis of all of the stock and securities received in the distribution with respect to such stock and securities shall be the same as the basis of the stock and securities with respect to which the distribution is made immediately before the transaction, allocated in the manner described in § 1.358–2.

(3) *Exchanges to which section 351 or 361 applies.* In the case of an exchange to which section 351 or 361 applies in which only nonrecognition property is received, the basis of all of the stock and securities received in the exchange shall be the same as the basis of all of the property exchanged for such stock and securities.

(b) *Certain exchanges or distributions in which both nonrecognition property and ''other property'' or money are received*—(1) *Exchanges or distributions to which section 351, 356, or 361 applies.* If in an exchange or distribution to which section 351, 356, or 361 applies both nonrecognition property and ''other property'' or money are received, the basis of the nonrecognition property held after the transaction shall be determined as described in paragraph (a) of this section, decreased by the sum of the money and the fair market value of the ''other property'' (as of the date of the transaction) received and increased by the sum of the amount treated as a dividend (if any) and the amount of the gain recognized on the exchange (other than gain treated as a dividend).

(2) *Cases in which loss is recognized.* In any case in which a taxpayer transfers property with respect to which loss is recognized, such loss shall be reflected in determining the basis of the property received in the exchange.

(3) *Basis of ''other property'' received.* The basis of the ''other property'' is its fair market value as of the date of the transaction.

(c) *Other rules.* See § 1.460–4(k)(3)(iv)(A) for rules relating to stock basis adjustments required where a contract accounted for using a long-term contract method of accounting is transferred in a transaction described in section 351 or a reorganization described in section 368(a)(1)(D) with respect to which the requirements of section 355 (or so much of section 356 as relates to section 355) are met.

(d) The application of this section may be illustrated by the following example:

Example. A purchased a share of stock in Corporation X on Date 1 for $150. Since that date, A has received distributions under section 301(c)(2) totaling $60, so that A's adjusted basis for the stock is $90. In a transaction qualifying under section 356, A exchanged this share for one share in Corporation Y, with a value of $100, cash of $10, and other property with a fair market value of $30. The exchange had the effect of the distribution of a dividend. A's ratable share of the earnings and profits of Corporation X was $5. A realized a gain of $50 on the exchange ($140 − $90), but the amount of gain recognized is limited to $40, the sum of the cash received and the fair market value of the other property. Of the gain recognized, $5 is taxable as a dividend, and $35 is taxable as a gain from the exchange of property. The basis to A of the one share of stock of Corporation Y is $90, that is the adjusted basis of the one share of stock of Corporation X ($90), decreased by the sum of the cash received ($10) and the fair market value of the other property received ($30) and increased by the sum of the amount treated as a dividend ($5) and the amount treated as a gain from the exchange of property ($35). The basis of the other property received is $30.

(e) *Effective/applicability date.* This section applies to exchanges and distributions of stock and securities that occur after the date these regulations are published as final regulations in the **Federal Register**, except for exchanges which occur pursuant to a written agreement that is binding on or before the date these regulations are published as final in the **Federal Register**. For exchanges and distributions that occur on or before the date these regulations are published as final regulations in the **Federal Register**, see this section as contained in 26 CFR part 1 revised April 1, for the year before these regulations are published as final regulations in the **Federal Register**.

Par. 14. Section 1.358–2 is revised to read as follows:

§ 1.358–2 Allocation of basis among nonrecognition property in certain exchanges or distributions.

(a) *Introduction*—(1) *Scope.* This section prescribes rules for allocating basis in the case of an exchange or distribution to which section 354, 355 or 356 applies. For rules that apply to transfers of stock and other property where the transfer of stock is described in section 351 but does not qualify as a reorganization, see § 1.358–2(g). For transfers of stock described in section 361, see § 1.358–2(h).

(2) *Definitions.* As used in this section the term *stock* means stock which is not ''other property'' under sections 351, 356, or 361, as applicable. The term *securities* means securities (including, where appropriate, fractional parts of securities) which are not ''other property'' under sections 356 or 361, as applicable. Stock, or securities, as the case may be, which differ either because they are in different corporations or because the rights attributable to them differ (although they are in the same corporation) are considered different classes of stock or securities, as the case may be, for purposes of this section.

(b) *Exchanges to which section 354, 355, or 356 applies.* If a shareholder or security holder surrenders one or more shares of stock or one or more securities in an exchange under the terms of section 354, 355 or 356, the following rules apply:

(1) *In general.* Except as otherwise provided in this section, the basis of each share of stock or security received in the exchange shall be the same as the basis of the share or shares of stock or security or securities (or allocable portions thereof) exchanged therefor (as adjusted under § 1.358–1).

(2) *More shares of stock or securities received than surrendered.* If more than one share of stock or security is received in exchange for one share of stock or one security, the basis of the share of stock or security surrendered shall be allocated to the shares of stock or securities received in proportion to the fair market value of the shares of stock or securities received.

(3) *Fewer shares of stock or securities received than surrendered*—(i) *In general.* If one share of stock or security is received in exchange for more than one share of stock or security or if a fraction of a share of stock or security is received, then the basis of the shares of stock or securities surrendered must be allocated to the shares of stock or securities (or allocable portions thereof) received in a manner that reflects, to the greatest extent possible, that a share of stock or security received is received in respect of shares of stock or securities that were acquired on the same date and at the same price. To the extent it is not possible to allocate basis in this manner, the basis of the shares of stock or securities surrendered must be allocated to the shares of stock or securities (or allocable portions thereof) received in a manner that minimizes the disparity in the holding periods of the surrendered shares of stock or securities whose basis is allocated to any particular share of stock or security received.

(ii) *Surrendered shares of stock or securities acquired on different dates or at different prices.* If a share of stock or a security is received in exchange for more than one share of stock or security and such shares of stock or securities were acquired on different dates or at different prices, the share of stock or security received shall be divided into segments based on the relative fair market values of the shares of stock or securities surrendered in exchange for such share or security. Each segment shall have a basis determined under the rules of this section and a corresponding holding period.

(4) *''Other property,'' money, or more than one class of stock or securities received.* If a shareholder or security holder receives shares of stock or securities of more than one class, or receives ''other property'' or money in addition to shares of stock or securities, the rules of §§ 1.354–1(d)(1) and 1.355–1(e)(1) apply for purposes of applying the rules of this section.

(5) *Pro rata exchanges to which section 355 or section 356(b) applies.* If a shareholder or security holder surrenders stock in distributing (as defined in § 1.355–1(b)) for only stock in controlled and the receipt of the controlled stock would be treated, within the meaning of section 302(d), as a distribution of property to which section 301 applies if the controlled stock received were money or other property, then the basis of the shares received shall be determined under the rules of paragraph (c) of this section and not the rules of this paragraph (b). The rules of paragraph (c) and not the rules of this paragraph (b) also apply to distributions subject to section 356(b).

(c) *Distributions to which section 355 applies.* If a shareholder or security holder receives one or more shares of stock or one or more securities in a distribution under section 355 (or so much of section 356 as relates to section 355), the following rules apply:

(1) *In general.* Except as otherwise provided in this section, the basis of each share of stock or security of the distributing corporation (as defined in § 1.355–1(b)), as adjusted under § 1.358–1, shall be allocated between the share of stock or security of the distributing corporation with respect to which the distribution is made and the share or shares of stock or security or securities (or allocable portions thereof) received in proportion to their fair market values.

(2) *Fewer shares of stock or securities received than with respect to which distributed*—(i) *In general.* If one share of stock or security is received with respect to more than one share of stock or security or if a fraction of a share of stock or security is received, then the basis of each share of stock or security of the distributing corporation must be allocated to the shares of stock or securities (or allocable portions thereof) received in a manner that reflects that, to the greatest extent possible, a share of stock or security received is received with respect to shares of stock or securities acquired on the same date and at the same price. To the extent it is not possible to allocate basis in this manner, the basis of each share of stock or security of the distributing corporation must be allocated to the shares of stock or securities (or allocable portions thereof) received in a manner that minimizes the disparity in the holding periods of the shares of stock or securities with respect to which such shares of stock or securities are received.

(ii) *Distribution upon shares of stock or securities acquired on different dates or at different prices.* If a share of stock or a security is received with respect to more than one share of stock or security and such shares or securities were acquired on different dates or at different prices, the share of stock or security received shall be divided into segments based on the relative fair market values of the shares of stock or securities with respect to which the share of stock or security is received. Each segment shall have a basis determined under the rules of this section and a corresponding holding period.

(3) *''Other property,'' money, or more than one class of stock or securities received.* If a shareholder or security holder receives shares of stock or securities of more than one class, or receives ''other property'' or money in addition to stock or securities, the rules of § 1.355–1(e)(1) apply for purposes of applying the rules of this section as though the distribution were an exchange.

(d) *Reorganizations in which stock is deemed received.* For purposes of this section, if a shareholder or security holder surrenders a share of stock or a security in a transaction under the terms of section 354 (or so much of section 356 as relates to section 354) in which such shareholder or security holder receives no property or receives property (including property permitted by section 354 to be received without the recognition of gain or ''other property'' or money) with a fair market value less than that of the stock or securities surrendered in the transaction, such shareholder or security holder shall be treated as provided in paragraphs (1) and (2) of this paragraph (d).

(1) *Step one: Deemed issuance.* First, the shareholder or security holder shall be treated as receiving the stock, securities, other property, and money actually received by the shareholder or security holder in the transaction and an amount of stock of the issuing corporation (as defined in § 1.368–1(b)) that has a value equal to the excess of the value of the stock or securities the shareholder or security holder surrendered in the transaction over the value of the stock, securities, other property, and money the shareholder or security holder actually received in the transaction. If the shareholder owns only one class of stock of the issuing corporation the receipt of which would be consistent with the economic rights associated with each class of stock of the issuing corporation, the stock deemed received by the shareholder pursuant to the previous sentence shall be stock of such class. If the shareholder owns multiple classes of stock of the issuing corporation the receipt of which would be consistent with the economic rights associated with each class of stock of the issuing corporation, the stock deemed received by the shareholder shall be stock of each such class owned by the shareholder immediately prior to the transaction, in proportion to the value of the stock of each such class owned by the shareholder immediately prior to the transaction. The basis of each share of stock or security deemed received and actually received shall be determined under the rules of this section.

(2) *Step two: Deemed section 368(a)(1)(E) exchange.* Second, the

shareholder or security holder shall then be treated as surrendering all of its shares of stock and securities in the issuing corporation, including those shares of stock or securities held immediately prior to the transaction, those shares of stock or securities actually received in the transaction, and those shares of stock deemed received pursuant to paragraph (d)(1) of this section, in a reorganization under section 368(a)(1)(E) in exchange for the shares of stock and securities of the issuing corporation that the shareholder or security holder actually holds immediately after the transaction. The basis of each share of stock and security deemed received in the reorganization under section 368(a)(1)(E) shall be determined under the rules of this section.

(e) *Designating which stock or securities were received for, or with respect to, the stock or securities surrendered or distributed upon*—(1) *In general.* If a shareholder or security holder that purchased or acquired shares of stock or securities in a corporation on different dates or at different prices exchanges such shares of stock or securities under the terms of section 354, 355, or 356, or receives a distribution of shares of stock or securities under the terms of section 355 (or so much of section 356 as relates to section 355), and the shareholder or security holder is not able to identify which particular share of stock or security (or allocable portion of a share of stock or security) is received (or deemed received) in exchange for, or with respect to, a particular share of stock or security, the shareholder or security holder may designate subject to the limitations of this section, which share of stock or security is received in exchange for, or with respect to, a particular share of stock or security, provided that such designation is consistent with the terms of the exchange or distribution (or an exchange deemed to have occurred pursuant to paragraph (d) of this section), and the other rules of this section. The designation will be binding for purposes of determining the Federal tax consequences of any sale or transfer of, or distribution with respect to, the shares or securities received.

(2) *Timing for designation*—(i) *In exchanges under section 354 or 356.* In the case of an exchange under the terms of section 354 or 356 (including a deemed exchange as a result of the application of paragraph (d) of this section), the designation must be made on or before the first date on which the basis of a share of stock or a security received (or deemed received in the reorganization under section 368(a)(1)(E) in the case of a transaction to which paragraph (d) of this section applies) is relevant. The basis of the shares or securities received in an exchange under the terms of section 354 or section 356, for example, is relevant when such shares or securities are sold or otherwise transferred.

(ii) *In exchanges or distributions under section 355.* In the case of an exchange or distribution under the terms of section 355 (or so much of section 356 as relates to section 355), the designation must be made on or before the first date on which the basis of a share of stock or a security of the distributing corporation or the controlled corporation (as defined in § 1.355–1(b)) is relevant.

(3) *Failure to designate.* If the shareholder fails to make a designation in a case in which the shareholder is not able to identify which share of stock is received in exchange for, or with respect to, a particular share of stock, then the shareholder will not be able to identify which shares are sold or transferred for purposes of determining the basis of property sold or transferred under section 1012 and § 1.1012–1(c) and, instead, will be treated as selling or transferring the share received in respect of the earliest share purchased or acquired.

(f) *Applicability of section to certain overlap situations*—(1) *Exchanges described in both section 1036 and section 354 or 356.* The rules of paragraphs (a) through (e) of this section shall apply to determine the basis of a share of stock or security received by a shareholder or security holder in an exchange described in both section 1036 and section 354 or 356.

(2) *Exchanges described in both section 351 and section 354 or 356.* The rules of paragraphs (a) through (e) of this section shall apply to determine the basis of a share of stock or security received by a shareholder or security holder in an exchange described in both section 351 and section 354 or 356, unless liabilities of the shareholder or security holder are assumed in connection with the exchange.

(g) *Section 351 exchanges*—(1) *In general.* Except as provided in paragraph (g)(2) of this section, if in an exchange to which section 351 applies property is transferred to a corporation and the transferor receives more than one share of stock, then the aggregate basis of the property transferred (as adjusted under § 1.358–1) shall be allocated among all of the shares of stock received in proportion to the fair market values of each share of stock.

(2) *Stock and property transferred in an exchange without a liability assumption.* If in an exchange to which section 351 applies stock or stock and property is transferred to a corporation and no liability is assumed by the transferee in the exchange, then the basis of the stock transferred (as adjusted under § 1.358–1) shall be allocated pursuant to paragraphs (b)(1) through (b)(3) of this section. Such rules also apply to other property, money or more than one class of stock or securities received.

(3) *Transactions in which stock is deemed received.* For purposes of this paragraph (g), if a shareholder transfers property to a corporation in a transaction to which section 351 applies, and such shareholder receives no property or property (including property permitted by section 351 to be received without the recognition of gain or ''other property'' or money) in such corporation with a fair market value less than that of the property transferred in the transaction, such shareholder shall be treated as provided in paragraphs (3)(i) and (ii) of this paragraph (g).

(i) *Step one: Deemed issuance.* First, the shareholder shall be treated as receiving the stock, other property, and money actually received by the shareholder in the transaction and an amount of stock of the transferee corporation that has a value equal to the excess of the value of the property the shareholder transferred in the transaction over the value of the stock, other property, and money the shareholder actually received in the transaction. If the shareholder owns only one class of stock of the transferee corporation the receipt of which would be consistent with the economic rights associated with each class of stock of the transferee corporation, the stock deemed received by the shareholder pursuant to the previous sentence shall be stock of such class. If the shareholder owns multiple classes of stock of the transferee corporation the receipt of which would be consistent with the economic rights associated with each class of stock of the transferee corporation, the stock deemed received by the shareholder shall be stock of each such class owned by the shareholder immediately prior to the transaction, in proportion to the value of the stock of each such class owned by the shareholder immediately prior to the transaction.

(ii) *Step two: Deemed section 368(a)(1)(E) exchange.* Second, the shareholder shall then be treated as surrendering all of its shares of stock in the transferee corporation, including those shares of stock held immediately

prior to the transaction, those shares of stock actually received in the transaction, and those shares of stock deemed received pursuant to paragraph (3)(i) of this paragraph (g), in a reorganization under section 368(a)(1)(E) in exchange for the shares of stock of the transferee corporation that the shareholder actually holds immediately after the transaction. The basis of each share of stock deemed received in the reorganization under section 368(a)(1)(E) shall be determined under the rules of this section.

(h) *Section 361 exchanges.* If in an exchange to which section 361 applies property is transferred to a corporation and the transferor receives stock or securities of more than one class or receives both stock and securities, then the basis of the property transferred (as adjusted under § 1.358–1) shall be allocated among all of the stock and securities received in proportion to the fair market values of the stock of each class and the securities of each class.

(i) *Examples.* The application of this section is illustrated by the following examples:

Example 1. More shares of stock received than surrendered. (i) *Facts.* J, an individual, acquired 20 shares of Corporation X stock on Date 1 for $3 each and 10 shares of Corporation X stock on Date 2 for $6 each. On Date 3, Corporation Y acquires the assets of Corporation X in a reorganization under section 368(a)(1)(A). Pursuant to the terms of the plan of reorganization, J receives 2 shares of Corporation Y stock in exchange for each share of Corporation X stock. Therefore, J receives 60 shares of Corporation Y stock. Pursuant to section 354, J recognizes no gain or loss on the exchange. J is not able to identify which shares of Corporation Y stock are received in exchange for each share of Corporation X stock.

(ii) *Analysis.* Under paragraph (b)(2) of this section, J has 40 shares of Corporation Y stock each of which has a basis of $1.50 and is treated as having been acquired on Date 1 and 20 shares of Corporation Y stock each of which has a basis of $3 and is treated as having been acquired on Date 2. Under paragraph (e) of this section, on or before the date on which the basis of a share of Corporation Y stock received becomes relevant, J may designate which of the shares of corporation Y stock have a basis of $1.50 and which have a basis of $3.

Example 2. More shares of stock received than surrendered. (i) *Facts.* The facts are the same as in *Example 1*, except that instead of receiving 2 shares of Corporation Y stock in exchange for each share of Corporation X stock, J receives 1½ shares of Corporation Y stock in exchange for each share of Corporation X stock. Therefore, J receives 45 shares of corporation Y stock. Again, J is not able to identify which shares (or portions of shares) of Corporation Y stock are received in exchange for each share of Corporation X stock.

(ii) *Analysis.* Under paragraph (b)(2) of this section, J has 30 shares of Corporation Y stock each of which has a basis of $2 and is treated as having been acquired on Date 1 and 15 shares of Corporation Y stock each of which has a basis of $4 and is treated as having been acquired on Date 2. Under paragraph (e) of this section, on or before the date on which the basis of a share of Corporation Y stock received becomes relevant, J may designate which of the shares of Corporation Y stock received have a basis of $2 and which have a basis of $4.

Example 3. More than one class of stock received. (i) *Facts.* J, an individual, acquired 10 shares of Class A stock of Corporation X on Date 1 for $3 each, 10 shares of Class A stock of Corporation X on Date 2 for $9 each, and 10 shares of Class B stock of Corporation X on Date 3 for $3 each. On Date 4, J surrenders all of J's shares of Class A stock in exchange for 20 shares of new Class C stock and 20 shares of new Class D stock in a reorganization under section 368(a)(1)(E). Pursuant to section 354, J recognizes no gain or loss on the exchange. On the date of the exchange, the fair market value of each share of Class A stock is $6, the fair market value of each share of Class C stock is $2, and the fair market value of each share of Class D stock is $4. The terms of the exchange do not specify that shares of Class C stock or shares of Class D stock of Corporation X are received in exchange for particular shares of Class A stock of Corporation X.

(ii) *Analysis.* Under paragraph (b)(4) of this section, because the terms of the exchange do not specify that shares of Class C stock or shares of Class D stock of Corporation X are received in exchange for particular shares of Class A stock of Corporation X, a pro rata portion of the shares of Class C stock and shares of Class D stock received will be treated as received in exchange for each share of Class A stock based on the fair market value of the surrendered shares of Class A stock. Therefore, J is treated as receiving one share of Class C stock and one share of Class D stock in exchange for each share of Class A stock. Under paragraph (b)(2) of this section, J has 10 shares of Class C stock, each of which has a basis of $1 and is treated as having been acquired on Date 1 and 10 shares of Class C stock, each of which has a basis of $3 and is treated as having been acquired on Date 2. In addition, J has 10 shares of Class D stock, each of which has a basis of $2 and is treated as having been acquired on Date 1 and 10 shares of Class D stock, each of which has a basis of $6 and is treated as having been acquired on Date 2. J's basis in each share of Class B stock remains $3. Under paragraph (e) of this section, on or before the date on which the basis of a share of Class C stock or Class D stock received becomes relevant, J may designate which of the shares of Class C stock have a basis of $1 and which have a basis of $3, and which of the shares of Class D stock have a basis of $2 and which have a basis of $6.

Example 4. Money received in addition to stock. (i) *Facts.* J, an individual, acquired 10 shares of stock of Corporation X on Date 1 for $2 each (Block 1), 10 shares of stock of Corporation X on Date 2 for $4 each (Block 2), and 20 shares of stock of Corporation X on Date 3 for $6 each (Block 3). On Date 4, Corporation Y acquires the assets of Corporation X in a reorganization under section 368(a)(1)(A). Pursuant to the terms of the plan of reorganization, J surrenders all of J's shares of Corporation X stock for 40 shares of Corporation Y stock and $200 of cash. The distribution of $200 of cash does not have the effect of a distribution of a dividend. On the date of the exchange, the fair market value of each share of stock of Corporation X is $10, and the fair market value of each share of Corporation Y stock is $5. The terms of the exchange do not specify that shares of Corporation Y stock or cash are received in exchange for particular shares of stock of Corporation X.

(ii) *Analysis.* Under paragraph (b)(4) of this section and under § 1.356–1(b), because the terms of the exchange do not specify that shares of Corporation Y stock or cash are received in exchange for particular shares of stock of Corporation X, a pro rata portion of the shares of Corporation Y stock and cash received will be treated as received in exchange for each share of stock of Corporation X surrendered based on the fair market value of such stock. Therefore, J is treated as receiving one share of Corporation Y stock and $5 of cash in exchange for each share of stock of Corporation X. J realizes a gain of $80 on the exchange of Block 1, $50 of which is recognized under § 1.356–1(a). J realizes a gain of $60 of the exchange of Block 2, $50 of which is recognized under § 1.356–1(a). J realizes a gain of $80 on the exchange of the Block 3 shares of stock of Corporation X, all of which is recognized under § 1.356–1(a). Under paragraph (b)(1) of this section, J has 10 shares of Corporation Y stock, each of which has a basis of $2 and is treated as having been acquired on Date 1, 10 shares of Corporation Y stock, each of which has a basis of $4 and is treated as having been acquired on Date 2, and 20 shares of Corporation Y stock, each of which has a basis of $5 and is treated as having been acquired on Date 3. Under paragraph (e) of this section, on or before the date on which the basis of a share of Corporation Y stock received becomes relevant, J may designate which of the shares of Corporation Y stock received have a basis of $2, which have a basis of $4, and which have a basis of $5.

Example 5. Money received in addition to stock. (i) *Facts.* The facts are the same as in *Example 4,* except that the terms of the plan of reorganization specify that J receives 40 shares of stock of Corporation Y in exchange for J's Block 1 and Block 2 shares of stock of Corporation X and $200 of cash in exchange for J's Block 3 shares of stock of Corporation X.

(ii) *Analysis.* Under paragraph (b)(4) of this section and under § 1.356–1(b), because the terms of the exchange specify that J receives 40 shares of stock of Corporation Y in exchange for J's Block 1 and Block 2 shares of stock of Corporation X and $200 of cash in exchange for J's Block 3 shares of stock of Corporation X and such terms are economically reasonable and the distribution is not dividend equivalent, such terms control. J realizes a gain of $80 on the exchange of Block 1, none of which is recognized under section 354. J realizes a

gain of $60 on the exchange of Block 2, none of which is recognized under section 354. J realizes a gain of $80 on the exchange of the Block 3 shares of stock of Corporation X, all of which is recognized under section 302(a). Under paragraph (b)(2) of this section, J has 20 shares of Corporation Y stock, each of which has a basis of $1 and is treated as having been acquired on Date 1, and 20 shares of Corporation Y stock, each of which has a basis of $2 and is treated as having been acquired on Date 2. Under paragraph (e) of this section, on or before the date on which the basis of a share of Corporation Y stock received becomes relevant, J may designate which of the shares of Corporation Y stock received have a basis of $1 and which have a basis of $2.

Example 6. Stock and securities received as nonrecognition property. (i) *Facts.* J, an individual, acquired 10 shares of stock of Corporation X on Date 1 for $2 each, and a security issued by Corporation X to J on Date 2 with a principal amount of $100 and a basis of $100. On Date 3, Corporation Y acquires the assets of Corporation X in a reorganization under section 368(a)(1)(A). Pursuant to the terms of the plan of reorganization, J surrenders all of J's shares of Corporation X stock in exchange for 10 shares of Corporation Y stock and surrenders J's Corporation X security in exchange for a Corporation Y security. The distribution of neither the Y stock nor the Y security has the effect of a distribution of a dividend. On the date of the exchange, the fair market value of each share of stock of Corporation X is $10, the fair market value of J's Corporation X security is $100, the fair market value of each share of Corporation Y stock is $10, and the fair market value and principal amount of the Corporation Y security received by J is $100.

(ii) *Analysis.* Under paragraph (b)(4) of this section and under § 1.354–1(d), because the terms of the exchange specify that J receives 10 shares of stock of Corporation Y in exchange for J's shares of Class A stock of Corporation X and a Corporation Y security in exchange for its Corporation X security and such terms are economically reasonable, such terms control. Pursuant to section 354, J recognizes no gain on either exchange. Under paragraph (b)(1) of this section, J has 10 shares of Corporation Y stock, each of which has a basis of $2 and is treated as having been acquired on Date 1, and a security that has a basis of $100 and is treated as having been acquired on Date 2.

Example 7. Fewer shares of stock received than surrendered. (i) *Facts.* J, an individual, acquired 10 shares of Corporation X stock on Date 1 for $2 each and 10 shares of Corporation X stock on Date 2 for $5 each. On Date 3, Corporation Y acquires the stock of Corporation X in a reorganization under section 368(a)(1)(B). Pursuant to the terms of the plan of reorganization, J receives one share of Corporation Y stock in exchange for every 2 shares of Corporation X stock. Pursuant to section 354, J recognizes no gain or loss on the exchange. J is not able to identify which portion of each share of Corporation Y stock is received in exchange for each share of Corporation X stock.

(ii) *Analysis.* Under paragraph (b)(3) of this section, J has 5 shares of Corporation Y stock each of which has a basis of $4 and is treated as having been acquired on Date 1 and 5 shares of Corporation Y stock each of which has a basis of $10 and is treated as having been acquired on Date 2. Under paragraph (e) of this section, on or before the date on which the basis of a share of Corporation Y stock received becomes relevant, J may designate which of the shares of Corporation Y stock received have a basis of $4 and which have a basis of $10.

Example 8. Exchange described in sections 351 and 354. (i) *Facts.* J, an individual, acquired 10 shares of Corporation X stock on Date 1 for $3 each and 10 shares of Corporation X stock on Date 2 for $6 each. On Date 3, Corporation Z, a newly formed, wholly owned subsidiary of Corporation Y, merges with and into Corporation X with Corporation X surviving. As part of the plan of merger, J receives one share of Corporation Y stock in exchange for each share of Corporation X stock. In connection with the transaction, Corporation Y assumes a liability of J. In addition, after the transaction, J owns stock of Corporation Y satisfying the requirements of section 368(c). J's transfer of the Corporation X stock to Corporation Y is an exchange described in sections 351 and 354.

(ii) *Analysis.* Under paragraph (f)(2) of this section, because, in connection with the transfer of the Corporation X stock to Corporation Y, Corporation Y assumed a liability of J, the rules of paragraph (g) this section apply to determine J's basis in the Corporation Y stock received in the transaction.

Example 9. Reorganization in which stock is deemed received. (i) *Facts.* Each of Corporation X and Corporation Y has a single class of stock outstanding, all of which is owned by J, an individual. J acquired 100 shares of Corporation X stock on Date 1 for $1 each and 100 shares of Corporation Y stock on Date 2 for $2 each. On Date 3, Corporation Y acquires the assets of Corporation X in a reorganization under section 368(a)(1)(D). Pursuant to the terms of the plan of reorganization, J surrenders J's 100 shares of Corporation X stock but does not receive any additional Corporation Y stock. Immediately before the effective time of the reorganization, the fair market value of each share of Corporation X stock and each share of Corporation Y stock is $1. Pursuant to section 354, J recognizes no gain or loss.

(ii) *Analysis.* Under paragraph (d) of this section, J is deemed to have received shares of Corporation Y stock with an aggregate fair market value of $100 in exchange for J's Corporation X shares. Given the number of outstanding shares of stock of Corporation Y and their value immediately before the effective time of the reorganization, J is deemed to have received 100 shares of stock of Corporation Y in the reorganization. Under paragraph (b)(1) of this section, each of those shares has a basis of $1 and is treated as having been acquired on Date 1. Then, the stock of Corporation Y is deemed to be recapitalized in a reorganization under section 368(a)(1)(E) in which J receives 100 shares of Corporation Y stock in exchange for those shares of Corporation Y stock that J held immediately prior to the reorganization and those shares J is deemed to have received in the reorganization. Under paragraph (b)(3) of this section, immediately after the reorganization, J holds 50 shares of Corporation Y stock each of which has a basis of $2 and is treated as having been acquired on Date 1 and 50 shares of Corporation Y stock each of which has a basis of $4 and is treated as having been acquired on Date 2. Under paragraph (e) of this section, on or before the date on which the basis of any share of J's Corporation Y stock becomes relevant, J may designate which of the shares of Corporation Y have a basis of $2 and which have a basis of $4.

Example 10. Reorganization in which stock is deemed received. (i) *Facts.* Corporation X has a single class of stock outstanding, all of which is owned by J, an individual. J acquired 100 shares of Corporation X stock on Date 1 for $1 each. Corporation Y has two classes of stock outstanding, common stock and nonvoting preferred stock. On Date 2, J acquired 100 shares of Corporation Y common stock for $2 each and 100 shares of Corporation Y preferred stock for $4 each. On Date 3, Corporation Y acquires the assets of Corporation X in a reorganization under section 368(a)(1)(D). Pursuant to the terms of the plan of reorganization, J surrenders J's 100 shares of Corporation X stock but does not receive any additional Corporation Y stock. Immediately before the effective time of the reorganization, the fair market value of each share of Corporation X stock is $10, the fair market value of each share of Corporation Y common stock is $10, and the fair market value of each share of Corporation Y preferred stock is $20. Pursuant to section 354, J recognizes no gain or loss.

(ii) *Analysis.* Under paragraph (d) of this section, J is deemed to have received shares of Corporation Y stock with an aggregate fair market value of $1,000 in exchange for J's Corporation X shares. Consistent with the economics of the transaction and the rights associated with each class of stock of Corporation Y owned by J, J is deemed to receive additional shares of Corporation Y common stock. Because the value of the common stock indicates that the liquidation preference associated with the Corporation Y preferred stock could be satisfied even if the reorganization did not occur, it is not appropriate to deem the issuance of additional Corporation Y preferred stock. Given the number of outstanding shares of common stock of Corporation Y and their value immediately before the effective time of the reorganization, J is deemed to have received 100 shares of common stock of Corporation Y in the reorganization. Under paragraph (b)(1) of this section, each of those shares has a basis of $1 and is treated as having been acquired on Date 1. Then, the common stock of Corporation Y is deemed to be recapitalized in a reorganization under section 368(a)(1)(E) in which J receives 100 shares of Corporation Y common stock in exchange for those shares of Corporation Y common stock that J held immediately prior to the reorganization and those shares of Corporation Y common stock that J is deemed to have received in the reorganization. Under paragraph (b)(3) of this section, immediately after the reorganization,

J holds 50 shares of Corporation Y common stock, each of which has a basis of $2 and is treated as having been acquired on Date 1, and 50 shares of Corporation Y common stock, each of which has a basis of $4 and is treated as having been acquired on Date 2. Under paragraph (e) of this section, on or before the date on which the basis of any share of J's Corporation Y common stock becomes relevant, J may designate which of those shares have a basis of $2 and which have a basis of $4.

Example 11. Distribution to which section 355 applies. (i) *Facts.* J, an individual, acquired 5 shares of Corporation X stock on Date 1 for $4 each and 5 shares of Corporation X stock on Date 2 for $8 each. Corporation X owns all of the outstanding stock of Corporation Y. The fair market value of the stock of Corporation X is $1,800. The fair market value of the stock of Corporation Y is $900. In a distribution to which section 355 applies, Corporation X distributes all of the stock of Corporation Y pro rata to its shareholders. In the distribution, J receives 2 shares of Corporation Y stock with respect to each share of Corporation X stock. Pursuant to section 355, J recognizes no gain or loss on the receipt of the shares of Corporation Y stock. J is not able to identify which share of Corporation Y stock is received in respect of each share of Corporation X stock.

(ii) *Analysis.* Under paragraph (c)(1) of this section, because J receives 2 shares of Corporation Y stock with respect to each share of Corporation X stock, the basis of each share of Corporation X stock is allocated between such share of Corporation X stock and two shares of Corporation Y stock in proportion to the fair market value of those shares. Therefore, each of the 5 shares of Corporation X stock acquired on Date 1 will have a basis of $2 and each of the 10 shares of Corporation Y stock received with respect to those shares will have a basis of $1. In addition, each of the 5 shares of Corporation X stock acquired on Date 2 will have a basis of $4 and each of the 10 shares of Corporation Y stock received with respect to those shares will have a basis of $2. Under paragraph (e) of this section, on or before the date on which the basis of a share of Corporation Y stock received becomes relevant, J may designate which of the shares of Corporation Y stock have a basis of $1 and which have a basis of $2.

Example 12. Designation of stock surrendered and received. (i) *Facts.* J, an individual, acquired 20 shares of Corporation X stock on Date 1 for $2 each and 20 shares of Corporation X stock on Date 2 for $4 each. Corporation X has 80 shares of stock outstanding. Corporation X owns 40 shares of stock of Corporation Y, which represents all of the outstanding stock of Corporation Y. The fair market value of the stock of Corporation X is $80. The fair market value of the stock of Corporation Y is $40. Corporation X distributes all of the stock of Corporation Y in a transaction to which section 355 applies. In the transaction, J surrenders 20 shares of stock of Corporation X in exchange for 20 shares of stock of Corporation Y. J retains 20 shares of Corporation X stock. Pursuant to section 355, J recognizes no gain or loss on the receipt of the shares of Corporation Y stock. J is not able to identify which shares of Corporation X stock are surrendered. In addition, J is not able to identify which shares of Corporation Y stock are received in exchange for each surrendered share of Corporation X. In addition, the receipt of Y stock is not dividend equivalent.

(ii) *Analysis.* Under paragraph (b)(1) of this section, J has 20 shares of Corporation Y stock each of which is treated as received in exchange for one share of Corporation X stock. The basis of the 20 shares of Corporation X stock that are retained by J will remain unchanged. Under paragraph (e) of this section, on or before the date on which the basis of a share of Corporation X or Corporation Y stock becomes relevant, J may designate which shares of Corporation X stock J surrendered in the exchange and which share of the Corporation Y stock received is received for each share of Corporation X stock surrendered. Therefore, it is possible that a share of Corporation Y stock would have a basis of $2 and be treated as having been acquired on Date 1, or would have a basis of $4 and be treated as having been acquired on Date 2.

Example 13. Surrendered shares of stock or securities acquired on different dates or at different prices. (i) *Facts.* J, an individual, acquired 10 shares of Corporation X stock on Date 1 for $3 each, 10 shares of Corporation X stock on Date 2 for $18 each, 10 shares of Corporation X stock on Date 3 for $6 each, and 10 shares of Corporation X stock on Date 4 for $9 each. On Date 5, Corporation Y acquires the assets of Corporation X in a reorganization under section 368(a)(1)(A). Pursuant to the terms of the plan of reorganization, J receives a ¾ share of Corporation Y stock in exchange for each share of Corporation X stock. Therefore, J receives 30 shares of Corporation Y stock. Pursuant to section 354, J recognizes no gain or loss on the exchange. J is not able to identify which shares of Corporation Y stock are received in exchange for each share (or portions of shares) of Corporation X stock.

(ii) *Analysis.* Under paragraph (b)(3) of this section, J has 7 shares of Corporation Y stock each of which has a basis of $4 and is treated as having been acquired on Date 1, 7 shares of Corporation Y stock each of which has a basis of $24 and is treated as having been acquired on Date 2, 7 shares of Corporation Y stock each of which has a basis of $8 and is treated as having been acquired on Date 3, and 7 shares of Corporation Y stock each of which has a basis of $12 and is treated as having been acquired on Date 4. In addition, J has two shares of Corporation Y stock, each of which is divided into two equal segments under paragraph (b)(3) of this section. The first of those two shares has one segment with a basis of $2 that is treated as having been acquired on Date 1 and a second segment with a basis of $12 that is treated as having been acquired on Date 2. The second of those two shares has one segment with a basis of $4 that is treated as having been acquired on Date 3 and a second segment with a basis of $6 that is treated as having been acquired on Date 4. Under paragraph (e) of this section, on or before the date on which a share of Corporation Y stock received becomes relevant, J may designate which of the shares of Corporation Y stock have a basis of $4, which have a basis of $24, which have a basis of $8, which have a basis of $12, and which share has a split basis of $2 and $12, and which share has a split basis of $4 and $6.

Example 14. Shareholder election and terms of the exchange. (i) *Facts.* J, an individual, acquired 10 shares of stock of widely-held Corporation X on Date 1 for $2 each, 10 shares of stock of Corporation X on Date 2 for $4 each, and 10 shares of stock of Corporation X on Date 3 for $6. On Date 5, Corporation X and Corporation Y sign a binding contract pursuant to which, in a reorganization under section 368(a)(1)(A), Corporation X will be merged with and into Corporation Y on Date 6. The fair market value of each share of Corporation X stock is $10 and the fair market value of each share of Corporation Y stock is $5. In exchange for each share of stock of Corporation X, the shareholders of Corporation X may elect to receive 2 shares of stock of Corporation Y or $10 cash. If, however, the elected consideration is oversubscribed, by default a pro-rata mix of consideration will be received for the corresponding shares of stock of Corporation X (the default pro-rata term). J elects to receive 2 shares of stock of Corporation Y in exchange for each of the 10 shares of stock of Corporation X acquired on Date 1, and $10 cash for each of the remaining 20 shares of stock of Corporation X. Neither of the elections is oversubscribed by the shareholders of Corporation X. The distribution of cash does not have the effect of a distribution of a dividend.

(ii) *Analysis.* Under paragraph (b)(4) of this section and under § 1.356–1(b), because the receipt does not have the effect of dividend, and the terms of the exchange specify that J receives 2 shares of stock of Corporation Y in exchange for each of the 10 shares of stock of Corporation X acquired on Date 1, and $10 cash for each of the remaining 20 shares of stock of Corporation X, and such terms are economically reasonable, such terms control. J realizes a gain of $80 on the exchange of the 10 shares of stock of Corporation X acquired on Date 1, none of which is recognized under § 1.356–1(a). J realizes a gain of $60 on the exchange of the 10 shares of stock of Corporation X acquired on Date 2 and realizes $40 on the exchange of the 10 shares of stock of Corporation X acquired on Date 3, all of which is recognized under § 1.356–1(a). Under paragraph (b)(2) of this section, J has 20 shares of stock of Corporation Y, each of which has a basis of $1 and is treated as having been acquired on Date 1.

Example 15. Shareholder election and terms of the exchange. (i) *Facts.* The facts are the same as in Example 14, except that the cash election is oversubscribed and, pursuant to the default pro-rata term, for each of the shares of stock of Corporation X that J acquired on Date 2 and Date 3, J receives 1 share of stock of Corporation Y and $5 cash.

(ii) *Analysis.* Under paragraph (b)(4) of this section and under § 1.356–1(b), because the terms of the exchange specify that J receives 2 shares of stock of Corporation Y in exchange for each of the 10 shares of stock

of Corporation X acquired on Date 1, and 1 share of stock of Corporation Y and $5 cash for each of the remaining 20 shares of stock of Corporation X, and such terms are economically reasonable, such terms control. J realizes a gain of $80 on the exchange of the 10 shares of stock of Corporation X acquired on Date 1, none of which is recognized under § 1.356–1(a). J realizes a gain of $60 on the exchange of the 10 shares of stock of Corporation X acquired on Date 2, $50 of which is recognized under § 1.356–1(a), and $40 on the exchange of the 10 shares of stock of Corporation X acquired on Date 3, all of which is recognized under § 1.356–1(a). Of the 40 shares of stock of Corporation Y received by J, 20 of the shares each has a basis of $1 and is treated as having been acquired on Date 1 under paragraph (b)(2) of this section, and 10 of the shares each has a basis of $4 and is treated as having been acquired on Date 2 and 10 of the shares each has a basis of $6 and is treated as having been acquired on Date 3 under paragraph (b)(1) of this section.

Example 16. Exchange described in section 351 in which only stock is received. (i) *Facts.* J transfers Asset I, Asset II, and 50 shares of Corporation X stock in exchange for 110 shares of Corporation Y in an exchange to which section 351 applies. At the time of the exchange, Asset I has a fair market value of $220 and a basis of $400, Asset II has a fair market value of $330 and a basis of $200, and the 50 shares of Corporation X stock each have a fair market value of $22 ($550 total) and a basis of $10 ($250 total). The fair market value of each share of Corporation Y stock is $10.

(ii) *Analysis.* Pursuant to section 351(a), J recognizes no gain or loss on the exchange. Under paragraph (g)(2) of this section, J has 55 shares of Corporation Y stock each of which has a basis of $10.91 ($600 total, the aggregate basis of Asset I and Asset II). Under paragraph (g)(2) of this section, J has 55 shares of Corporation Y stock each of which has a basis of $4.55 ($250 total).

Example 17. Exchange described in section 351 in which "other property" is received. (i) *Facts.* The facts are the same as Example 1, except J receives 100 shares of Corporation Y stock and $100 in the exchange.

(ii) *Analysis.* Pursuant to section 351(b), J recognizes gain, but no loss, on the exchange, but not in excess of the amount of money received. Under § 1.351–2, J realizes a loss of $180 on Asset I, none of which is recognized, a gain of $130 on Asset II, $30 of which is recognized, and a gain of $300 on shares of Corporation X stock, $50 of which is recognized. Under paragraph (g)(2) of this section, J has 50 shares of Corporation Y stock each of which has a basis of $11.60 ($580 total), and 50 shares of Corporation Y stock each of which has a basis of $5.00 ($250 total).

(j) *Effective/applicability date.* This section applies to exchanges and distributions of stock and securities that occur after the date these regulations are published as final regulations in the **Federal Register**, except for exchanges which occur pursuant to a written agreement that is binding on or before the date these regulations are published as final in the **Federal Register**. For exchanges and distributions of stock and securities that occur on or before the date these regulations are published as final regulations in the **Federal Register**, see this section as contained in 26 CFR part 1 revised April 1, for the year before these regulations were published as final regulations in the **Federal Register**.

Par. 15. Section 1.358–6 is amended by revising paragraphs (c)(1)(i)(B), (c)(3)(ii), and (f)(3) to read as follows:

§ 1.358–6 Stock basis in certain triangular reorganizations.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(B) P transferred the T assets (and liabilities which S assumed or to which the T assets acquired by S were subject) to S in a transaction in which P received no property and P 's basis in S stock was determined under section 358. See § 1.358–2(g)(3) (allocation of basis in a section 351 transaction in which stock is deemed received).

* * * * *

(3) * * *

(ii) P transferred the T stock to S in a transaction in which P received no property and P's basis in its S stock was determined under section 358. See § 1.358–2(g)(3) (allocation of basis in a section 351 transaction in which stock is deemed received).

* * * * *

(f) * * *

(3) This section applies to exchanges that occur after the date these regulations are published as final regulations in the **Federal Register**, except for exchanges which occur pursuant to a written agreement that is binding on or before the date these regulations are published as final in the **Federal Register**. For exchanges that occur on or before the date these regulations are published as final regulations in the **Federal Register**, see this section as contained in 26 CFR part 1 revised April 1, 2008, for the year before the date these regulations are published as final regulations in the **Federal Register**.

Par. 16. Section 1.368–1 is amended by adding a sentence to the end of paragraph (a) and by revising paragraph (e)(9) to read as follows:

§ 1.368–1 Purpose and scope of exception of reorganization exchanges.

(a) * * * For purposes of determining whether a transaction qualifies as a reorganization under section 368(a), to the extent the terms of the exchange specify that a particular property is received in exchange for a particular property, such terms shall control provided such terms are economically reasonable.

* * * * *

(e) * * *

(9) This section applies to exchanges that occur after the date these regulations are published as final regulations in the **Federal Register**, except for exchanges which occur pursuant to a written agreement that is binding on or before the date these regulations are published as final in the **Federal Register**. For effective dates for transactions that occur on or before the date these regulations are published as final regulations in the **Federal Register**, see paragraph (e) of this section, as contained in 26 CFR part 1 revised April 1, for the year before these regulations are published as final regulations in the **Federal Register**.

* * * * *

Par. 17. Section 1.861–12 is added to read as follows:

§ 1.861–12 Characterization rules and adjustments for certain assets.

(a) through (c)(2)(v) [Reserved]. For further guidance, see § 1.861–12T(a) through (c)(2)(v).

(c)(2)(vi) Adjustments in respect of redeemed stock for taxpayers using the tax book value method. Solely for purposes of apportioning expenses on the basis of the tax book value of assets, the adjusted basis of any other class of stock in a 10 percent owned corporation owned directly by a taxpayer that is a redeemed shareholder (as defined in § 1.302–5(b)(1)) with respect to such corporation shall be increased by the amount of any loss that has not been taken into account under § 1.302–5(a)(3) as of the close of the redeemed shareholder's taxable year (unrecovered loss). If the redeemed shareholder does not own directly any shares in the 10 percent owned corporation as of the end of the taxable year, but is treated for purposes of section 302(b) as owning shares actually owned by another member of the redeemed shareholder's affiliated group, as defined in section § 1.861–11(d)(1) and § 1.861–11T(d)(6) with respect to the redeemed shareholder, then, solely for purposes of this paragraph (c)(2)(vi), the adjusted basis of the shares in the 10 percent owned corporation, if any, that are owned by such other corporation or corporations shall be increased by the amount of the redeemed shareholder's unrecovered loss (and allocated among such corporations, if applicable, in proportion to their relative adjusted bases (as adjusted pursuant to this

paragraph and § 1.861–12T(c)(2)) in the stock of the redeeming corporation). These adjustments are to be made annually and are noncumulative.

(vii) *Examples.* Certain of the rules of this paragraph (c)(2) may be illustrated by the following examples:

Examples 1 and *2.* [Reserved]. For further guidance, see § 1.861–12T(c)(2)(vii), *Examples 1* and *2.*

Example 3. X, an unaffiliated domestic corporation that was organized on January 1, 2000, owns all of the stock of Y, a foreign corporation with a functional currency other than the U.S. dollar since January 1, 2000. The Y stock held by X includes Class A and Class B common stock. X's adjusted basis in the Class A and Class B common stock is $25,000 and $50,000, respectively. Y has earnings and profits for the 2008 taxable year of $40,000. During the 2008 taxable year, Y redeems all of the Class A common stock held by X for $40,000. Because X still owns all of the outstanding stock of Y, the redemption is treated as a distribution with respect to the stock of Y under section 301. Under § 1.302–5(a)(3), X's $ 25,000 adjusted basis in the redeemed shares of Class A common stock is treated as a loss recognized on the date of the redemption, none of which is taken into account in 2008. Under paragraph (c)(2)(vi) of this section, solely for purposes of apportioning expenses on the basis of the tax book value of assets, X's adjusted basis in its remaining Class B common stock of Y is considered to be $75,000 ($50,000 adjusted basis in the Class B common stock plus $ 25,000 unrecovered basis in the redeemed Class A common stock).

(c)(2)(viii) *Effective/applicability date.* Paragraph (c)(2)(vi) and *Example 3* apply to transactions that occur after the date these regulations are published as final regulations in the **Federal Register**.

(c)(3) through (j) [Reserved]. For further guidance, see § 1.861–12T(c)(3) through (j).

§ 1.1002–1 [Redesignated as § 1.1001–6]

Par. 18. Section 1.1002–1 is redesignated as 1.1001–6 and amended by revising paragraph (c) and adding a new paragraph (e) to read as follows:

§ 1.1001–6 Sales or exchanges.

* * * * *

(c) *Certain exceptions to general rule.* Exceptions to the general rule are made, for example, by sections 351(a), 354, 361(a), 721, 1031, 1035, and 1036. These sections describe certain specific exchanges of property in which at the time of the exchange particular differences exist between the property parted with and the property acquired, but such differences are more formal than substantial. As to these, the Internal Revenue Code provides that such differences shall not be deemed controlling, and that gain or loss shall not be recognized at the time of the exchange. The underlying assumption of these exceptions is that the new property is substantially a continuation of the old investment still unliquidated; and, in the case of reorganizations, that the new enterprise, the new corporate structure and the new property are substantially continuations of the old still unliquidated. Solely for purposes of determining whether the exceptions to the general rule under sections 354 and 361 apply to an exchange, to the extent the terms of the exchange specify that a particular property is received in exchange for a particular property, such terms shall control provided such terms are economically reasonable.

* * * * *

(e) *Effective/applicability date.* This section applies to exchanges that occur after the date these regulations are published as final regulations in the **Federal Register**. For exchanges that occur on or before the date these regulations are published as final regulations in the **Federal Register**, see this section as contained in 26 CFR part 1 revised April 1, for the year before these regulations are published as final regulations in the **Federal Register**.

Par. 19. Section 1.1016–2 is amended by adding paragraphs (e) and (f) to read as follows:

§ 1.1016–2 Items properly chargeable to capital account.

* * * * *

(e) Solely for purposes of determining basis in stock, in the case of a shareholder capital contribution to which section 118 applies, the principles of § 1.358–2(g)(3) (allocation of basis in a section 351 transaction in which stock is deemed received) shall apply.

(f) This section applies to transactions that occur after the date these regulations are published as final regulations in the **Federal Register**. For exchanges that occur on or before the date these regulations are published as final regulations in the **Federal Register**, see this section as contained in 26 CFR part 1 revised April 1, for the year before these regulations are published as final regulations in the **Federal Register**.

Par. 20. Section 1.1374–10, the first sentence of paragraph (a) is revised to read as follows:

§ 1.1374–10 Effective date and additional rules.

(a) *In general.* For transactions to which § 1.302–5 applies [Reserved]. Sections 1.1374–1 through 1.1374–9, other than § 1.1374–3(b) and (c) *Examples 2* through *4,* apply for taxable years ending on or after December 27, 1994, but only in cases where the S corporation's return for the taxable year is filed pursuant to an S election or a section 1374(d)(8) transaction occurring on or after December 27, 1994. * * *

* * * * *

Linda M. Kroening,

(Acting) Deputy Commissioner for Services and Enforcement.

[FR Doc. E9–1100 Filed 1–16–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. OSHA–2007–0007]

RIN 1218–AC39

Additional Quantitative Fit-Testing Protocols for the Respiratory Protection Standard

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: OSHA is proposing to add two PortaCount® quantitative fit-testing protocols to its Respiratory Protection Standard (29 CFR 1910.134); the proposed protocols would apply to employers in general industry, shipyard employment, and the construction industry. The first of the two proposed protocols consists of the eight fit-testing exercises described in Part I.A.14 of Appendix A of the Respiratory Protection Standard, except each exercise would last 30 seconds instead of the currently required 60 seconds.[1] The second proposed protocol would eliminate two of the eight fit-testing exercises, and each of the remaining six exercises would last 40 seconds; in addition, this proposed protocol would increase the current minimum pass-fail fit-testing criterion from a fit factor of 100 to 200 for half masks, and from 500 to 1,000 for full facepieces.

DATES: Submit comments to this proposal, including comments to the information collection (paperwork) determination described under the section this preamble titled **SUPPLEMENTARY INFORMATION**, as well as

[1] Except for the grimace exercise, which currently lasts 15 seconds and would remain at 15 seconds in both of the proposed protocols. However, neither the current nor proposed protocols include the fit factor obtained from this exercise in determining the overall fit factor for a respirator tested using a quantitative fit test.

other information, by March 23, 2009. All submissions must bear a postmark or provide other evidence of the submission date. (*See* the following section titled **ADDRESSES** for methods used in submitting comments to the docket.)

ADDRESSES: Submit comments, identified by docket number OSHA–2007–0007 or regulatory information number (RIN) 1218–AC39, by any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Fax:* (202) 693–1648 for comments that are 10 pages or fewer in length (including attachments). Instead of transmitting facsimile copies of attachments that supplement these comments (*e.g.*, studies, journal articles), commenters may submit these attachments, in triplicate hard copy, to the OSHA Docket Office, Technical Data Center, Room N–2625, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. These attachments must clearly identify the sender's name, date, subject, and docket number or RIN number (*i.e.*, OSHA–2007–0007 or 1218–AC39, respectively) so that the Agency can attach them to the appropriate comments.

• *Mail, Hand Delivery, or Courier (for Paper, Disk, or CD–ROM Submissions):* OSHA Docket Office, Docket No. OSHA–2007–0007 or RIN No. 1218–AC39, Technical Data Center, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; *telephone:* (202) 693–2350. (OSHA's TTY number is (877) 889–5627.) Contact the OSHA Docket Office for information about security procedures concerning delivery of materials by express delivery, hand delivery, and messenger service. The hours of operation for the OSHA Docket Office are 8:15 a.m. to 4:45 p.m., e.t.

• *Instructions:* All submissions must include the agency name and the docket number or RIN number (*i.e.*, OSHA–2007–0007 or 1218–AC39, respectively) for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. For detailed instruction on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

• *Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and/or to the OSHA Docket Office in Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC. The *http://www.regulations.gov* index lists the documents in the docket; however, some information (*e.g.*, copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

FOR FURTHER INFORMATION CONTACT:

• *General information and press inquiries:* Contact Ms. Jennifer Ashley, Director, Office of Communications, OSHA, U.S. Department of Labor, Room N–3637, 200 Constitution Avenue, NW., Washington, DC 20210; *telephone:* (202) 693–1999; *facsimile:* (202) 693–1634.

• *Technical inquiries:* Contact Mr. John Steelnack, Directorate of Standards and Guidance, Room N–3718, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; *telephone:* (202) 693–2289; *facsimile:* (202) 693–1678.

• *Copies of this* **Federal Register** *notice:* Electronic copies of this **Federal Register** notice, news releases, and other similar documents are available on OSHA's Web page at *http://www.osha.gov* (select ''**Federal Register**,'' ''Date of Publication,'' and then ''2008'').

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Summary and Explanation of the Proposal
A. Introduction
B. Summary of the Peer-Reviewed Article
C. Conclusions
D. Issues for Public Comment
III. Procedural Determinations
A. Legal Authority
B. Preliminary Economic Analysis and Initial Regulatory Flexibility Analysis
C. Paperwork Reduction Act
D. Federalism
E. State-Plan States
F. Unfunded Mandates Reform Act
G. Applicability of Existing Consensus Standards
H. Review of the Proposed Standard by the Advisory Committee for Construction Safety and Health
I. Public Participation
List of Subjects
Authority and Signature
IV. Proposed Amendment to the Standard

I. Background

Appendix A of OSHA's Respiratory Protection Standard at 29 CFR 1910.134 currently includes three quantitative fit-testing protocols using the following challenge agents: A non-hazardous generated aerosol such as corn oil, polyethylene glycol 400, di-2-ethyl hexyl sebacate, or sodium chloride; ambient aerosol; and controlled negative pressure. Appendix A of the Respiratory Protection Standard also specifies the procedure for adding new fit-testing protocols to this standard. The criteria for determining whether OSHA must publish a fit-testing protocol for notice-and-comment rulemaking under Section 6(b)(7) of the Occupational Safety and Health Act of 1970 (the ''Act'') (29 U.S.C. 655) include: (1) A test report prepared by an independent government research laboratory (*e.g.*, Lawrence Livermore National Laboratory, Los Alamos National Laboratory, the National Institute for Standards and Technology) stating that the laboratory tested the protocol and found it to be accurate and reliable; or (2) an article published in a peer-reviewed industrial-hygiene journal describing the protocol and explaining how the test data support the protocol's accuracy and reliability. Using this procedure, OSHA has added one fit-testing protocol (*i.e.*, the controlled negative pressure REDON quantitative fit-testing protocol) to Appendix A of its Respiratory Protection Standard (see 69 FR 46986).

II. Summary and Explanation of the Proposal

A. Introduction

In the letter submitting two new quantitative fit-testing protocols for review under the provisions of Appendix A of OSHA's Respiratory Protection Standard (Ex. OSHA–2007–0007–0002), Mr. Jeff Weed of TSI Inc. included a copy of a peer-reviewed article from an industrial-hygiene journal describing the accuracy and reliability of these proposed protocols (Ex. OSHA–2007–0007–0003).[2] The submission letter also included instructions that described in detail the equipment and procedures required to administer the proposed protocols. According to this description, the proposed protocols are variations of the existing ambient-aerosol condensation-nuclei-counter quantitative fit-testing protocol developed by TSI Inc., in the 1980's, commonly referred to as the standard PortaCount® quantitative fit-testing protocol (hereafter, ''the standard PortaCount® QNFT protocol''). OSHA included the standard PortaCount® QNFT protocol in Appendix A of its final Respiratory Protection Standard.

[2] This letter and the accompanying article describe three fit-testing protocols, but Mr. Weed of TSI Inc., in a subsequent telephone call to OSHA staff, requested that the Agency include only two of them in this proposed rulemaking.

(For consistency, OSHA will refer to the two proposed protocols as ''revised PortaCount® quantitative fit-testing protocols 1 and 2'' (*i.e.*, ''revised PortaCount® QNFT protocols 1 and 2'').

The proposed protocols use the same fit-testing requirements and instrumentation specified for the standard PortaCount® QNFT protocol in paragraphs (a) and (b) of Part I.C.3 of Appendix A of the Respiratory Protection Standard, with the following exceptions:

- Revised PortaCount® QNFT protocol 1 reduces the duration of the eight fit-testing exercises from 60 seconds to 30 seconds; and
- Revised PortaCount® QNFT protocol 2 eliminates two of the eight fit-testing exercises, with each of the remaining six exercises having a duration of 40 seconds; in addition, this proposed protocol increases the current minimum pass-fail fit-testing criterion from a fit factor of 100 to 200 for half masks, and from 500 to 1,000 for full facepieces.

B. Summary of the Peer-Reviewed Article

Peer-reviewed industrial-hygiene journal article. The peer-reviewed article submitted by Mr. Jeff Weed of TSI Inc., entitled ''Evaluation of Three New Fit Test Protocols for Use with the TSI PortaCount,'' appeared in the Fall/Winter 2005 issue of the *Journal of the International Society for Respiratory Protection* (Ex. OSHA–2007–0007–0003). This article describes a study that determined whether performing the proposed protocols yields fit-testing results similar to results obtained with the standard PortaCount® QNFT protocol (*i.e.*, the standard PortaCount® QNFT protocol was the criterion measure or ''gold standard'').

Test subjects and respirator selection. The study involved 30 test subjects who performed 140 fit tests while wearing elastomeric half-mask and full-facepiece respirators equipped with P100 filters. The test subjects selected respirators from among 24 models, with some test subjects using more than one model during fit testing. Respirator fit varied across the test subjects, with 60 of 140 fit factors below 100, and 91 of 140 fit factors less than 500, as determined by the standard PortaCount® QNFT protocol.[3] Poor respirator fit resulted from improper respirator selection by the test subjects themselves, or from assigning respirators to test subjects that were either too small or too large. Test subjects could adjust the respirator for comfort, but they did not perform user seal checks.

Procedures. In conducting the study, the authors followed the recommendations for evaluating new fit-testing protocols specified by Annex A2 (''Criteria for Evaluating Fit Tests Methods'') of ANSI Z88.10–2001 (''Respirator Fit Testing Methods''). Specially designed testing software allowed for calculation of fit factors every 10 seconds during the in-mask sampling periods without disturbing the facepiece (*i.e.*, at 10-, 20-, and 30-second intervals for comparison with the 40-second in-mask sampling intervals determined using the standard PortaCount® QNFT protocol). The authors used TSI-supplied sampling adaptors, or respirators with fixed probes provided by the respirator manufacturer, to collect samples inside the respirators. The sampling point inside the respirator was between the nose and the mouth. During sampling, the test subjects performed the exercises listed in Part I.A.14 of Appendix A of OSHA's Respiratory Protection Standard, which include: initial normal breathing, deep breathing, turning the head side to side, moving the head up and down, reading a passage, grimace, bending over, and final normal breathing.

The TSI PortaCount® Plus fit-testing instrument performed particle counts on samples collected during the study. The table below provides the exercise and sampling parameters for each of the protocols used in the study.

Protocol	Number of exercises	Duration of each exercise (secs.)	In-mask sampling duration for each exercise (secs.) [1]
Standard PortaCount® QNFT Protocol	8	60	40
Revised PortaCount® QNFT Protocol 1	8	30	10
Revised PortaCount® QNFT Protocol 2	[2] 6	40	20

[1] Does not include 20 seconds for each exercise to collect ambient-air samples and to purge the in-mask and ambient-air sampling tubes.
[2] This protocol eliminated the initial normal-breathing exercise and the deep-breathing exercise.

Results. To pass a fit test using revised PortaCount® QNFT protocol 1, test subjects had to attain a fit factor of 100 for half masks and 500 for full-facepiece respirators; the pass-fail criteria for full-facepiece respirators using revised PortaCount® QNFT protocol 2 were 200 for half masks and 1,000 for full-facepiece respirators. Based on these criteria, the authors determined the following statistics for the two proposed protocols: test sensitivity; predictive value of a pass; test specificity; predictive value of a fail; and the kappa statistic. In calculating these statistics, the authors adopted the variables defined by ANSI Z88.10–2001, in which: A = false positives (passed the fit test with a fit factor < 100); B = true positives (passed the fit test with a fit factor ≥ 100); C = true negatives (failed the fit test with a fit factor < 100); D = false negatives (failed the fit test with a fit factor ≥ 100); P_o = observed proportion of the two fit tests that are concordant; and P_e = expected proportion of the two fit tests expected to be concordant when the two tests are statistically independent. Using these variables, ANSI Z88.10–2001 specifies the formula and recommended value (''RV'') for each statistic as follows: Test sensitivity = C/(A + C), RV ≥ 0.95; predictive value of a pass = B/(A + B), RV ≥ 0.95; test specificity = B/(B + D), RV > 0.50; predictive value of a fail = C/(C + D), RV > 0.50; and the kappa statistic = $(P_o - P_e)/(1 - P_e)$.

Using the standard PortaCount® QNFT protocol as the criterion measure, the variables for the two proposed protocols had values for half masks and full-facepiece respirators listed in the following two tables.

[3] After excluding from the analysis fit factors within one standard deviation of the reference fit-factor pass-fail criterion, these figures are 57 of 135 fit factors below 100, and 91 of 135 fit factors less than 500.

Variables	Values for half-mask respirators		
	ANSI requirement	Revised PortaCount® QNFT Protocol 1	Revised PortaCount® QNFT Protocol 2
Sensitivity	≥0.95	[1] 0.91	1.00
Predictive Value of a Pass	≥0.95	[2] 0.94	1.00
Specificity	>0.50	0.99	0.81
Predictive Value of a Fail	>0.50	0.98	0.79
Kappa Statistic	>0.70	0.91	0.78

[1] = Fail.
[2] = Borderline fail.

Variables	Values for full-facepiece respirators		
	ANSI requirement	Revised PortaCount® QNFT Protocol 1	Revised PortaCount® QNFT Protocol 2
Sensitivity	≥0.95	0.97	1.00
Predictive Value of a Pass	≥0.95	[1] 0.94	1.00
Specificity	>0.50	0.98	0.84
Predictive Value of a Fail	>0.50	0.99	0.92
Kappa Statistic	>0.70	0.94	0.87

[1] = Borderline fail.

For half masks, revised PortaCount® QNFT protocol 1 failed to meet the sensitivity value specified by ANSI Z88.10–2001, and, consistent with this failure, the value for the predictive-value-of-a-pass variable was marginal. However, for full-facepiece respirators, the sensitivity value for this proposed protocol exceeded the ANSI requirement, although the predictive-value-of-a-pass variable was again slightly below the ANSI specification. The failure of this proposed protocol to attain an adequate sensitivity value when applied to half masks indicates that, for half masks, the proposed protocol is susceptible to alpha, or false positive, error—*i.e.*, it would pass some half masks that would function below a fit factor of 100 when tested with the protocol used as the criterion measure (*i.e.*, the standard PortaCount® QNFT protocol). The authors did not provide an explanation for this deficiency. However, the deficiency is unlikely to be the result of statistical error because the number of test subjects appeared to be adequate, and a procedural or measurement error should have decreased the sensitivity value for revised PortaCount® QNFT protocol 2, which was not the case. Despite these problems, revised PortaCount® QNFT protocol 1 performed well above the values established by the ANSI standard for the three remaining variables, including specificity, predictive value of a fail, and the kappa statistic. These values indicate that the vast majority of the test subjects who passed (or failed) the criterion measure also passed (or failed) the proposed protocol, and the proposed protocol correlated highly with the criterion measure. Nonetheless, the fact that revised PortaCount® QNFT protocol 1 failed to meet the sensitivity value specified by ANSI Z88.10–2001 for half masks raises the question of whether it is as protective as the standard PortaCount® QNFT protocol, and OSHA has raised this as an issue for public comment (see below).

The variables for revised PortaCount® QNFT protocol 2 had sensitivity values for both half masks and full-facepiece respirators well in excess of the sensitivity value specified by the ANSI standard. The sensitivity values for this proposed protocol demonstrate that it identified 100% of the poorly fitting half masks and full-facepiece respirators. In addition, this proposed protocol performed well above the values listed in the ANSI standard for the four remaining variables, including predictive value of a pass, specificity, predictive value of a fail, and the kappa statistic. Consistent with the sensitivity values derived for this proposed protocol, these four values indicate that the proposed protocol resulted in fit factors that accurately identified half masks and full-facepiece respirators with acceptable and poor fits, and that these fit factors agreed closely with the fit factors attained from the criterion measure.

In discussing the results for revised PortaCount® QNFT protocol 2, the authors noted that excluding the two least strenuous fit-testing exercises (*i.e.*, the initial normal-breathing exercise and the deep-breathing exercise) from this proposed protocol was a conservative approach in that the proposed protocol was more likely than protocols consisting of eight fit-testing exercises to detect respirator leakage (*i.e.*, using data from less strenuous fit-testing exercises inappropriately inflates the overall fit factor for respirators, thereby increasing alpha error). Another conservative approach used by this proposed protocol was raising the pass-fail criterion for half masks from a fit factor of 100 to 200, and, for full-facepiece respirators, from 500 to 1,000. This approach likely enhanced the sensitivity of the proposed protocol. However, enhancing sensitivity may increase beta (false-negative) error, which would increase the number of repeated tests and, consequently, the total testing time required by some employees to identify a respirator having an acceptable fit.

C. Conclusions

OSHA believes that the information submitted by Mr. Weed in support of the proposed protocols meets the criteria for determining whether OSHA must publish fit-testing protocols for notice-and-comment rulemaking established by the Agency in Part II of Appendix A of its Respiratory Protection Standard. Therefore, the Agency concludes that the proposed protocols warrant notice-and-comment rulemaking under Section 6(b)(7) of the Act (29 U.S.C. 655), and is initiating this rulemaking to determine whether to approve these proposed protocols for inclusion in Part I of Appendix A of its Respiratory Protection Standard.

The only differences between the two proposed protocols and the standard PortaCount® QNFT protocol specified

currently in Part I.C.3 of Appendix A of the Respiratory Protection Standard are the duration of the exercises used during fit testing, and for revised PortaCount® QNFT protocol 2, the exclusion of the two least strenuous fit-testing exercises and the raising of the minimum passing criteria. Therefore, the Agency is proposing to add the proposed protocols to Part I.C.3 of Appendix A (see section IV of this preamble titled ''Proposed Amendment to the Standard''). In addition to decreasing exercise durations from 60 seconds to 30 or 40 seconds, the proposed revisions to the regulatory text would limit use of revised PortaCount® QNFT protocol 2 to respirator users who demonstrate a minimum passing criteria of 200 for half masks or 1,000 for full-facepiece respirators. If approved, the proposed protocols would be alternatives to the existing quantitative fit-testing protocols already listed in the Part I of Appendix A of the Respiratory Protection Standard; employers would be free to select these alternatives or to continue using any of the other protocols currently listed in the appendix.

D. Issues for Public Comment

OSHA invites comments and data from the public regarding the accuracy and reliability of the two proposed protocols, their effectiveness in detecting respirator leakage, and their usefulness in selecting respirators that will protect employees from airborne contaminants in the workplace. Specifically, the Agency invites public comment on the following issues:

- Was the study described in the peer-reviewed journal article well controlled, and conducted according to accepted experimental design practices and principles?
- Were the results of the study described in this article properly, fully, and fairly presented and interpreted?
- Will the proposed protocols generate reproducible fit-testing results?
- Will the proposed protocols reliably identify respirators with unacceptable fit as effectively as the quantitative fit-testing protocols, including the standard PortaCount® QNFT protocol, already listed in Part I.C.3 of Appendix A of the Respiratory Protection Standard?
- Is the test-sensitivity value of 0.91 obtained for half masks by revised PortaCount® QNFT protocol 1 acceptable in view of the test-sensitivity value of 0.95 required by ANSI Z88.10–2001. If not, would it be appropriate for OSHA to limit application of revised PortaCount® QNFT protocol 1 to full-facepiece respirators?
- The study evaluating the proposed protocols involved only elastomeric half-mask and full-facepiece respirators. Accordingly, is it appropriate to apply the results of the study to other types of respirators (*e.g.*, filtering-facepiece respirators)?

III. Procedural Determinations

A. Legal Authority

The purpose of the Occupational Safety and Health Act of 1970 (''the Act''; 29 U.S.C. 651 *et seq.*) is ''to assure so far as possible every working man and woman in the nation safe and healthful working conditions and to preserve our human resources'' (29 U.S.C. 651(b)). To achieve this goal, Congress authorized the Secretary of Labor to promulgate and enforce occupational safety and health standards (29 U.S.C. 655(b) and 654(b)).

Under the Act, a safety or health standard is a standard that ''requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment or places of employment'' (29 U.S.C. 652(8)). A standard is reasonably necessary or appropriate within the meaning of Section 652(8) of the Act when it substantially reduces or eliminates a significant workplace risk, and is technologically and economically feasible, cost effective, consistent with prior Agency action or supported by a reasoned justification for departing from prior Agency action, and supported by substantial evidence; it also must effectuate the Act's purposes better than any national consensus standard it supersedes (*see International Union, UAW* v. *OSHA* (*LOTO II*), 37 F.3d 665 (D.C. Cir. 1994); and 58 FR 16612–16616 (March 30, 1993)). Rules promulgated by the Agency must be highly protective (*see* 58 FR 16612, 16614–15 (March 30, 1993); *LOTO II*, 37 F.3d 665, 669 (D.C. Cir. 1994)). Moreover, Section 8(g)(2) of the Act authorizes OSHA ''to prescribe such rules and regulations as [it] may deem necessary to carry out its responsibilities under the Act'' (*see* 29 U.S.C. 657(g)(2)).

Based on the available evidence, OSHA has preliminarily determined that the protocols described in the proposed rule meet the legal requirements to provide substantial protection to employees who use respirators when exposed to hazardous atmospheres (*see Industrial Union Dept.* v. *American Petroleum Institute*, 448 U.S. 607, 655 (1980); *International Union* v. *Pendergrass*, 878 F.2d 389, 392–93 (DC Cir. 1989); *Building and Construction Trades Dept., AFL-CIO* v. *Brock*, 838 F.2d 1258, 1264–65 (DC Cir. 1988)). OSHA also made a preliminary finding that the proposed rule is technologically feasible because the protective measures it requires already exist (*see American Textile Mfrs. Institute* v. *OSHA* (*Cotton Dust*), 452 U.S. 490, 513 (1981); *American Iron and Steel Institute* v. *OSHA* (*Lead II*), 939 F.2d 975, 980 (DC Cir. 1991)). Specifically, employers covered by this proposal already must comply with the fit-testing requirements specified in paragraph (f) of OSHA's Respiratory Protection Standard at 29 CFR 1910.134. Accordingly, these provisions currently are protecting their employees from the significant risk that results from poorly fitting respirators. In this regard, for OSHA to adopt the proposed protocols in the final rule, OSHA would have to determine that the proposed protocols provide employees with protection that is comparable to the protection afforded to them by the provisions of the standard PortaCount® QNFT protocol. If adopted, the protocols would not replace existing fit-testing protocols, but instead would be alternatives to them. Therefore, OSHA preliminarily finds that the proposal would not directly increase or decrease the protection afforded to employees, nor would it increase employers' compliance burdens. As demonstrated in the following section, the proposal may reduce employers' compliance burdens by decreasing the time required to fit test respirators for employee use. Accordingly, OSHA concludes that it is unnecessary to determine significant risk or the extent to which this proposal would reduce that risk, as typically would be required by *Industrial Union Department, AFL-CIO* v. *American Petroleum Institute*, 448 U.S. 607 (1980).

The Agency believes that the proposed rule is economically feasible because the employers can absorb or pass on the costs of compliance without threatening their long-term profitability or competitive structure (*see Cotton Dust*, 452 U.S. at 530 n. 55 (1981); *Lead II*, 939 F.2d 975, 980 (DC Cir. 1991)). Moreover, the preliminary economic analysis of the proposed rule describes the benefits and costs of the proposed rule (*see* section III.B. of this preamble, ''Preliminary Economic Analysis and Initial Regulatory Flexibility Analysis''). Based on this information, OSHA made a preliminary determination that the proposed rule is an economically feasible means of meeting its statutory objective of reducing the risk associated with employee exposure to hazardous atmospheres while using respirators (*see*

Cotton Dust, 453 U.S. at 514 n. 32 (1981); *LOTO II*, 37 F.3d 665, 668 (DC Cir. 1994)).

B. Preliminary Economic Analysis and Initial Regulatory Flexibility Analysis

The proposal is not economically significant within the context of Executive Order (''E.O.'') 12866 (58 FR 51735), or a ''major rule'' under Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''; 5 U.S.C. 804). The proposal would impose no additional costs on any private-or public-sector entity, and does not meet any of the criteria for a significant or major rule specified by E.O. 12866 or other relevant statutes.

The proposal offers employers additional options to fit test their employees for respirator use. In this regard, OSHA would supplement the standard PortaCount® QNFT protocol currently in Appendix A of the Respiratory Protection Standard with the proposed protocols if it approves them as a result of this proposed rulemaking. According to a recent survey of respirator use conducted by the National Institute for Occupational Safety and Health and the Bureau of Labor Statistics, approximately 7,500 establishments currently use an ambient-aerosol protocol out of nearly 282,000 establishments found by the survey to require respirator use (Ex. 6–3, Docket No. H049C (''Respiratory Protection—Assigned Protection Factors'').[4]

Under this proposal, employers would have a choice between the standard PortaCount® QNFT protocol consisting of exercises lasting one minute each, or the proposed protocols with exercises (six or eight) lasting 30 or 40 seconds each. By providing regulatory flexibility to these employers, the proposal may reduce their costs by decreasing fit-testing time. In this regard, OSHA assumes that the proposed protocols would be adopted by some employers who currently use the standard PortaCount® QNFT protocol for their employees. These employers would adopt the proposed protocols because these protocols would take less time to administer than the standard PortaCount® QNFT protocol, thereby decreasing the cost required for fit testing their employees. However, the Agency believes that the proposed protocols are unlikely to be adopted by employers who currently perform fit testing using other quantitative or qualitative fit tests because of the significant equipment and training investment they already have made to administer these fit tests.

Based on the above discussion, the Agency preliminarily concludes that this proposed rulemaking would impose no additional costs on employers, thereby eliminating the need for a preliminary economic analysis. Moreover, OSHA certifies that the proposal would not have a significant impact on a substantial number of small entities, and that the Agency does not have to prepare an initial regulatory flexibility analysis for this rulemaking under the SBREFA (5 U.S.C. 601 *et seq.*).

C. Paperwork Reduction Act

After thoroughly analyzing the proposed fit-testing provisions in terms of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.* and 5 CFR part 1320), OSHA believes that these provisions would not add to the existing collection of information (*i.e.*, paperwork) requirements regarding fit testing employees for respirator use. The paperwork requirement specified in paragraph (m)(2) of OSHA's Respiratory Protection Standard at 29 CFR 1910.134 specifies that employers must document and maintain the following information on quantitative fit tests administered to employees: the name or identification of the employee tested; the type of fit test performed; the specific make, model, style, and size of respirator tested; the date of the test; and the test results. The employer must maintain this record until the next fit test is administered. However, this paperwork requirement would remain the same whether employers currently use the other fit-testing protocols already listed in Part I of Appendix A of the Respiratory Protection Standard, or implement the proposed fit-testing protocols instead. Therefore, using one of the proposed fit-testing protocols in the context of the existing fit-testing protocols would not involve an additional paperwork-burden determination by OSHA because it already accounts for this burden under the paperwork analysis for the Respiratory Protection Standard (OMB Control Number 1218–0099).

Members of the public may send comments on this paperwork analysis to: Office of Information and Regulatory Affairs (*Attention:* Desk Officer for OSHA), Office of Management and Budget, Room 10235, 725 17th Street, NW., Washington, DC 20503. The Agency also encourages commenters to submit a copy of their comments on this paperwork analysis to OSHA, along with their other comments on the proposed rule.

D. Federalism

The Agency reviewed the proposal according to the most recent Executive Order (''E.O.'') on Federalism (E.O. 13132; 64 FR 43225). This E.O. requires that Federal agencies, to the extent possible, refrain from limiting State policy options, consult with States before taking actions that restrict their policy options, and take such actions only when clear constitutional authority exists and the problem is national in scope. The E.O. allows Federal agencies to preempt State law only with the expressed consent of Congress. In such cases, Federal agencies must limit preemption of State law to the extent possible.

Section 18 of the Act; 29 U.S.C. 651 *et seq.*), expressly provides OSHA with authority to preempt State occupational safety and health standards to the extent that the Agency promulgates a Federal standard under Section 6 of the Act. Accordingly, Section 18 of the Act authorizes the Agency to preempt State promulgation and enforcement of requirements dealing with occupational safety and health issues covered by OSHA standards unless the State has an OSHA-approved occupational safety and health plan (namely, is a ''State-plan State''). (*See Gade* v. *National Solid Waste Management Association*, 112 S. Ct. 2374 (1992).)

With respect to States that do not have OSHA-approved plans, the Agency concludes that this proposed rule conforms to the preemption provisions of the Act. Additionally, Section 18 of the Act prohibits States without approved plans from issuing citations for violations of OSHA standards; the Agency finds that the proposed rulemaking does not expand this limitation. Therefore, for States that do not have approved occupational safety and health plans, this proposed rule would not affect the preemption provisions of Section 18 of the Act.

OSHA has authority under E.O. 13132 to propose the use of additional fit-testing protocols under its Respiratory Protection Standard at 29 CFR 1910.134 because the problems addressed by these fit-testing requirements are national in scope. The Agency preliminarily concludes that the fit-testing protocols proposed by this rulemaking would provide employers in every State with procedures that would assist them in protecting their employees from the risks of exposure to atmospheric hazards. In this regard, the proposal offers thousands of employers across the nation an opportunity to use additional protocols to assess respirator fit among their employees. Therefore,

[4] The standard PortaCount® QNFT protocol is the only ambient-aerosol protocol currently listed in Appendix A of the Respiratory Protection Standard.

the proposal would provide employers in every State with an alternative means of complying with the fit-testing requirements specified by paragraph (f) of OSHA's Respiratory Protection Standard.

Should the Agency adopt a proposed standard in a final rulemaking, Section 18(c)(2) of the Act (29 U.S.C. 667(c)(2)) requires State-plan States to adopt the same standard, or to develop and enforce an alternative standard that is at least as effective as the OSHA standard. However, the new fit-testing protocols proposed in this rulemaking would only provide employers with an alternative to the existing requirements for fit-testing protocols specified in the Respiratory Protection Standard; therefore, the alternative is not, itself, a mandatory standard. Accordingly, States with OSHA-approved State Plans would not be obligated to adopt the final provisions that may result from this proposed rulemaking. Nevertheless, OSHA strongly encourages them to adopt the final provisions to provide additional compliance options to employers in their States.

In summary, this proposed rule complies with E.O. 13132. In States without OSHA-approved State Plans, Congress expressly provides for OSHA standards to preempt State job safety and health rules in areas addressed by the Federal standards; in these States, this proposed rule would limit State policy options in the same manner as every standard promulgated by the Agency. In States with OSHA-approved State Plans, this rulemaking does not significantly limit State policy options.

E. State-Plan States

Section 18(c)(2) of the Act (29 U.S.C. 667(c)(2)) requires State-Plan States to adopt mandatory standards promulgated by OSHA. However, as noted in the previous section of this preamble, States with OSHA-approved State Plans would not be obligated to adopt the final provisions that may result from this proposed rulemaking. Nevertheless, OSHA strongly encourages them to adopt the final provisions to provide compliance options to employers in their States. In this regard, OSHA preliminarily concludes that the fit-testing protocols proposed by this rulemaking would provide employers in the State-Plan States with procedures that would protect the safety and health of employees who use respirators against hazardous airborne substances in their workplace at least as well as the standard PortaCount® QNFT protocol. The 24 States and two Territories with State Plans are: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming. Connecticut, New Jersey, New York, and the Virgin Islands have OSHA-approved State Plans that apply to State and local government employees only.

F. Unfunded Mandates Reform Act

OSHA reviewed the proposal according to the Unfunded Mandates Reform Act of 1995 (''UMRA''; 2 U.S.C. 1501 *et seq.*) and Executive Order 12875 (58 FR 58093). As discussed above in section III.B of this preamble (''Preliminary Economic Analysis and Initial Regulatory Flexibility Analysis''), the Agency made a preliminary determination that the proposal imposes no additional costs on any private-or public-sector entity. The substantive content of the proposal applies only to employers whose employees use respirators for protection against airborne workplace contaminants, and compliance with the proposal would be strictly optional for these employers. Accordingly, the proposal would require no additional expenditures by either public-or private-sector employers; therefore, this proposal is not a significant regulatory action within the meaning of Section 202 of the UMRA (2 U.S.C. 1532).

Under voluntary agreement with OSHA, some States enforce compliance with their State standards on public-sector entities, and these agreements specify that these State standards must be equivalent to OSHA standards. Thus, although OSHA preliminarily concludes that the proposed protocols would impose no additional costs on public-sector employers, the proposal would not involve any unfunded mandates imposed on any other State or local government entity. Consequently, this proposal does not meet the definition of a ''Federal intergovernmental mandate'' (*see* Section 421(5) of the UMRA (2 U.S.C. 658(5))). Therefore, for the purposes of the UMRA, the Agency preliminarily certifies that this proposal does not mandate that State, local, or tribal governments adopt new, unfunded regulatory obligations, nor does the proposed rule increase expenditures by the private sector of more than $100 million a year.

G. Applicability of Existing Consensus Standards

Section 6(b)(8) of the Act (29 U.S.C. 655(b(8)) requires OSHA to explain ''why a rule promulgated by the Secretary differs substantially from an existing national consensus standard,'' by publishing ''a statement of the reasons why the rule as adopted will better effectuate the purposes of the Act than the national consensus standard.'' In this regard, when OSHA promulgated its original respirator fit-testing protocols under Appendix A of its final Respiratory Protection Standard (29 CFR 1910.134), no national consensus standards addressed these protocols. Later, the American National Standards Institute (ANSI) developed a national consensus standard on fit-testing protocols (''Respirator Fit Testing Methods,'' ANSI Z88.10–2001) as an adjunct to its national consensus standard on respiratory-protection programs.

Paragraph 7.2 of ANSI Z88.10–2001 specifies the requirements for conducting a PortaCount® quantitative fit test, which differ substantially from the standard PortaCount® QNFT protocol provided in Part I.C.3 of OSHA's Respiratory Protection Standard. These protocols differ in terms of the fit-testing exercises required, and the duration of these exercises. In addition, the ANSI standard provides no data or information on the accuracy and reliability of its protocol. The Agency believes that limiting fit-testing options to the protocol currently specified by the ANSI standard would seriously impede the development of fit-testing protocols that are more accurate and reliable, and less costly to administer, than the ANSI protocol.

H. Advisory Committee for Construction Safety and Health Review of the Proposed Standard

The proposal to add two quantitative fit-testing protocols to Part I.C of Appendix A of OSHA's Respiratory Protection Standard would affect the construction industry because it revises the fit-testing requirements specified by the standard, which is applicable to the construction industry.[5] Whenever the Agency proposes a rule involving construction activities, the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 3704), OSHA regulations governing the Advisory Committee for Construction Safety and Health (ACCSH) (i.e., 29 CFR 1912.3), and provisions governing OSHA rulemaking (i.e., 29 CFR 1911.10) require OSHA to consult with the ACCSH. Specifically, 29 CFR 1911.10 requires that the Assistant Secretary provide the ACCSH with ''any proposal

[5] The Respiratory Protection Standard for the construction industry at 29 CFR 1926.103 cross-references the Respiratory Protection Standard for general industry at 29 CFR 1910.134.

of his own,'' together with ''all pertinent factual information available to him, including the results of research, demonstrations, and experiments.'' Accordingly, OSHA provided the ACCSH members with copies of the proposal and other relevant information several weeks before the January 24, 2008, ACCSH meeting. OSHA staff met with the ACCSH at that meeting to discuss the proposal, and to answer members' questions about it. At the end of this session, the ACCSH voted to defer making any recommendations to OSHA regarding the proposal until their next meeting so they could thoroughly review the proposal and the other relevant information, including the peer-reviewed article described above under section II.B of this notice (''Summary of the Peer-Reviewed Article'').

At the May 16, 2008, ACCSH meeting, OSHA staff again met with the ACCSH to discuss the proposal. Following this discussion, the ACCSH recommended unanimously that OSHA: (1) Remove the PortaCount® QNFT protocol 1 from the proposal because it failed to meet the ANSI Z88.10–2001 criteria for test sensitivity and predicted value of a pass; and (2) include the PortaCount® QNFT protocol 2 in the proposal because it met all of the ANSI Z88.10–2001 criteria.

I. Public Participation

OSHA encourages members of the public to participate in this rulemaking by submitting comments on the proposal, as well as documentary evidence in support of these comments. Accordingly, the Agency invites interested parties having knowledge of, or experience with, respirator fit-testing protocols to participate in this process, and welcomes any pertinent information that will provide it with the best available evidence on which to develop the final regulatory provisions. The Agency invites interested parties to submit written views, arguments, and data concerning this proposed rule, including: responses to the issues specified under section II.B of this preamble (''Issues for Public Comment''), and comments on OSHA's determination of the economic or other regulatory impacts of the proposed rule on the regulated community. Comments may be submitted in response to this **Federal Register** notice: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking portal; (2) by facsimile (fax); or (3) by hard copy. When submitting comments, follow the procedures specified above in the sections of this preamble titled **DATES** and **ADDRESSES**. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for this rulemaking (Docket No. OSHA–2007–0007). In addition, comments must clearly identify the provision of the proposal being addressed, the position taken with respect to an issue, and the basis for that position. Comments, along with supporting data and references, received by the end of the specified comment period will become part of the proceedings record. This material, including comments, is available for public inspection without change at *http://www.regulations.gov*[6] and at OSHA's docket Web site at http://www.dockets.osha.gov (under Docket No. OSHA–2007–0007). Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and birth dates with their comments. Exhibits referenced in this **Federal Register** notice also will be available at *http://www.regulations.gov* and *http://www.dockets.osha.gov* under the same docket number.

Material that supplements electronic comments may be uploaded electronically (including by fax). Supplemental material also may be mailed to the OSHA Docket Office (*see* the section of this preamble titled **ADDRESSES**) provided it identifies the electronic comments using the commenter's name, comment submission date, and docket number so OSHA can attach the materials to the appropriate comments. Reading or downloading some of this material (*e.g.*, copyrighted material) from the *http://www.regulations.gov* and *http://www.dockets.osha.gov* Web sites is not possible; however, this material is available for inspection and copying (along with comments and exhibits) at the OSHA Docket Office (*see* the section of this preamble titled **ADDRESSES**).

Security-related procedures may delay significantly the delivery of comments and other material submitted through the regular mail. For information about security procedures involving the regular mail, as well as express delivery and messenger or courier service, contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This notice, as well as news releases and other relevant information, also are available at OSHA's Web site at *http://www.osha.gov.*

[6] Information on using this Web site to submit comments and to access dockets is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information and assistance about using the Internet to locate docket submissions.

List of Subjects in 29 CFR Part 1910

Fit testing, Hazardous substances, Health, Occupational safety and health, Respirators, Toxic substances.

Authority and Signature

Thomas M. Stohler, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, directed the preparation of this notice. Accordingly, the Agency issues the proposed amendment under the following authorities: Sections 4, 6(b), 8(c), and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Section 3704 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 *et seq.*); Section 41 of the Longshore and Harbor Worker's Compensation Act (33 U.S.C. 941); Secretary of Labor's Order No. 5–2007 (72 FR 31159); and 29 CFR part 1911.

Signed at Washington, DC, on January 13, 2009.

Thomas M. Stohler,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

IV. Proposed Amendment to the Standard

For the reasons stated above in the preamble, the Agency proposes to amend 29 CFR part 1910 as follows:

PART 1910—[AMENDED]

Subpart I—[Amended]

1. Revise the authority citation for subpart I of part 1910 to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657); Section 3704 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 *et seq.*); Section 41, Longshore and Harbor Worker's Compensation Act (33 U.S.C. 941); and Secretary of Labor's Order Nos. 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), or 5–2007 (72 FR 31159), as applicable. Sections 29 CFR 1910.132, 1910.134, and 1910.138 also issued under 29 CFR part 1911. Sections 29 CFR 1910.133, 1910.135, and 1910.136 also issued under 29 CFR part 1911 and 5 U.S.C. 553.

2. Add paragraphs (c) and (d) to section C.3 of Appendix A to § 1910.134 to read as follows:

§ 1910.134 Respiratory protection.

* * * * *

Appendix A to § 1910.134: Fit Testing Procedures (Mandatory)

* * * * *

C. * * *

* * * * *

3. * * *

* * * * *

(c) Revised PortaCount® Quantitative Fit-Testing Protocol 1.

(1) When administrating this protocol to test subjects (*i.e.*, employees), employers must comply with the requirements specified in paragraphs (a) and (b) of Part 1.C.3 of this appendix. In addition, employers must use the eight fit-testing exercises specified in section I.A.14 of this appendix when administering this protocol. Test subjects must perform these fit-testing exercises for at least 30 seconds, except for the grimace exercise, which test subjects must perform for 15 seconds.

(2) Calculate the overall fit factor for this protocol as follows:

$$\text{Overall Fit Factor} = \frac{7}{1/ff_1 + 1/ff_2 + 1/ff_3 + 1/ff_4 + 1/ff_5 + 1/ff_7 + 1/ff_8}$$

Note to Paragraph (c)(2): Only seven of the eight fit-testing exercises are used in this calculation because the results for the grimace exercise (ff_6) are not included in the calculation.

(d) Revised PortaCount® Quantitative Fit-Testing Protocol 2.

(1) When administrating this protocol to test subjects (*i.e.*, employees), employers must comply with the requirements specified in paragraphs (a) and (b) of Part 1.C.3 of this appendix. In addition, employers must use the fit-testing exercises specified in section I.A.14 of this appendix when administering this protocol, except that test subjects must not perform the fit-testing exercises specified by paragraphs (a)(1) and (a)(2) of section I.A.14 (*i.e.*, the initial normal-breathing exercise and the deep-breathing exercise, respectively). Test subjects must perform these fit-testing exercises for at least 40 seconds, except for the grimace exercise, which test subjects must perform for 15 seconds.

(2) This protocol requires the following minimum pass-fail fit-testing criteria: for half masks, an overall fit factor of 200 (instead of the usual 100); and, for full-facepiece respirators, an overall fit factor of 1,000 (instead of the usual 500).

(3) Calculate the overall fit factor for this protocol as follows:

$$\text{Overall Fit Factor} = \frac{5}{1/ff_3 + 1/ff_4 + 1/ff_5 + 1/ff_7 + 1/ff_8}$$

Note to Paragraph (d)(3): Only five of the eight fit-testing exercises are used in this calculation because test subjects do not perform the initial normal-breathing exercise (ff_1) and the deep-breathing exercise (ff_2), and the results for the grimace exercise (ff_6) are not included in the calculation.

* * * * *

[FR Doc. E9–922 Filed 1–16–09; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 160, 161, 164, and 165

[USCG–2005–21869]

RIN 1625–AA99

Vessel Requirements for Notices of Arrival and Departure, and Automatic Identification System

AGENCY: Coast Guard, DHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Coast Guard announces a public meeting to receive comments on a notice of proposed rulemaking to amend Coast Guard regulations governing Notice of Arrival and Departure (NOAD) and Automatic Identification System (AIS) requirements.

DATES: A public meeting will be held on March 5, 2009, from 12:30 p.m. to 3 p.m. to provide an opportunity for oral comments. Written comments and related material may also be submitted to Coast Guard personnel specified at that meeting. The comment period for the proposed rule closes April 15, 2009. All comments and related material submitted after the meeting must either be submitted to our online docket via *http://www.regulations.gov* on or before April 15, 2009, or reach the Docket Management Facility by that date.

ADDRESSES: The public meeting will be held at the United States Coast Guard Headquarters Building, Room 2415, 2100 2nd Street, SW., Washington, DC 20593; a government-issued photo identification (for example, a driver's license) will be required for entrance to the building.

You may submit written comments identified by docket number USCG–2005–21869 before or after the meeting using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

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

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

To avoid duplication, please use only one of these four methods. Our online docket for this rulemaking is available on the Internet at *http://www.regulations.gov* under docket number USCG–2005–21869.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning the NOAD portion of this proposed rulemaking or concerning the public meeting, please contact Lieutenant Sharmine Jones, Office of Vessel Activities (CG–543), Coast Guard, *Sharmine.N.Jones@uscg.mil,* telephone 202–372–1234. If you have questions on the AIS portion of this proposed rulemaking, contact Mr. Jorge Arroyo, Office of Navigation Systems (CG–5413), Coast Guard, *Jorge.Arroyo@uscg.mil,* telephone 202–372–1563. If you have questions on viewing or submitting material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

We published a notice of proposed rulemaking (NPRM) in the **Federal Register** on December 16, 2008 (73 FR 76295), entitled ''Vessel Requirements for Notices of Arrival and Departure, and Automatic Identification System.'' In it we stated our intention to hold a public meeting, and to publish a notice

to announce the location and date of the public meeting. 73 FR 76296. In this notice, we announce that public meeting to receive comments on this proposed rule.

In the NPRM, we proposed to expand the applicability of Notice of Arrival and Departure (NOAD) and Automatic Identification System (AIS) requirements to more commercial vessels, modify NOAD reporting requirements, establish a mandatory method for electronic data submission and establish a separate requirement for certain vessels to submit notices of departure. The proposed rulemaking would also clarify existing AIS requirements and extend the applicability of AIS requirements beyond Vessel Traffic Service areas to all U.S. navigable waters.

You may view the NPRM in our online docket, in addition to supporting documents prepared by the Coast Guard (Regulatory Analysis & Initial Regulatory Flexibility Analysis, Valuing Mortality Risk Reductions in Homeland Security Regulatory Analyses—Final Report June 2008, and an Environmental Checklist), and comments submitted thus far by going to *http://www.regulations.gov.* Once there, select the Advanced Docket Search option on the right side of the screen, insert USCG–2005–21869 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

We encourage you to participate in this rulemaking by submitting comments either orally at the meeting or in writing. If you bring written comments to the meeting, you may submit them to Coast Guard personnel specified at the meeting to receive written comments. These comments will be submitted to our online public docket. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

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

Information on Service for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact Lieutenant Sharmine Jones at the telephone number indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Public Meeting

The Coast Guard will hold a public meeting regarding this proposed rulemaking on March 5, 2009, from 12:30 p.m. to 3 p.m., at the United States Coast Guard Headquarters Building, Room 2415, 2100 2nd Street, SW., Washington, DC 20593. A government-issued photo identification (for example, a driver's license) will be required for entrance to the building.

Parking near the building is limited. Public transportation to the building (Bus Route 71) is limited to rush hours, approximately 6 to 9:30 a.m. and 3 to 6 p.m. Contact the Washington Metropolitan Area Transit Authority for additional information at 202–637–7000 or *http://www.wmata.com/.*

We plan to record this meeting using an audio-digital recorder and to make that audio recording available through a link in our online docket. We will also provide a written summary of the meeting and comments and will place that summary in the docket.

Dated: January 13, 2009.

M.L. Blair,

Captain, U.S. Coast Guard, Acting Director of Commercial Regulations and Standards.

[FR Doc. E9–1135 Filed 1–16–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AN23

Expansion of Enrollment in the VA Health Care System

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its regulations regarding enrollment in the VA health care system. In particular, it proposes to establish additional subpriorities within enrollment priority category 8 and provide that beginning on the effective date of the rule, VA would enroll priority category 8 veterans whose income exceeds the current means test and geographic means test income thresholds by 10 percent or less.

DATES: Written comments must be received on or before February 20, 2009.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov;* by mail or hand-delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to ''RIN 2900–AN23—Expansion of Enrollment.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Tony Guagliardo, Director, Business Policy, Chief Business Office (163), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–1591. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: Public Law 104–262, the Veterans' Health Care Eligibility Reform Act of 1996, required VA to establish a national enrollment system to manage the delivery of inpatient hospital care and outpatient medical care, within available appropriated resources. It directed that the enrollment system be managed in such a way as ''to ensure that the provision of care to enrollees is timely and acceptable in quality,'' and authorized such subprioritization of the statutory enrollment categories ''as the Secretary determines necessary.'' The law also provided that starting October 1, 1998, most veterans had to enroll in the VA health care system as a condition for receiving VA hospital and outpatient care.

In a document published in the **Federal Register** on January 17, 2003 (68 FR 2670), VA published an interim final rule that amended 38 CFR 17.36 to add two new subpriorities to both enrollment priority categories 7 and 8, for a total of four subpriorities in each category. It also announced that

beginning January 17, 2003, VA would enroll all priority categories of veterans except that those veterans in priority category 8 who were not in an enrolled status on January 17, 2003, or who requested disenrollment after that date, would not be eligible to be enrolled. The veterans in this priority category are those whose incomes exceed certain income limits and who do not qualify for enrollment in another priority category. Since then, VA has not enrolled veterans in priority category 8 unless they had been enrolled in another priority category and no longer qualified for enrollment in that category.

This proposed rule would establish additional subpriorities within enrollment priority category 8 and would provide that beginning on the effective date of the rule, VA would enroll priority category 8 veterans whose income exceeds the current means test and geographic means test income thresholds by 10 percent or less. These veterans would continue enrollment in these subpriority groups (even if their income exceeds the current tests by more than 10 percent) unless they become eligible for enrollment in a higher category or subpriority; a request for disenrollment is made; or a decision is made to disenroll their particular subpriority or category. This proposed rule would also amend the medical regulations by making a nonsubstantive change to reflect an alternative method to submit VA's Application for Health Care Benefits (VA Form 10–10EZ).

Projections for Increasing Enrollment of Priority Category 8 Veterans Whose Income Exceeds the Current VA Means Test and Geographic Means Test Income Thresholds by 10 Percent or Less

An existing regulation (38 CFR 17.36(c)) requires that the Secretary determine which categories of veterans are eligible to be enrolled and that the Secretary notify eligible enrollees of the determination by announcing it in the **Federal Register**. In making that determination, the Secretary must consider an array of factors including economic information such as available resources, projections of demand for enrollment, and the length of waiting times for appointments for care.

The actual number of total enrollees who were enrolled at any time in 2003 was 7,120,347. The corresponding number in 2008 was 7,802,382. The increase in the veterans enrolled in the VA health care system between 2003 and 2008 is, therefore, 682,035.

The 2009 Appropriations Act provided funding in VA's health care appropriation to increase priority category 8 enrollment. The Veterans Health Administration's (VHA) total FY 2009 medical care appropriation is $40.434 billion. This is supplemented by an additional $3.717 billion from collections for copayments, third-party reimbursements for services, other revenue, and carry-over funds. The sum of these resources is $44.151 billion. The following table shows the projected enrollment for FY 2009 together with the projected expenditures that would be needed to provide the medical benefits package to enrollees under VA's current enrollment policy:

FY 2009 PROJECTIONS UNDER VA'S CURRENT ENROLLMENT POLICY [1]

Priority category	Enrollment	Expenditures	Cumulative expenditures
1	1,079,852	$10,552,245,777	$10,552,245,777
2	595,548	2,352,417,015	12,874,662,792
3	1,090,376	3,517,387,015	16,392,050,361
4	233,153	3,461,043,477	19,853,093,838
5	2,361,166	11,513,021,012	31,366,114,850
6	354,785	606,349,476	31,972,464,326
7	1,056,733	2,041,244,267	34,013,708,592
8	1,286,626	2,692,952,224	36,706,660,817
Total	8,058,238	36,706,660,817	.....

[1] This table *does not* include projections regarding the impact of the proposed regulatory change.

The following table shows the projected enrollment and expenditures for FY 2009 if the expanded enrollment as proposed in this document is implemented. The projections are based on reopening enrollment for Priority 8 veterans whose income exceeds the current VA means test (VMT) and geographic means test (GMT) income thresholds by 10 percent or less. The means tests are currently based on Calendar Year (CY) 2007 income.

Priority 8 veterans eligible to enroll under VMT/GMT+10 percent are assumed to enroll at higher rates than the average historical rates evidenced in the current Priority 8 enrollee population. Experience shows that veterans in the lower income ranges for Priority 8 veterans are more likely to enroll. The FY 2009 enrollment projections also reflect an expected surge in enrollment when the suspension is lifted and veterans who have not been able to enroll take advantage of this opportunity. The higher enrollment rates for VMT/GMT+10 percent veterans were increased by 17.5 percent for FY 2009 to reflect the expected surge. In absence of any data to support a different assumption, the projections for VMT/GMT+10 percent assume the new Priority 8 enrollees will have the same reliance and morbidity as current Priority 8 enrollees.

FY 2009 PROJECTIONS UNDER VA'S CURRENT ENROLLMENT POLICY PLUS GMT/VMT 10 PERCENT SCENARIO [1]

Priority category	Enrollment	Expenditures	Cumulative expenditures
1	1,079,852	$10,552,245,777	$10,522,245,777
2	595,548	2,352,417,015	12,874,662,792
3	1,090,376	3,517,387,568	16,392,050,361
4	233,153	3,461,043,477	19,853,093,838
5	2,361,166	11,513,021,012	31,366,114,850

FY 2009 PROJECTIONS UNDER VA'S CURRENT ENROLLMENT POLICY PLUS GMT/VMT 10 PERCENT SCENARIO [1]—Continued

Priority category	Enrollment	Expenditures	Cumulative expenditures
6	354,785	606,349,476	31,972,464,326
7	1,056,733	2,041,244,267	34,013,708,592
8	1,545,331	3,178,199,353	37,191,907,945
Total	8,316,943	37,191,907,945	

[1] FY 2009 Projections in this table include projections under Current Enrollment Policy *plus* the impact of the proposed regulatory change.

The previous tables display 2009 projections based on the 2008 Enrollee Health Care Projection Model, VA's health care actuarial model. The VA Enrollee Health Care Projection Model (the ''Model'') supports the VHA health care budget, projects the number of veterans who will be enrolled, the health care services they will choose to get from VHA, and the expenditures associated with that utilization for 20 years. The utilization and expenditure projections are developed based on where enrollees live to support population-based long-term planning. Base year unit costs are based on FY 2007 unit cost data from VA's financial accounting system—Decision Support System (DSS). The base year unit costs are trended forward using health care cost trends and adjusted for the impact of enrollee aging and changes in VA's level of health care management over the 20-year projection period. The expenditures projected by this model reflected in these tables exclude services such as Long Term Care, Readjustment Counseling, Spina Bifida, Foreign Medical Programs, Non-Veteran Medical Care, and the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA). Total expenditures for medical care not included in the model are projected to be $6.959 billion in FY 2009. The following tables show VA's projections for enrollment through 2019 under the current enrollment policy and how the proposed expansion of enrollment in priority category 8 would affect that.

PROJECTED PRIORITY CATEGORY 8 ENROLLMENT: FY 2009–2019 [1]

Fiscal year	Current enrollment policy [2]	GMT/VMT 10% scenario [3]	Total enrollment
2009	1,286,626	258,705	1,545,331
2010	1,291,964	265,571	1,557,535
2011	1,294,969	271,755	1,566,724
2012	1,295,921	281,598	1,577,518
2013	1,293,672	295,772	1,589,444
2014	1,288,124	290,583	1,578,707
2015	1,280,054	294,617	1,574,671
2016	1,269,050	297,001	1,566,051
2017	1,258,489	299,393	1,557,882
2018	1,244,623	300,847	1,545,470
2019	1,228,603	300,798	1,529,401

[1] The enrollment projections begin with VetPop data, 20-year projections of the veteran population that are produced by the VA Office of the Actuary. At this time, VetPop does not provide veteran projections by Priority Levels so VetPop data is combined with other data sources to create VetPop Proxy data, which provides veteran projections by Priority Level.

Historical enrollment data are analyzed to develop enrollment rates by Priority Level, Age Band, Geographic Area, and Special Conflict Status. The enrollment rates are then applied to the enrollment pool, which is VetPop minus the enrolled veteran population, to determine projected enrollees for any given year.

Mortality rates specific to age, gender, and Priority Level are then applied to the enrollee population, and the enrollment and potential enrollee pool are aged one year at the end of each fiscal year to arrive at the projections for the beginning of the next fiscal year. The process of applying enrollment and mortality rates then repeats for the duration of the enrollment projections.

The VA Enrollee Health Care [Projection Model (EHCPM) also accounts for geographic migration and enrollees who transition between enrollment Priority Levels.

[2] FY 2009–2019 Projections under Current Enrollment Policy *do not* include the impact of the proposed regulatory change.

[3] FY 2009–2019 Projections under GMT/VMT 10 percent represent the impact of the proposed regulatory change.

PROJECTED TOTAL PRIORITY CATEGORY 1–8 ENROLLMENT: FY 2009–2019

Fiscal year	Current enrollment policy [1]	Current enrollment plus GMT/VMT 10% scenario [2]	Change from current policy
2009	8,058,238	8,316,943	258,705
2010	8,173,270	8,438,842	265,578
2011	8,274,706	8,546,461	271,755
2012	8,341,713	8,623,310	281,598
2013	8,378,061	8,673,833	295,772
2014	8,384,127	8,674,710	290,583
2015	8,364,224	8,658,841	294,617
2016	8,318,496	8,615,497	297,001

PROJECTED TOTAL PRIORITY CATEGORY 1–8 ENROLLMENT: FY 2009–2019—Continued

Fiscal year	Current enrollment policy [1]	Current enrollment plus GMT/VMT 10% scenario [2]	Change from current policy
2017	8,277,135	8,576,528	299,393
2018	8,231,823	8,532,671	300,847
2019	8,181,196	8,481,994	300,798

[1] FY 2009–2019 Projections under Current Enrollment Policy *do not* include the impact of the proposed regulatory change.
[2] FY 2009–2019 Projections in this column include projections under Current Enrollment Policy *plus* the impact of the proposed regulatory change.

As can be seen from the FY 2009 medical care appropriation and the tables above, VA projects that available resources to expand enrollment will be adequate to support the proposed expansion of enrollment of Priority 8 veterans.

Previous Interim Final Rules and Responses to Comments

This document includes proposed changes in the provisions adopted in the interim final rule published in the **Federal Register** on January 17, 2003 (68 FR 2669, RIN 2900–AL51). We received five comments on that interim final rule. All of the commenters expressed disagreement with VA's decision to suspend enrollment of additional veterans in priority category 8. Each of the commenters generally expressed the view that VA should provide care to all veterans seeking care because they had served their country. Thoughtful consideration was given to the comments received. However, as discussed in the preamble accompanying publication of the interim final rule, VA is required to assess available resources and determine the number of veterans it is able to enroll to ensure that medical services provided are both timely and acceptable in quality. An enrollment system is necessary because the provision of VA health care is discretionary and can be provided only to the extent that appropriated resources are available for that purpose. The enrollment decision made in January 2003 was based on available resources, and the comments do not suggest that VA's assessment of available resources was incorrect.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no such effect on State, local, or tribal governments.

Paperwork Reduction Act

This proposed rule contains no provisions constituting a new collection of information, but would change, merely by adding an option of a new method of submission, a collection of information that has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). OMB assigns a control number for each collection of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The information collection provisions affected by this proposed rule have been approved under control number 2900–0091.

Executive Order 12866 and Congressional Review Act

This is an economically significant regulatory action under Executive Order 12866 and constitutes a major rule under the Congressional Review Act.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a ''significant regulatory action'' requiring review by OMB as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of entitlement recipients; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

VA has examined the economic, interagency, budgetary, legal, and policy implications of this proposed rule and has concluded that it is an economically significant regulatory action under Executive Order 12866 because it is likely to result in a rule that may have an annual effect on the economy of $100 million or more and may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. This proposed rule is also a major rule under the Congressional Review Act because it is likely to result in an annual effect on the economy of $100 million or more.

VA has attempted to follow OMB circular A–4 to the extent feasible in this analysis. The circular first calls for a discussion of the need for the regulation. The Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Pub. L. 110–329) was enacted on September 30, 2008. The accompanying report language stated that funding was included to reopen priority category 8 enrollment. The preamble above discusses the need for the regulation in more detail. There are not any alternatives to publishing this proposed rule that will accomplish the stated provisions in the report language of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Pub. L. 110–329).

VA uses the Enrollee Health Care Projection Model (Model), a health care actuarial model, to project veteran demand for VA health care. To project enrollment and expenditures under this proposed regulatory change, VA first identified the number of non-enrolled veterans whose income exceeds the current VA means test and geographic means test income thresholds by 10

percent or less. VA then projected the number of those veterans who would enroll based on historical priority category 8 enrollment rates. The projected health care service utilization for these new enrollees was based on the historical morbidity and reliance rates of the current priority category 8 enrollee population. The projected expenditures represent the cost to provide the projected health care services to these new enrollees.

Using the 2008 Model, VA projects that this proposed regulatory change would result in an additional 258,705 priority category 8 enrollees in FY 2009. The projected increase in total health care service expenditures associated with this new enrollment is $485 million in FY 2009. The revenues generated by the first- and third-party collections are projected to be $121 million,[1] resulting in a $364 million growth in net health service expenditures for FY 2009, and $375 million was provided in the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Pub. L. 110–329). VA's expenditures related to this proposed regulatory change are projected to be approximately $2.931 billion for five years.[2] These expenditures exclude services such as Long Term Care, Readjustment Counseling, Spina Bifida, Foreign Medical Programs, Non-Veteran Medical Care and CHAMPVA.

[1] *The first party collections are based on the projected health care service utilization of the new Priority 8 enrollees. In the base year (2007), we applied the appropriate co-payment to the projected services. We then balanced the resulting co-payment revenue projections to the actual collections for 2007 for four categories (inpatient, outpatient, residential rehabilitation, and pharmacy) and by Veterans Integrated Service Network (VISN) to account for the amount actually collected. The resulting first-party revenue per service developed for 2007 is applied to the projected services in future years to project the first-party revenue associated with health care utilization of the new Priority 8 enrollees. Further, the pharmacy co-payment is increased over time based on the legislated Consumer Price Index (CPI) schedule.*

To develop the third-party collections, we calculated the percentage of third-party revenue collected in 2007 as a percent of 2007 expenditures by VISN, priority level, and two age bands (under and over age 65). We then applied these percentages to the projected expenditures for the new Priority 8 enrollees in future years. For 2010, the percentages were increased to reflect VHA's initiatives to increase third-party revenue collections.

[2] FIVE YEAR PROJECTION TABLE

[Present value: (future value)/((1+i−^n)]

($ in billions)	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	5 year
Future Value (FV)	$0.485	$0.533	$0.580	$0.631	$0.702	$2.931
3% discount rate (i)	3.00%	3.00%	3.00%	3.00%	3.00%	.....
7% discount rate (i)	7.00%	7.00%	7.00%	7.00%	7.00%	.....
Number of Years (n)	0	1	2	3	4	.....
Present Value (PV) at 3%	$0.485	$0.517	$0.546	$0.578	$0.624	$2.751
Present Value (PV) at 7%	$0.485	$0.498	$0.506	$0.515	$0.536	$2.540

VA requests comments on all of these projections.

Regulatory Flexibility Act

The Secretary hereby certifies that the adoption of this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule would not directly affect any small entities. Only individuals could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.005, Grants to States for the Construction of State Homes; 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.016, Veterans State Hospital Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; and 64.022, Veterans Home Based Primary Care.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and record-keeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: January 13, 2009.

James B. Peake,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, VA proposes to amend 38 CFR part 17 as set forth below:

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, and as stated in specific sections.

2. Amend § 17.36 by revising paragraphs (b)(8), (c)(1), (c)(2), and (d)(1) and the authority citation to read as follows:

§ 17.36 Enrollment—provision of hospital and outpatient care to veterans.

* * * * *

(b) * * *

(8) Veterans not included in priority category 4 or 7, who are eligible for care only if they agree to pay to the United States the applicable copayment determined under 38 U.S.C. 1710(f) and 1710(g). This category is further prioritized into the following subcategories:

(i) Noncompensable zero percent service-connected veterans who were in an enrolled status on January 17, 2003, or who are moved from a higher priority category or subcategory due to no longer being eligible for inclusion in such priority category or subcategory and who subsequently do not request disenrollment;

(ii) Noncompensable zero percent service-connected veterans not included in paragraph (b)(8)(i) of this section and whose income is not greater than ten percent more than the income that

would permit their enrollment in priority category 5 or priority category 7, whichever is higher;

(iii) Nonservice-connected veterans who were in an enrolled status on January 17, 2003, or who are moved from a higher priority category or subcategory due to no longer being eligible for inclusion in such priority category or subcategory and who subsequently do not request disenrollment;

(iv) Nonservice-connected veterans not included in paragraph (b)(8)(iii) of this section and whose income is not greater than ten percent more than the income that would permit their enrollment in priority category 5 or priority category 7, whichever is higher;

(v) Noncompensable zero percent service-connected veterans not included in paragraph (b)(8)(i) or paragraph (b)(8)(ii) of this section; and

(vi) Nonservice-connected veterans not included in paragraph (b)(8)(iii) or paragraph (b)(8)(iv) of this section.

(c) * * *

(1) It is anticipated that each year the Secretary will consider whether to change the categories and subcategories of veterans eligible to be enrolled. The Secretary at any time may revise the categories or subcategories of veterans eligible to be enrolled by amending paragraph (c)(2) of this section. The preamble to a **Federal Register** document announcing which priority categories and subcategories are eligible to be enrolled must specify the projected number of fiscal year applicants for enrollment in each priority category, projected healthcare utilization and expenditures for veterans in each priority category, appropriated funds and other revenue projected to be available for fiscal year enrollees, and projected total expenditures for enrollees by priority category. The determination should include consideration of relevant internal and external factors, *e.g.*, economic changes, changes in medical practices, and waiting times to obtain an appointment for care. Consistent with these criteria, the Secretary will determine which categories of veterans are eligible to be enrolled based on the order of priority specified in paragraph (b) of this section.

(2) Unless changed by a rulemaking document in accordance with paragraph (c)(1) of this section, VA will enroll the priority categories of veterans set forth in § 17.36(b) beginning [effective date of regulation], except that those veterans in subcategories (v) and (vi) of priority category 8 are not eligible to be enrolled.

(d) * * *

(1) *Application for enrollment.* A veteran may apply to be enrolled in the VA healthcare system at any time. A veteran who wishes to be enrolled must apply by submitting a VA Form 10–10EZ to a VA medical facility or via an online submission at *https://www.1010ez.med.va.gov/sec/vha/1010ez/.*

* * * * *

(Authority: 38 U.S.C. 101, 501, 1521, 1701, 1705, 1710, 1722)

[FR Doc. E9–1024 Filed 1–16–09; 8:45 am]

BILLING CODE 8320–01–P

Notices

Federal Register
Vol. 74, No. 12
Wednesday, January 21, 2009

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

Agricultural Marketing Service

[Doc. No. AMS–LS–07–0131; LS–07–16]

United States Standards for Livestock and Meat Marketing Claims, Naturally Raised Claim for Livestock and the Meat and Meat Products Derived From Such Livestock

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) is establishing a voluntary standard for a naturally raised marketing claim that livestock producers may request to have verified by the Department of Agriculture (USDA). This standard incorporates revisions made as a result of comments received from an earlier proposed standard. A number of livestock producers make claims associated with production practices in order to distinguish their products in the marketplace and there are a growing number of entities that are capturing value-added opportunities by using alternative production methods to meet the demands of consumers and markets seeking meat and meat products from naturally raised livestock. This voluntary standard will allow livestock producers to utilize AMS' voluntary, third party verification services to provide validity to such naturally raised livestock claims and, in certain cases, access to markets that require AMS verification. AMS verification of this claim would be accomplished through an audit of the production process in accordance with procedures that are contained in Part 62 of Title 7 of the Code of Federal Regulations (7 CFR part 62).

DATES: *Effective Date:* Standard will become effective once related information collection provisions pursuant to the Paperwork Reduction Act (44 U.S.C. 3501–3520) are met.

FOR FURTHER INFORMATION CONTACT: Martin E. O'Connor, Chief, Standards, Analysis, and Technology Branch, Livestock and Seed Program, AMS, USDA, Room 2607–S, 1400 Independence Avenue, SW., Washington, DC 20250–0254; facsimile: (202) 720–1112; telephone: (202) 720–4486; or e-mail: *Martin.OConnor@usda.gov.* Additional information can also be found by accessing the Web site at *http://www.ams.usda.gov/SAT.*

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1622), directs and authorizes the Secretary of Agriculture ''to develop and improve standards of quality, condition, quantity, grade, and packaging, and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices.'' USDA is committed to carrying out this authority in a manner that facilitates the marketing of agricultural products. One way of achieving this objective is through the development and maintenance of voluntary standards by AMS. Utilization of this voluntary standard would be accomplished through an audit of the production process in accordance with procedures that are contained in Part 62 of Title 7 of the Code of Federal Regulations (7 CFR Part 62).

Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act (PRA) (44 U.S.C. 3501–3520), the information collection provisions associated with this notice have been submitted to OMB for approval as a new collection and will be published for public comment.

Background

Individuals and companies often highlight production and marketing practices in advertisements and promotions to distinguish their products in the marketplace. Since the late 1970s, livestock and meat producers (individuals and companies) have requested the voluntary services of AMS to verify or certify specific practices to increase the value of their products. The Livestock and Seed (LS) Program of AMS has provided certification through direct product examination for a number of production claims related to livestock and carcass characteristics. The validity of such claims utilizing LS Program voluntary certification services is enhanced since the product is labeled as ''USDA Certified.'' The LS Program also offers verification services through Quality System Verification Programs (QSVP; *http://www.ams.usda.gov/ARCaudits*) to substantiate claims that cannot be determined by direct examination of livestock, their carcasses, component parts, or the finished product. The QSVP provides suppliers of agricultural products or services the opportunity to distinguish specific activities involved in the production and processing of their agricultural products and to assure customers of their ability to provide products or services of a consistently high quality. This is accomplished by documenting the quality management system and having the manufacturing or service delivery processes verified through independent, third-party audits by AMS.

In addition to the market differentiation that AMS certification and verification services provide, certain other markets require AMS certification or verification services as a prerequisite. This is especially true with certain foreign markets that require a competent government entity, such as AMS to provide the certification or verification activity. Since animal raising claims cannot be evaluated in finished products through direct product examination (as certification provides), the claims must be verified through the QSVP program.

The majority of claims currently citing naturally raised animal production methods are defined by the individual company selling the product. Depending upon the branded program making the claims, the production activities and associated requirements can vary since there is currently no standard to specify which attributes must be addressed and to what level, other than to be truthful and not misleading. This has led to confusion in the industry and the marketplace as to what requirements must be met in order to have a uniform, explicit claim that can be easily understood.

There has also been growing recognition that livestock producers targeting niche markets can provide the

most value-added alternatives by developing production systems that include the widest array of marketing opportunities. Thus, instead of losing the market premium of an animal intended to be marketed for a specific marketing claim because it no longer met program requirements, some premium could be obtained if the animal qualified for other value-added markets.

The key to the success of this approach for the producer is to ensure that he or she develops a program scope, which encompasses all requirements that need to be addressed in any of the potentially applicable marketing strategies. Thus, animals may be shifted into other programs depending upon circumstances and management decisions. This allows producers more flexibility than an all or nothing approach, which would be the case if only one program was included in a marketing strategy. Producers must determine whether viable markets exist for any verification program they wish to make use of.

Another critical key to success is understanding that there are commonly understood and verifiable programs available in the market, but that AMS' verification can augment or complement these programs. Consistent with its mission, AMS has determined that it can best support producers and the development of markets, by providing verification services and, as necessary, defining standards based on their experience with USDA Certified Programs and USDA QSVP, research into standard practices and procedures, and requests from the livestock and meat industries.

With respect to the Naturally Raised Claim, AMS developed and proposed a standard with explicit attributes that could easily be understood by market participants as the basis for a naturally raised marketing claim as it relates to live animal production practices. As part of this process, AMS has obtained input from a number of individual experts in government, industry, academia, and other interested parties while establishing this voluntary standard.

Relationship of the Naturally Raised Claim to Other Marketing Claims

The U.S. Standard for the Naturally Raised Claim for Livestock and the Meat and Meat Products Derived from such Livestock is intended to stand alone or to be used in conjunction with other marketing claims. This flexibility is intended to allow producers to develop marketing plans utilizing recognized standards and terms, and to ensure product characteristics are expressed and understood more clearly by market participants. It does not limit in any way the ability of market participants to make additional marketing claims.

USDA's Food Safety and Inspection Service (FSIS), under the authority of the Federal Meat Inspection Act (FMIA; 21 U.S.C. 601, 607) and the Poultry Products Inspection Act (PPIA; 21 U.S.C. 451, 457), regulates domestic and imported meat and poultry product labeling, standards, and ingredients. AMS' standard for a naturally raised marketing claim would be verified, as provided in 7 CFR Part 62. However, since this is a voluntary marketing claim standard, FSIS will not necessarily limit the use of the term naturally raised to labels in which participants employ and meet AMS' standard. FSIS label approval requirements for the use of the term naturally raised and other claims about livestock production practices are based upon the substantiation provided at the time of label approval application. QSVP verified claims, like other label approval applications, must be submitted to FSIS for approval. Any specific labeling questions not related to AMS services should be directed to FSIS.

Meat products marketed under a specific production marketing claim should not be construed to imply that it is safer or somehow better than conventionally produced livestock and the meat and meat products derived from such livestock. Rather, marketing claims are meant to distinguish or differentiate products in the marketplace; thus, allowing purchasers to assess the value of their purchase on factors other than price.

Comments and Responses on the Proposed Naturally Raised Marketing Claim Standard

AMS proposed the Naturally Raised Marketing Claim standard as a notice and request for comments in the November 28, 2007, **Federal Register** Notice (72 FR 67266). AMS then reopened and extended the comment period in the January 31, 2008, **Federal Register** Notice (73 FR 5789) because a number of interested producers, processors, and marketers requested additional time to evaluate the impact of the requirements of the proposed standard in order to provide more meaningful and substantive comments.

By the close of the comment period, AMS received over 44,000 comments concerning the Naturally Raised Marketing Claim standard from consumers, veterinarians, trade and professional associations, non-profit organizations, national organic associations, as well as consumer, agriculture, and animal advocacy organizations, retail and meat product companies, food service, livestock producers, and allied animal industries. Approximately 43,000 of the over 44,000 comments received were form letter comments. A breakout of the comments by issues raised, including the comments from form letters, and AMS' responses follow.

The majority of the commenters felt the scope of the Naturally Raised Marketing Claim standard was too narrow and thus opposed the standard as proposed; however, nearly all of the commenters concurred that the three core criteria proposed (animals raised without growth promotants and antibiotics and have never been fed mammalian or avian by-products) in the November 28, 2007, **Federal Register** Notice (72 FR 67266) should be a part of a naturally raised marketing claim standard.

AMS has determined that these three core criteria best represent the current industry consensus of naturally raised claims existing in the marketplace and that broadening the focus of the proposed standard would limit the usefulness of the claim to a very small segment of producers, would render it unlikely to be used, and would be of little value in facilitating the marketing of agricultural products. Commenters that were in favor of the standard identified additional clarifications, practices, and attributes for consideration which will be addressed below in the specific sections for each issue raised. The revisions incorporated into the standard include (1) a clarification of the meaning of animal by-products, (2) the addition of a prohibition of aquatic by-products, and (3) a provision that would allow coccidiostats for parasite control as long as their use is disclosed. The majority of the comments received provided information related to one or more of the categories below as a justification for or against the proposed standard or as a suggested revision to the proposed standard.

Diet

Comments: AMS received many comments regarding the diet of naturally raised livestock. Some commenters wanted the diet of naturally raised livestock to be restricted to a vegetarian diet or a grass diet, while other commenters suggested allowing a grain fed diet. Some commenters stated that AMS should regulate the diet to be natural to the species. Others commented that the diet of naturally raised livestock should allow organic

grains only while other commenters stated that the proposed standard should prohibit genetically modified feedstuffs.

The only diet requirement addressed in the proposed standard was that livestock have never been fed mammalian or avian by-products. Many commenters expressed support for this requirement; however, numerous commenters asked that the definition of animal by-products be clarified. Some commenters asserted that pigs were omnivores and that eggs and milk were commonly used in pigs' diet and requested that the requirement of no mammalian and avian derived products be clarified to prohibit slaughter by-products but not food items such as eggs and milk in the porcine diet. Some commenters also suggested aquatic by-products be prohibited.

Agency Response: As stated previously, the only diet requirement addressed in the proposed standard was that livestock have never been fed mammalian or avian by-products. After reviewing the comments received suggesting the clarification of the definition of mammalian and avian by-products, AMS has determined to revise the standard to clarify the definition of animal by-product to specifically state what is prohibited. For the purpose of the Naturally Raised Marketing Claim standard, AMS will prohibit animal (mammalian, avian, and aquatic) by-products derived from the slaughter/harvest processes including meat and fat, animal waste materials (*e.g.*, manure and litter), and aquatic by-products (*e.g.*, fishmeal and fish oil). This prohibition includes meat by-products as defined by FSIS in 9 CFR 301.2. Mammalian and avian products (*e.g.*, milk and eggs) that are not derived from the slaughter/harvest processes are allowed.

The remainder of the comments regarding diet were considered, but not incorporated into the standard as AMS has determined the standard, with the revisions made, is appropriate and will be most useful in meeting the needs of producers as they develop a program scope and marketing strategies. In addition, as we point out above, the Naturally Raised Marketing Claim can be used in conjunction with other marketing claims, thus accommodating many of the suggestions made regarding diet. This flexibility allows producers to develop marketing plans incorporating other recognized standards and terms in the livestock and meat industries thereby allowing product characteristics to be articulated in the marketplace and to be more clearly understood by market participants.

Production Issues

Comments: AMS received numerous comments regarding the living and raising conditions of livestock to be included in a naturally raised marketing claim standard. Commenters suggested that animals be raised in an environment natural to the species, allowed to exhibit natural behaviors, and allowed to socialize. Some commenters wanted animals to graze or be pastured only and many commenters stated that animals should not be confined (e.g., free range, no Confined Animal Feeding Operations (CAFOs), no cages, or no crates). Other commenters also suggested that livestock be raised in sunshine, allowed fresh air, provided clean water, and in inclement weather, provided un-crowded enclosure with good manure handling.

Commenters also provided input regarding animal handling and welfare (live animal and slaughter). Numerous commenters stated that the standard should require animals to be treated and raised humanely using acceptable animal welfare practices, and that animals should be humanely slaughtered. Some commenters specifically requested that the standard include requirements regarding the humane handling of downers while other commenters requested that downer animals be prohibited.

AMS received comments on environmental stewardship and sustainability. Commenters stated that sustainable production methods should be used and that AMS should require conservation and sustainable environmental measures.

Additional production/management practices that AMS received comments on were suggestions to prohibit genetic selection, early weaning, artificial insemination, tail docking, and surgical mutilation. Many commenters also expressed the view that meat from cloned animals be prohibited. Some commenters also stated that the standard should require smaller herd sizes and allow as little interference from humans as possible. AMS received comments requesting that the proposed standard also include poultry and dairy production requirements.

Agency Response: The comments received provided no clear, unified approach other than that the three core criteria proposed (animals raised without growth promotants and antibiotics and that have never been fed mammalian or avian by-products) should be a part of a naturally raised marketing claim. Accordingly, the comments did not provide an adequate basis to establish a broader, more encompassing standard.

Therefore, AMS determined that it was not appropriate to expand the scope of this standard to incorporate the diverse range of suggested practices or attributes into the naturally raised standard. Furthermore, attempting to broaden the list of practices or attributes incorporated in a standard to be applied on a nationwide basis would be inherently difficult as practices vary from region to region and by producer. Due to the geographic diversity of the United States, livestock production practices vary considerably due to soils, climate, and availability of the production inputs and other necessities such as shelter, feedstuffs, and labor.

AMS concluded that many of the production activities identified through the comment process would be more appropriately addressed as standards themselves or incorporated into other more encompassing standards or marketing programs that they would be more appropriately associated with. AMS reiterates that the naturally raised standard was designed to stand alone or be used in conjunction with other marketing claims. For example, the naturally raised claim can be used in conjunction with other descriptive marketing claims such as ''grass (forage) fed.'' This flexibility is intended to allow producers to develop marketing plans incorporating a variety of appropriate standards, assuring that their products' characteristics are communicated to and understood by market participants.

Thus, while these comments regarding production practices were considered, they were not incorporated into the standard. Finally, the inclusion of poultry and dairy production requirements in the standard is outside the scope of the standard which is intended for livestock and the meat and meat products derived from such livestock.

Use of Antibiotics, Growth Promotants, Health Treatments, and Pesticides and Chemicals

Comments: Many commenters agreed with the proposed standard that for naturally raised livestock, antibiotics should be prohibited at all stages of the animal's life. However, other commenters expressed that medical treatment should be allowed only when sick. One specific issue commenters raised involved the question of whether to allow coccidiostats for parasite control. The majority of the commenters who specifically commented on this topic were in favor of the use of coccidiostats/parasite control while

others felt coccidiostats should not be allowed. AMS also received a few comments on whether the proposed standard should or should not allow vaccines. One commenter specifically stated that the proposed standard should address what is excluded rather than what is allowed. Regarding the use of growth promotants, many commenters agreed with the proposed standard that for naturally raised livestock growth promotants and hormones should be prohibited. Other commenters also suggested that the proposed standard should prohibit chemicals and use of pesticides.

Agency Response: AMS has incorporated a suggested revision to the proposed standard as a result of the comments received on this subject. In the proposed standard, coccidiostats, which include ionophores and sulfonamides, were prohibited. Based upon our evaluation of the comments and after further consideration of the issue, AMS has determined that coccidiostats in the form of ionophores (not sulfonamides) when used as a preventative measure for coccidiosis, as well as for the prevention and treatment of other types of parasitism, should be allowable. Coccidiosis is a parasitic disease of the intestinal tract of livestock animals, primarily of young or immune-compromised animals. Coccidiosis is an infectious disease that causes either severe illness with possible death or subtle illness causing stress and debilitation of the animal, resulting in secondary disease that further jeopardizes the health of the animal. Treatment and control must include both good animal husbandry measures, as well as the use of anticoccidial drugs to prevent further disease and premise contamination. When marketed, the animals or meat product must be clearly identified with a statement that no antibiotics other than ionophores were used to prevent parasitism. Ionophores may only be used according to the manufacturer's label recommendations for coccidiostat levels (parasite control).

AMS has concluded that for the Naturally Raised Marketing Claim standard, the use of vaccines is acceptable and appropriate. The use of vaccines, according to manufacturers' label recommendations, is an important component of control and prevention of infectious diseases and protects against losses from disease in livestock herds. Vaccination is an essential part of good herd management and animal husbandry practices. AMS has also concluded that if antibiotics are used for medical treatment when animals are sick, the animals cannot be marketed as naturally raised. AMS has not incorporated standards related to the use of pesticides and chemicals because it is unclear whether the variation in practices from region to region would allow such a standard to meet the needs of producers throughout the Nation as they define and determine the scope of their programs and develop marketing plans.

Finally, AMS is clarifying the standard to make clear that production promotants are included within the term ''growth promotants.''

Additional Issues Raised Including Perceptions Associated With the Naturally Raised Claim

Comments: AMS received numerous comments comparing the Naturally Raised Marketing Claim standard to the FSIS label approval policies with respect to the term natural for meat products. Many commenters requested that AMS address what the commenters perceive as confusion between the terms natural and naturally raised. Some commenters felt that the Naturally Raised Marketing Claim should be linked to the FSIS policies regarding the use of the natural claim and that a single standard cover naturally raised livestock all the way to the meat product and meat processing (make naturally raised a class of natural); however, there were many other commenters who asserted that the naturally raised claim should continue to be distinct from the natural claim.

Many commenters tended to compare the Naturally Raised Marketing Claim standard to other marketing programs. Commenters requested that the Naturally Raised Marketing Claim standard not compromise other labels such as organic and Certified Naturally Grown. Some commenters requested that the requirements for a naturally raised standard be created at a higher threshold than organic, while other commenters thought it should be similar to organic or ''organic-like'', while others thought it was or should be ''organic-light''.

AMS received comments stating that the Naturally Raised Marketing Claim standard would contribute to confusion in the marketplace but also received other comments stating that the proposed standard provided clarity. Many commenters stated that the proposed standard would mislead consumers; however, other commenters stated that the proposed standard is a step in the right direction and is long overdue. Many commenters felt that single, separate standards (e.g., ''no antibiotics used,'' and ''no supplemental growth promotants administered,'' and ''no animal by-products'') would indicate raising practices more accurately rather than one umbrella claim and urged AMS to abandon or withdraw the proposed naturally raised standard.

Some commenters also stated that the proposed standard would create a competitive disadvantage for small farmers and companies and confer an advantage on large corporate farms and businesses. Some commenters stated that the Naturally Raised Marketing Claim standard should be mandatory while other commenters asserted that the standard should be voluntary. A few commenters stated that the Government should not be involved with marketing claims and should leave the development of marketing claims to producers and industry.

Agency Response: AMS reiterates that the Naturally Raised Marketing Claim standard is independent of and distinct from FSIS label approval policies governing use of natural claims with regard to post-harvest processing. The naturally raised claim pertains only to pre-harvest livestock production practices. AMS developed the Naturally Raised Marketing Claim standard to be a distinct standard. AMS is adopting this standard at this time because it fills a need that has been identified to AMS. Nonetheless, AMS recognizes that there is considerable merit in the comments that suggested that there is a need for AMS and FSIS to coordinate the definitions of 'naturally raised' and 'natural' to avoid creating consumer confusion. AMS and FSIS are committed to developing a coordinated approach to defining labeling terms that will maximize consistency and minimize differences when similar terminology is addressed by the two agencies. FSIS intends to address this matter in a forthcoming **Federal Register** document, and AMS will work with FSIS on that document. It is clearly distinguishable from the USDA organic standard, as well as from other marketing claims (e.g., grass fed) and similar programs.

AMS has concluded that the standard is clear, reasonable, and attainable. AMS believes this standard will create marketing opportunities for all businesses, small and large. AMS QSVP is voluntary and not mandatory. Producers will choose to comply with the standard, be certified by AMS, and/or place a claim on their product based on whether doing so would meet their production and marketing needs. They will not be required to do so.

Accordingly, AMS establishes the following voluntary U.S. Standard for

Livestock and Meat Marketing Claims, by this notice.

U.S. Standards for Livestock and Meat Marketing Claims, Naturally Raised Claim for Livestock and the Meat and Meat Products Derived From Such Livestock

Background: This claim applies to livestock used for meat and meat products that were raised entirely without growth promotants, antibiotics, and animal (mammalian, avian, and aquatic) by-products derived from the slaughter/harvest processes including meat and fat, animal waste materials (e.g., manure and litter), or aquatic by-products (e.g., fishmeal and fish oil).

The administration of growth promotants, including natural hormones, synthetic hormones, production promotants, estrus suppressants, beta agonists, or other synthetic growth promotants is prohibited from birth to slaughter. Collectively, these substances are referred to in the Naturally Raised Marketing Claim standard as ''growth promotants.''

No antibiotics can be administered, by any method (e.g., through feed or water, or by injection), from birth to slaughter. This includes low-level (sub-therapeutic) or therapeutic level doses, sulfonamides, ionophores (except for ionophores used as coccidiostats for parasite control as long as the animals marketed or meat product label states no antibiotics other than ionophores were used to prevent parasitism), or any other synthetic antimicrobial. Ionophores may only be used according to manufacturer's label recommendations for coccidiostat levels (parasite control). If an animal is in need of medical attention, proper treatment should be administered in an attempt to improve the health of the animal. If any prohibited substances are administered, the treated animal must be identified and excluded from the program. Vitamin and mineral supplementation is permissible.

Verification of the claim will be accomplished through an audit of the production process. The producer must be able to verify for AMS that the Naturally Raised Marketing Claim standard requirements are being met through a detailed, documented quality management system.

Claim and Standard:

Naturally Raised—Livestock used for the production of meat and meat products that have been raised entirely without growth promotants, antibiotics (except for ionophores used as coccidiostats for parasite control), and have never been fed animal (mammalian, avian, or aquatic) by-products derived from the slaughter/harvest processes, including meat and fat, animal waste materials (e.g., manure and litter), and aquatic by-products (e.g., fishmeal and fish oil). All products labeled with a naturally raised marketing claim must incorporate information explicitly stating that animals have been raised in a manner that meets the following conditions: (1) No growth promotants were administered to the animals; (2) no antibiotics (other than ionophores used to prevent parasitism) were administered to the animal; and (3) no animal by-products were fed to the animals. If ionophores used only to prevent parasitism were administered to the animals, they may be labeled with the naturally raised marketing claims if that fact is explicitly noted.

Authority: 7 U.S.C. 1621–1627.

Dated: January 13, 2009.

James E. Link,

Administrator, Agricultural Marketing Service.

[FR Doc. E9–1007 Filed 1–16–09; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2008–0146]

Notice of Request for Approval of an Information Collection; National Animal Health Laboratory Network

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: 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 approval of an information collection associated with the National Animal Health Laboratory Network.

DATES: We will consider all comments that we receive on or before March 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-2008-0146* 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–2008–0146, 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–2008–0146.

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 the National Animal Health Laboratory Network, contact Dr. Barbara Martin, Coordinator, National Animal Health Laboratory Network, NVSL, VS, APHIS, 1800 Dayton Avenue, Ames, IA 50010; (515) 663–7731. 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: National Animal Health Laboratory Network.

OMB Number: 0579–XXXX.

Type of Request: Approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) conducts activities and maintains records pursuant to its missions and responsibilities authorized by the Animal Health Protection Act (7 U.S.C. 8301–8317); Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Pub. L. 107–188); Homeland Security Presidential Directive-7; and Homeland Security Presidential Directive-9.

The purpose of the National Animal Health Laboratory Network (NAHLN) is to coordinate and network Federal laboratory capacity with the capacity and extensive infrastructure (facilities, professional expertise, and support) of State and university laboratories. APHIS uses the system to enhance early detection of foreign animal disease agents and newly emerging diseases, to better respond to animal health emergencies (including bioterrorist events) that threaten the nation's food supply and public health, and to assist in assessing the nation's animal health status through targeted surveillance and shared animal health diagnostic data.

The NAHLN collects information, including information about laboratories, laboratory personnel (employee) and emergency personnel contacts, animals and owners, and animal disease diagnostic test results.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our 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 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, 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 0.099932 hours per response.

Respondents: State and university veterinary diagnostic laboratory personnel and State animal health officials.

Estimated annual number of respondents: 89.

Estimated annual number of responses per respondent: 875.98876.

Estimated annual number of responses: 77,963.

Estimated total annual burden on respondents: 7,791 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 13th day of January 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–1103 Filed 1–16–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Consultative Group to Eliminate the Use of Child Labor and Forced Labor in Imported Agricultural Products

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Request for Applications.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture (USDA) requests nominations of individuals to serve as a non-government member of the Consultative Group to Eliminate the Use of Child Labor and Forced Labor in Imported Agricultural Products (Consultative Group). On June 18, 2008, the President signed into law the Food, Conservation, and Energy Act of 2008 (the Act), also known as the 2008 Farm Bill. The Act provides for the creation of the Consultative Group.

DATES: Applications must be received prior to 5 p.m. on March 9, 2009.

ADDRESSES: You may submit applications by any of the following methods:

—*USDA:* Applications should be sent by mail to the Office of Negotiations and Agreements, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1040, 1400 Independence Ave., SW., Washington, DC 20250; by hand (including DHL, FedEx, UPS, etc.) to the Office of Negotiations and Agreements, Foreign Agricultural Service, U.S. Department of Agriculture, Room 4133–S, 1400 Independence Ave., SW., Washington, DC 20250; by e-mail to: *kathryn.ting@fas.usda.gov*; or by fax to (202) 720–0340.

—*U.S. Department of Labor (DOL):* Applications should be sent by mail or by hand (including DHL, FedEx, UPS, etc.) to the Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–5317, Washington, DC 20210; by e-mail to: *rigby.rachel@dol.gov* or *castro.charita@dol.gov*; or by fax to (202) 693–4830.

FOR FURTHER INFORMATION CONTACT: The Office of Negotiations and Agreements by fax on (202) 720–0340; by email addressed to *kathryn.ting@fas.usda.gov*; or by mail addressed to the Office of Negotiations and Agreements, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1040, 1400 Independence Ave., SW., Washington, DC 20250.

SUPPLEMENTARY INFORMATION: The Consultative Group to Eliminate the Use of Child Labor and Forced Labor in Imported Agricultural Products was established by section 3205 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246). Interested parties are invited to submit applications for membership in the Consultative Group to the USDA or DOL as specified in the Submission of Applications paragraph below.

Duties

The Consultative Group will develop recommendations relating to a standard set of practices for independent, third-party monitoring and verification for the production, processing, and distribution of agricultural products or commodities to reduce the likelihood that agricultural products or commodities imported into the United States are produced with the use of forced labor or child labor. Recommendations developed by the Consultative Group will be submitted to the Secretary of Agriculture by June 18, 2010. Thereafter, the Consultative Group will continue to advise the Secretary as necessary.

Membership

The Consultative Group will be composed of a total of 13 members, including two officials from USDA, one of whom will serve as the chairperson; the Deputy Under Secretary for International Affairs, DOL; and one representative from the Department of State. As required under section 3205(d) of the Act, the Consultative Group will also include:

- Three members to represent private agriculture-related enterprises, which may include retailers, food processors, importers, and producers, of whom at least one member shall be an importer, food processor, or retailer who utilizes independent, third-party supply chain monitoring for forced labor or child labor;
- Two members to represent institutions of higher education and research institutions, as determined appropriate by the Bureau of International Labor Affairs, DOL;
- One member to represent an organization that provides independent, third-party certification services for labor standards for producers or importers of agricultural commodities or products; and
- Three members to represent organizations described in section 501(c)(3) of the Internal Revenue Code of 1986 that have expertise on the issues of international child labor and do not possess a conflict of interest associated with establishment of the guidelines issued under section 3205(c)(2) of the Act, as determined by the Bureau of

International Labor Affairs, DOL, including representatives from consumer organizations and trade unions, if appropriate.

Terms of Service

- Members shall serve through December 31, 2012;
- The Consultative Group shall meet no fewer than four times per year in person in Washington, DC or through alternative media;
- The Consultative Group shall make its recommendations to the Secretary of Agriculture no later than June 18, 2010. Thereafter, the Consultative Group will continue to advise the Secretary as necessary;
- Members of the Consultative Group shall serve without compensation;
- Travel and lodging expenses will be borne by each member; and
- Meetings of the Consultative Group will be closed to the public.

Submission of Applications

- Membership in the Consultative Group is open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical handicap, marital status, or sexual orientation.
- All applications must include the following information:

(1) Brief summary explaining the candidate's qualifications to serve as a member of the Consultative Group;

(2) Statement specifying the non-government membership category for which the candidate is best qualified (private agriculture-related enterprises, higher education and research institutions, etc.);

(3) Resume;

(4) Contact information of candidate; and

(5) Completed copy of form AD–755, ''Advisory Committee Membership Background Information.''

Applications from candidates of private agriculture-related enterprises and independent, third-party certification services must be sent to the USDA contact listed above. Applications from candidates of higher education, research institutions, and 501(c)(3) organizations must be sent to the DOL contact listed above.

Member Selection

The requested applications will assist U.S. Government agencies in making appointments to the Consultative Group. Other qualified individuals may be considered in addition to those who submit applications in response to this notice.

Signed at Washington, DC on January 12, 2009.

Constance Jackson,

Administrator, Foreign Agricultural Service.

[FR Doc. E9–1005 Filed 1–16–09; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

Shasta-Trinity National Forest, California; Moosehead Vegetation and Road Management Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Shasta-Trinity National Forest proposes to thin forest stands and reduce fuel loads on approximately 2,300 acres of National Forest System Lands. Overstocked forest stands would be thinned by removing primarily understory and midstory trees to achieve desired stocking. Trees to be removed would generally be smaller in size than trees that would be retained. Some dominant and codominant trees may be removed to attain desired stocking. Forest stand treatments would be accomplished primarily through commercial harvest. Harvest operations would yield sawtimber (logs) and biomass (chips) products. After commercial harvest, fuels would be reduced by treating brush and small diameter trees in the forest understory. Road reconstruction, closure and decommissioning are also proposed. Approximately 22 miles of road would be reconstructed to improve drainage and reduce erosion. The existing open road network would be reduced by decommissioning ¼ mile of road and closing approximately 10 miles of road.

DATES: Comments concerning the scope of the analysis must be received no later than 30 days after the publication of this notice in the **Federal Register**. The draft environmental impact statement is expected in July 2009 and the final environmental impact statement is expected in November 2009.

ADDRESSES: Send written comments to: District Ranger Priscila S. Franco, Mt. Shasta Ranger Station, 204 W. Alma St., Mt. Shasta, California 96067. Send e-mail comments to: *comments-pacificsouthwest-shasta-trinity-mtshasta-mccloud@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: John Natvig, P.O. Box 688, Hot Springs, SD 57747, telephone (605) 745–3253, e-mail *jnatvig@fs.fed.us.*

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 purpose of the proposed action is to protect and enhance conditions in late successional forest ecosystems. The majority of the project area falls within lands identified by the Shasta-Trinity Land and Resource Management Plan as Late Successional Reserve (LSR), Managed Late Successional Area (MLSA) and Riparian Reserve. Protection includes reducing the risk of large-scale disturbance such as stand-replacing wildfires and epidemic forest insect and disease outbreaks. Fire exclusion over the last 100 years has created dense forest conditions which have a negative impact on tree vigor and forest health. Overstocked stands are stressed by competition for limited resources and are at risk to high levels of insect-caused mortality, especially during periods of drought. The closed canopy, mixed-conifer stands are densely stocked with pole-sized trees in the midstory and understory and pockets of dead and down wood. The combination of deadwood, understory and midstory ladder fuels creates fuel conditions that in the event of fire, could result in high fire intensities spreading fire from the understory into the crowns of overstory conifer trees. The stands are at risk of loss from stand-replacing wildfire during weather periods that support extreme fire behavior. Treatments that decrease surface, ladder and canopy fuels will make the area more resistant to stand-replacing wildfires.

A California-Oregon Transmission Project high voltage powerline crosses the project area. Interruption or loss of service associated with this powerline has the potential to impact a large number of electric users. Vegetation and fuel conditions in close proximity to the powerline should be treated so ground forces can control a wildfire under most fire weather conditions.

Hardwoods and meadows are important components of an ecosystem; however, hardwoods and meadows

make up only a small portion of the project area (less than one percent). Wildfires that maintained early successional hardwoods and meadows have not occurred, or have been rare events since fire suppression efforts began in the early 1900s. Conifers gradually become established in both meadows and aspen stands. Hardwoods are desired as a stand component in LSRs/MLSAs. Therefore, actions are needed to maintain these sites as aspen or meadow.

Proper drainage of system roads is needed to minimize surface erosion. Culverts must also be fully functional and of proper size to facilitate area drainage to prevent erosion causing water flow over road surfaces. Reconstruction of system roads is needed to improve road drainage and replace culverts.

Proposed Action

The proposed action would reduce forest stocking and fuels on approximately 2,300 acres. In addition, 10 acres of meadow and aspen would be restored. Riparian Reserves would be treated in limited areas to improve or protect late-successional forest habitat. Project actions within Riparian Reserves would meet the objectives of the Aquatic Conservation Strategy in the Shasta-Trinity National Forest Land and Resource Management Plan. Overstocked early and mid-successional stands would be thinned to promote the development of late-successional stand characteristics and reduce the risk of stand loss due to epidemic insect-caused mortality. Thinning treatments would retain 10 percent or more of the stand in un-thinned patches and up to 15 percent of the stand would be in heavily thinned patches or openings up to ¼ acre in size for stand diversity. Canopy, ladder and surface fuels would be reduced through thinning and treatment of surface fuels and brush.

Open-road density will be decreased by decommissioning approximately ¼ mile of Forest System road and closing 10 miles of Forest System roads with gates, barricades, or earth berms. Erosion of existing roads would be reduced by improving road drainage, replacing culverts and surfacing roads with rock.

Forest stand treatments would be accomplished primarily through commercial harvest, yielding sawtimber and chip products. Trees would be felled, removed and processed with mechanized equipment. Harvested trees would be transported from the stump to central landing areas adjacent to roads where they would be limbed and processed into sawtimber logs or chips.

Responsible Official

J. Sharon Heywood, Forest Supervisor, Shasta-Trinity National Forest.

Nature of Decision To Be Made

The Forest Supervisor will decide whether to implement the proposed action, take an alternative action that meets the purpose and need or take no action.

Scoping Process and Comment Requested

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. The project is included in the Shasta-Trinity National Forest's quarterly schedule of proposed actions (SOPA). Information on the proposed action will be posted on the forest Web site, *http://www.fs.fed.us/r5/shastatrinity/projects* and advertised in both the Redding Record Searchlight and the Mount Shasta Herald. Comments submitted during this scoping process should be in writing and should be specific to the proposed action. Comments should describe as clearly and completely as possible any issues the commenter has with the proposal. The scoping process includes:

(a) Identifying potential issues.

(b) Identifying issues to be analyzed in depth.

(c) Eliminating non-significant issues or those previously covered by a relevant environmental analysis.

(d) Exploring additional alternatives.

(e) Identifying potential environmental effects of the proposed action and alternatives.

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. The submission of timely and specific comments can affect a reviewer's ability to participate in subsequent administrative appeal or judicial review.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

At this stage, it is important to note several court rulings related to public participation in the environmental review process. Reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond in the final environmental impact statement.

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

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

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

J. Sharon Heywood,

Forest Supervisor, Shasta-Trinity National Forest.

[FR Doc. E9–920 Filed 1–16–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

AGENCY: Boise and Sawtooth National Forests, USDA Forest Service.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA), the Federal Advisory Committee Act of 1972 (FACA), and the Federal Lands Recreation Enhancement Act (REA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Boise and Twin Falls District Recreation Resource Advisory Council (Rec-RAC) Subcommittee, will hold a meeting as indicated below.

DATES: The meeting will be held February 5, 2009, beginning at 10 a.m. and adjourning at 4:30 p.m. The meeting location is the Boise District BLM Offices, 3948 South Development Avenue, Boise, Idaho. Public comment periods will be held before the conclusion of the meeting.

FOR FURTHER INFORMATION CONTACT: MJ Byrne, Public Affairs Officer and RAC Coordinator, BLM Boise District, 3948 Development Avenue, Boise, ID 83705, Telephone 208–384–3393, or Heather Tiel-Nelson, Public Affairs Officer, Twin Falls District, 2536 Kimberly Road, Twin Falls, ID 83301, 208–735–2063.

SUPPLEMENTARY INFORMATION: In accordance with section 4 of the Federal Lands Recreation Enhancement Act of 2005 (Title VII, Pub. L. 108–447), a subcommittee has been established to provide advice to the Secretary of Agriculture, through the Forest Service and the Secretary of the Interior, through the BLM, in the form of recommendations relating to public concerns regarding the implementation, elimination, or expansion of an amenity recreation fee; or the recreation fee program on public lands under the jurisdiction of the Forest Service and/or the BLM in both the Boise and Twin Falls Districts located in southern Idaho. Items on the agenda include review and discussion of information mailed by representatives of the Boise and Sawtooth National Forests to the subcommittee members about proposals to establish nine new fee sites on the Sawtooth National Forest and one new fee site on the Boise National Forest, and to increase existing fees at six recreation sites on the Sawtooth National Forest. Recommendations of the Rec-RAC subcommittee relative to approval or rejection of these fee proposals will be brought before the two full RACs meeting jointly on a future date to be set at this Rec-RAC subcommittee meeting. Agenda items and location may change due to changing circumstances. All meetings are open to the public. The public may present written comments to the subcommittee. Each formal subcommittee meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation, or other reasonable accommodations, should contact the BLM coordinators as provided above.

Cecilia R. Seesholtz,

Forest Supervisor.

[FR Doc. E9–724 Filed 1–16–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee will hold a meeting on January 21, 2009 on the north shore of Lake Tahoe. This Committee, established by the Secretary of Agriculture on December 15, 1998 (64 FR 2876), is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

DATES: The meeting will be held January 21, 2009 beginning at 1 p.m. and ending at 5 p.m.

ADDRESSES: The meeting will be held on the north shore of Lake Tahoe. A final location can be confirmed at *http://www.fs.fed.us/r5/ltbmu/Iocallltfac.*

FOR FURTHER INFORMATION CONTACT: Arla Hains, Lake Tahoe Basin Management Unit (LTBMU), Forest Service, 35 College Drive, South Lake Tahoe, CA 96150, (530) 543–2773.

SUPPLEMENTARY INFORMATION: Items to be covered on the agenda include:

☐ Committee operations.

☐ Lake Tahoe SNPLMA Round 10 status and calendar update.

☐ Status of the Lake Tahoe Basin Management Unit Forest Plan Revision and Tahoe Region Planning Agency Regional Plan update.

☐ Status of the Lake Tahoe Restoration Act (LTRA) reauthorization.

Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements for the Committee before or after the meeting. Please refer any written comments attention Arla Hams, Lake Tahoe Basin Management Unit at the contact address stated above.

If you have questions concerning special needs for this public meeting, or to request sign language interpretation, contact Linda Lind, no later than January 19, 2009 at (530) 543–2787 or TTY (530) 543–0956, or via e-mail at *LLind@afs.fed.us.*

This **Federal Register** notice will be published less than 15 calendar days before the meeting based on these exceptional circumstances: (1) Due to the holidays LTFAC members were not available to schedule the meeting; and (2) there will be timely meeting notification through the LTBMU Web site (*http://www.fs.fed.us/r5/ltbmu/local/ltfac*).

Dated: January 9, 2009.

Michael Gabor,

Acting Forest Supervisor.

[FR Doc. E9–722 Filed 1–16–09; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Oregon Coast Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Oregon Coast Province Advisory Committee will meet at Siuslaw National Forest Headquarters, Siuslaw River Room. The agenda includes: Future of Coast PAC and Meeting Schedule, Travel Management Planning, Spotted Owl Recovery Plan, Western Oregon Plan Revision and Public Comment.

DATES: The meeting will be held January 22, 2009, beginning at 9 a.m.

ADDRESSES: The meeting will be held at 4077 SW Research Way, Corvallis, Oregon 97333.

FOR FURTHER INFORMATION CONTACT: Joni Quarnstrom, Public Affairs Specialist, Siuslaw National Forest, 541–750–7075, or write to Siuslaw National Forest Supervisor, 4077 SW Research Way, Corvallis, OR 97339.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Council Discussion is limited to Forest Service/BLM staff and Council Members. Lunch will be on your own. A public input session will be at 3 p.m. for fifteen minutes. The meeting is expected to adjourn around 3:15 p.m.

Dated: January 13, 2009.

Barnie T. Gyant,

Forest Supervisor.

[FR Doc. E9–1045 Filed 1–16–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Business—Cooperative Service

Notice of a Public Meeting on Implementation of Title VI, Rural Development Authorities of the Food, Conservation, and Energy Act of 2008—Section 6022, Rural Microentrepreneur Assistance Program and Section 6023, Grants for Expansion of Employment Opportunities for Individuals With Disabilities in Rural Areas

AGENCY: Rural Business—Cooperative Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: The Rural Business—Cooperative Service, an Agency in the Rural Development Mission Area of the United States Department of Agriculture, will hold a public meeting January 26, 2009, entitled ''Rural Microentrepreneur Assistance Opportunities—Inviting comments with the Public on new authorities of the Consolidated Farm and Rural Development Act (Pub. L. 110–246) (''the Act'').'' The purpose of this event is to gather public comments and suggestions on how to implement certain new authorities authorized under Title VI of the Act.

DATES: The meeting will be held on Monday, January 26, 2009. Registration will start at 12:30 p.m.; the program will begin at 1 p.m. and conclude by 4 p.m. Eastern Time.

ADDRESSES: The meeting will be held in the Whitten Building, Room 107–A, U.S. Department of Agriculture, 12th and Jefferson Drive SW., Washington, DC. Participants should enter the building through the main visitor's entrance on Jefferson Drive which is closest to the conference room. Valid photo identification is required for clearance by building security personnel.

FOR FURTHER INFORMATION CONTACT: Lori Washington, Loan Specialist, Business Programs, Specialty Lenders Division, USDA, Rural Development, Rural Business and Cooperative Service, Room 6866, South Agriculture Building, STOP 3225, 1400 Independence Avenue, SW., Washington, DC 20250–3225, *Telephone:* (202) 720–9815, *E-mail: lori.washington@wdc.usda.gov*.

SUPPLEMENTARY INFORMATION: Specifically, USDA has an interest in initiating a dialogue on the following sections of Title VI of the Act:

Section numbers below refer to sections of the Food, Conservation and Energy Act of 2008.

Section 6022, Rural Microentrepreneur Assistance Program—Provides rural microentrepreneurs with the skills necessary to establish new rural microenterprises, training, and to provide continuing technical and financial assistance related to the successful operation of rural microenterprises. Loans and grants will be made to eligible and qualified Microenterprise Development Organizations for the purposes of (1) providing microloans to rural microentrepreneurs, and (2) providing training and technical assistance to microentrepreneurs and/or potential microentrepreneurs to establish new, or sustain existing microbusinesses in rural areas. The Act provides mandatory funding in the amount of $4 million in fiscal years (FYs) 2009 thru 2011, $3 million in fiscal year 2012 and the authorization for funding in the amount of $40 million in FYs 2009 thru 2012 for direct loan and grant assistance to rural microenterprises.

Section 6023, Grants for Expansion of Employment Opportunities for Individuals with Disabilities in Rural Areas—While funding has yet to be made available for this section, USDA seeks comments in anticipation of program implementation. This program is expected to provide for grants to nonprofit organizations to expand and enhance employment opportunities for individuals with disabilities in rural areas. Eligible organizations will include nonprofit organizations that have:

(1) A significant focus on serving the needs of individuals with disabilities;

(2) Demonstrated knowledge and expertise in employment of people with disabilities and advising private entities regarding accessibility issues;

(3) Expertise in removing employment barriers including access to transportation, assistive technology, and other such accommodations; and

(4) Existing relationships with national organizations focused primarily on the needs of rural areas.

Grants under this program will be used to expand or enhance employment opportunities for individuals with disabilities in rural areas via the development of national technical assistance and education resources to assist rural small businesses in the recruitment, hiring, accommodation, and employment of individuals with disabilities. Grants will also be used to expand or enhance self employment and entrepreneurship opportunities for individuals with disabilities in rural areas.

Instructions for Participation

Although registration is encouraged, walk-ins will be accommodated to the extent that space permits. Registered participants will be given priority for making presentations prior to walk-ins. Anyone interested in the Act programs that support assistance to rural microenterprises or assistance with the expansion of employment for persons with disabilities in rural areas is encouraged to attend the public meeting. Presentations will be limited to no more than 10 minutes in duration. To register and request time for an oral statement, contact Lori Washington, Business Programs, Specialty Lenders Division, USDA, Rural Development, Business and Cooperative Programs, Room 6866 South Agriculture Building, STOP 3225, 1400 Independence Avenue, SW., Washington, D.C. 20250–3201; *Telephone:* 202–720–9815, *E-mail: lori.washington@wdc.usda.gov*. Comments by e-mail should be in an ASCII file. Written comments should clearly identify which of the above-referenced sections the comments are addressing. Anyone may attend without pre-registering.

Anyone intending in making an electronic presentation must provide such presentation via e-mail to Lori Washington no later than Friday, January 16th and bring a copy of the presentation with them on a portable electronic media to the meeting. You will be notified if USDA does not have the equipment available to permit you to make the presentation. Due to technical problems that can arise, you are advised to have a backup plan for making the presentation.

Depending on the level of interest expressed by the registered participants, certain blocks of time will be allotted for oral presentations by referenced sections mentioned in this notice.

In addition, the Department will allow written comments to be provided on the referenced Sections of Title VI of the Act up to 15 days following the date of the public meeting. These written comments should be submitted to Lori

Washington, Room 6866 South Agriculture Building, STOP 3225, 1400 Independence Avenue, SW., Washington, DC 20250–3225.

Copies of the presentations and any additional written comments that are received within the 15 days following the public meeting will be available for review at *http://www.usda.gov/wps/portal/!ut/p/_s.7_0_A/7_0_2KD?navid=FARMBILL2008*.

Participants who require a sign language interpreter or other special accommodations should contact Lori Washington as directed above.

The oral and written information obtained from interested parties will be considered in implementing provisions of Sections 6022 and 6023. In order to assure that the Act is implemented to meet constituent needs, USDA, Rural Development is sponsoring a listening forum and soliciting written comments to encourage public input and comments and in making recommendations on program implementation. All comments are welcome, and no attempt will be made to establish a consensus.

Non-Discrimination Statement

''The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs). Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Adjudication and Compliance, 1400 Independence Avenue, SW., Washington, DC 20250–9410, or call (800) 795–3272 (voice), or (202) 720–6382 (TDD). USDA is an equal opportunity provider, employer, and lender.''

Dated: January 9, 2009.

Ben Anderson,

Administrator, Rural Business—Cooperative Service.

[FR Doc. E9–1014 Filed 1–16–09; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice for Request for Proposals for Loan Guarantees under the Section 538 Guaranteed Rural Rental Housing Program (GRRHP) for Fiscal Year 2009

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: This is a request for proposals for loan guarantees under the section 538 Guaranteed Rural Rental Housing Program (GRRHP) pursuant to 7 CFR 3565.4 for Fiscal Year (FY) 2009 subject to the availability of funding. FY 2008 funding for the section 538 program was $129,090,000.

For FY 2009, there are approximately $2 million in additional funds for GRRHP properties that are located in a presidentially declared disaster area. Disaster funds may be used for new construction or repair and rehabilitation. To be eligible for these disaster funds, a property must be located in a county affected by hurricanes, floods, and other natural disasters occurring during 2008 for which the President declared a major disaster under Title IV of the Robert T. Stafford and Disaster and Emergency Assistance of 1974. Applicants must notify the Rural Development contact person for the respective state, as indicated in the ''Submission Address'' section of this notice, that their project is located in an eligible disaster zone and that they want the project considered for these funds.

Applicants for both general program funding or disaster funds will submit proposals in the form of ''RESPONSES.'' The commitment of program dollars will be made to applicants of selected responses that have fulfilled the necessary requirements for obligation. Expenses incurred in developing applications will be at the applicant's risk. The following paragraphs outline the timeframes, eligibility requirements, lender responsibilities, and the overall response and application processes.

The GRRHP operates under 7 CFR part 3565. The GRRHP Origination and Servicing Handbook (HB–1–3565) is available to provide lenders and the general public with guidance on program administration. HB–1–3565, which contains a copy of 7 CFR part 3565 in Appendix 1, can be found at the Agency's Instructions Web site address *http://www.rurdev.usda.gov/regs/hblist.html#hbw6.*

Eligible lenders are invited to submit responses for the new construction and the acquisition with rehabilitation of affordable rural rental housing.

Also eligible is the revitalization, repair, and transfer (as stipulated in 7 CFR 3560.406) of existing direct section 515 housing (transfer costs are subject to Agency approval and must be an eligible use of loan proceeds as listed in 7 CFR 3565.205), and properties involved in the Agency's multi-family preservation and revitalization program (MPR). Equity payments, as stipulated in 7 CFR 3560.406, in connection with the transfer of existing direct section 515 housing, are an eligible use of guaranteed loan proceeds. In order to be considered, the transfer of direct section 515 housing and MPR projects must need repairs and undergo revitalization of a minimum of $6,500 per unit. A Section 538 guaranteed loan used in conjunction with a section 515 transfer that includes an equity payment and that qualifies for an interest credit award, will receive interest credit according to the following schedule:

Guaranteed loan amount	Maximum interest credit basis points award
Over $1,000,000	0
$1,000,000 or less	50
$750,000 or less	100
$600,000 or less	150
$450,000 or less	200
$300,000 or less	250

The ''Maximum Interest Credit Basis Points Award'' is applied to the whole loan amount, therefore a qualifying $600,000 loan guarantee for example, would be awarded 150 interest credit basis points for the whole $600,000 (not, 250 interest credit basis points for the first $300,000, 200 interest credit basis points for the next $150,000 up to $450,000, and 150 interest credit basis points for the next $150,000 up to $600,000).

The Agency will review responses submitted by eligible lenders, on the lender's letterhead, and signed by both the prospective borrower and lender. Although a complete application is not required in response to this Notice of request for proposals, eligible lenders may submit a complete application concurrently with the response. Submitting a complete application will not have any effect on the respondent's NOFA response score.

DATES: As long as funds remain available, eligible responses to this notice will be accepted and eligible requests will be obligated per this guidance until September 28, 2009, 12:00 P.M. Eastern Time. Selected responses that develop into complete applications and meet all Federal environmental requirements will receive commitments to the extent an

appropriation act provides funding for GRRHP for FY 2009 until all funds are expended. A notice will be placed in the **Federal Register** if all FY 2009 funds are committed prior to September 28, 2009.

The Agency will select the responses that meet eligibility criteria and invite lenders to submit complete applications to the Agency. Those responses that are selected that subsequently submit complete applications that meet all program requirements and are received prior to or on March 31, 2009, but score less than 25 points, or score 25 points or more, but have a development cost ratio equal to or greater than 70 percent, may be selected for obligation after March 31, 2009, with the highest scoring responses receiving priority subject to availability of funds. After March 31, 2009, responses that develop into complete applications that meet all program requirements will be selected for further processing regardless of score, subject to the availability of funding.

The USDA Rural Development will prioritize the obligation requests received after March 31, 2009, using the highest score and the procedures outlined as follows. Once a complete application is received and approved by the State Office, an obligation request for 2009 funds will be submitted [via fax] by the State Office to the National Office. Obligation requests submitted to the National Office will be accumulated, but not obligated, throughout the week until the weekly obligation request submission deadline of midnight Eastern Time every Thursday. To the extent that funds remain available, the National Office will obligate the requests accumulated through the weekly request submission deadline of the previous week by the following Tuesday (i.e., requests received from Friday, May 15, 2009, to Thursday, May 21, 2009, will be obligated by Tuesday, May 26, 2009). However, requests received prior to March 31, 2009, that are not eligible for obligation until after March 31, 2009, will be obligated no earlier than Friday, April 3, 2008. Funds will be allocated in scoring order, with the highest scoring requests being obligated first, until all funds are exhausted. In the event of a tie, priority will be given to the request for the project that: 1st—has the highest percentage of leveraging (lowest Loan to Cost); 2nd—is in the smaller rural community.

Eligible lenders mailing a response or application must provide sufficient time to permit delivery to the *Submission Address* on or before the closing deadline date and time. Acceptance by a U.S. Post Office or private mailer does not constitute delivery. Postage due responses and applications will not be accepted.

Submission Address: Eligible lenders will send responses to the contact person in the State Office where the project will be located. The lender will also send a copy of its response (copies of ''Lender Certification'' letter and ''Project Specific Data'' sheets only; do not include any application supporting documentation, i.e., market studies, plans/specs, etc.) to: Tammy S. Daniels, Financial and Loan Analyst, USDA Rural Development Guaranteed Rural Rental Housing Program, Multi-Family Housing Guaranteed Loan Division, U.S. Department of Agriculture, South Agriculture Building, Room 1265, STOP 0781, 1400 Independence Avenue, SW., Washington, DC 20250–0781.

USDA Rural Development State Offices, their addresses, telephone numbers, and person to contact follows: [this information may also be found at *http://www.rurdev.usda.gov/recd_map.html*].

Note: Telephone numbers listed are not toll-free.

Alabama State Office: Suite 601, Sterling Centre, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3455, TDD (334) 279–3495, Vann L. McCloud.

Alaska State Office: 800 West Evergreen, Suite 201, Palmer, AK 99645, (907) 761–7740, TDD (907) 761–8905, Deborah Davis.

Arizona State Office: Phoenix Courthouse and Federal Building, 230 North First Ave., Suite 206, Phoenix, AZ 85003–1706, (602) 280–8768, TDD (602) 280–8706, Carol Torres.

Arkansas State Office: 700 W. Capitol Ave., Room 3416, Little Rock, AR 72201–3225, (501) 301–3250, TDD (501) 301–3279, Gregory Kemper.

California State Office: 430 G Street, #4169, Davis, CA 95616–4169, (530) 792–5830, TDD (530) 792–5848, Stephen Nnodim.

Colorado State Office: 655 Parfet Street, Room E100, Lakewood, CO 80215, (720) 544–2923, TDD (800) 659–2656, Mary Summerfield.

Connecticut: Served by Massachusetts State Office.

Delaware and Maryland State Office: 1221 College Park Drive, Suite 200, Dover, DE 19904, (302) 857–3600, TDD (302) 857–3585, Patricia M. Baker.

Florida & Virgin Islands State Office: 4440 N.W. 25th Place, Gainesville, FL 32606–6563, (352) 338–3465, TDD (352) 338–3499, Elizabeth M. Whitaker.

Georgia State Office: Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2164, TDD (706) 546–2034, Wayne Rogers.

Hawaii State Office (Services all Hawaii, American Samoa, Guam, and Western Pacific): Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8305, TDD (808) 541–2600, Don Étés.

Idaho State Office: Suite A1, 9173 West Barnes Dr., Boise, ID 83709, (208) 378–5630, TDD (208) 378–5644, Roni Atkins.

Illinois State Office: 2118 West Park Court, Suite A, Champaign, IL 61821–2986, (217) 403–6222, TDD (217) 403–6240, Barry L. Ramsey.

Indiana State Office: 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100 (ext. 413), TDD (317) 290–3343, Paul Neumann.

Iowa State Office: 210 Walnut Street, Room 873, Des Moines, IA 50309, (515) 284–4666, TDD (515) 284–4858, Heather Honkomp.

Kansas State Office: 1303 SW First American Place, Suite 100, Topeka, KS 66604–4040, (785) 271–2718, TDD (785) 271–2767, Tim Rogers.

Kentucky State Office: 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7325, TDD (859) 224–7422, Paul Higgins.

Louisiana State Office: 3727 Government Street, Alexandria, LA 71302, (318) 473–7962, TDD (318) 473–7655, Yvonne R. Emerson.

Maine State Office: 967 Illinois Ave., Suite 4, PO Box 405, Bangor, ME 04402–0405, (207) 990–9110, TDD (207) 942–7331, Dale D. Holmes.

Maryland: Served by Delaware State Office.

Massachusetts, Connecticut, & Rhode Island State Office: 451 West Street, Amherst, MA 01002, (413) 253–4333, TDD (413) 253–4590, Arlene Nunes or Paul Geoffroy.

Michigan State Office: 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5192, TDD (517) 337–6795, Ghulam R. Sumbal.

Minnesota State Office: 375 Jackson Street Building, Suite 410, St. Paul, MN 55101–1853, (651) 602–7804, TDD (651) 602–7830, Tom Osborne.

Mississippi State Office: Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 965–4326, TDD (601) 965–5850, Darnella Smith-Murray.

Missouri State Office: 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0990, TDD (573) 876–9480, Anita J. Dunning.

Montana State Office: 900 Technology Blvd., Suite B, Bozeman, MT 59715, (406) 585–2565, TDD (406) 585–2562, Deborah Chorlton.

Nebraska State Office: Federal Building, Room 152, 100 Centennial Mall N., Lincoln, NE 68508, (402) 437–5594, TDD (402) 437–5093, Mike Buethe.

Nevada State Office: 1390 South Curry Street, Carson City, NV 89703–9910, (775) 887–1222 (ext. 25), TDD (775) 885–0633, William Brewer.

New Hampshire State Office: Concord Center, Suite 218, Box 317, 10 Ferry Street, Concord, NH 03301–5004, (603) 223–6046, TDD (603) 229–0536, Robert McCarthy.

New Jersey State Office: 5th Floor North, Suite 500, 8000 Midlantic Dr., Mt. Laurel, NJ 08054, (856) 787–7740, TDD (856) 787–7730, George Hyatt, Jr.

New Mexico State Office: 6200 Jefferson St., NE., Room 255, Albuquerque, NM 87109, (505) 761–4944, TDD (505) 761–4938, Art Garcia.

New York State Office: The Galleries of Syracuse, 441 S. Salina Street, Suite 357, 5th Floor, Syracuse, NY 13202, (315) 477–6419, TDD (315) 477–6447, George N. Von Pless.

North Carolina State Office: 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2063, TDD (919) 873–2003, William Hobbs.

North Dakota State Office: Federal Building, Room 208, 220 East Rosser, PO Box 1737, Bismarck, ND 58502, (701) 530–2049, TDD (701) 530–2113, Mark Wax.

Ohio State Office: Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2477, (614) 255–2418, TDD (614) 255–2554, Gerald Arnott.

Oklahoma State Office: 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1070, TDD (405) 742–1007, Tommy Earls.

Oregon State Office: 101 SW Main, Suite 1410, Portland, OR 97204–3222, (503) 414–3353, TDD (503) 414–3387, Rod Hansen.

Pennsylvania State Office: One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2281, TDD (717) 237–2261, Frank Wetherhold.

Puerto Rico State Office: 654 Munoz Rivera Avenue, IBM Plaza, Suite 601, Hato Rey, PR 00918, (787) 766–5095 (ext. 249), TDD (787) 766–5332, Pedro Gomez or Lourdes Colon.

Rhode Island: Served by Massachusetts State Office.

South Carolina State Office: Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 253–3432, TDD (803) 765–5697, Larry D. Floyd.

South Dakota State Office: Federal Building, Room 210, 200 Fourth Street, SW., Huron, SD 57350, (605) 352–1132, TDD (605) 352–1147, Roger Hazuka or Pam Reilly.

Tennessee State Office: Suite 300, 3322 West End Avenue, Nashville, TN 37203–1084, (615) 783–1375, TDD (615) 783–1397, Don Harris.

Texas State Office: Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9758, TDD (254) 742–9712, Leon Carey or Michael Canales.

Utah State Office: Wallace F. Bennett Federal Building, 125 S. State Street, Room 4311, Salt Lake City, UT 84147–0350, (801) 524–4325, TDD (801) 524–3309, David E. Brown.

Vermont State Office: City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6026, TDD (802) 223–6365, Heidi Setien.

Virgin Islands: Served by Florida State Office,

Virginia State Office: Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1596, TDD (804) 287–1753, CJ Michels.

Washington State Office: 1835 Black Lake Blvd., Suite B, Olympia, WA 98512, (360) 704–7730, TDD (360) 704–7760, Robert Lund.

Western Pacific Territories: Served by Hawaii State Office.

West Virginia State Office: Federal Building, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 284–4872, TDD (304) 284–4836, Dianne Crysler.

Wisconsin State Office: 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7600, TDD (715) 345–7614, Dave Schwobe.

Wyoming State Office: PO Box 11005, Casper, WY 82602, (307) 233–6715, TDD (307) 233–6733, Alan Brooks.

FOR FURTHER INFORMATION CONTACT: Tammy S. Daniels, Financial and Loan Analyst, USDA Rural Development Guaranteed Rural Rental Housing Program, Multi-Family Housing Guaranteed Loan Division, U.S. Department of Agriculture, South Agriculture Building, Room 1271, STOP 0781, 1400 Independence Avenue, SW., Washington, DC 20250–0781. E-mail: *tammy.daniels@wdc.usda.gov.* Telephone: (202) 720–0021. This number is not toll-free. Hearing or speech-impaired persons may access that number by calling the Federal Information Relay Service toll-free at (800) 877–8339.

Eligiblity of Prior Year Selected Notice of Funding Availability Responses: FY 2008 NOFA response selections that did not develop into complete applications within the time constraints stipulated by the corresponding State Office have been cancelled. A new response for the project may be submitted subject to the conditions of this Notice.

FY 2008 NOFA responses that were selected by the Agency, with a complete application (including all Federal environmental documents required by 7 CFR part 1940, subpart G, a Form RD 3565–1, and the $2,500 application fee) submitted by the lender within 90 days from the date of notification of response selection (unless an extension was granted by the State office), will be eligible for FY 2009 program dollars and will compete for available FY 2009 funds without having to complete a FY 2009 response.

General Program Information

Program Purpose: The purpose of the GRRHP is to increase the supply of affordable rural rental housing through the use of loan guarantees that encourage partnerships between the Agency, private lenders, and public agencies.

Responses Must be Submitted by: The Agency will only accept responses from GRRHP eligible or approved lenders as described in 7 CFR 3565.102 and 3565.103, respectively.

Qualifying Properties: Qualifying properties include new construction for multi-family housing units and the acquisition of existing structures with a minimum per unit rehabilitation expenditure requirement in accordance with 7 CFR 3565.252.

Also eligible is the revitalization, repair and transfer (as stipulated in 7 CFR 3560.406) of existing direct section 515 housing (transfer costs are subject to Agency approval and must be an eligible use of loan proceeds as listed in 7 CFR 3565.205) and properties involved in the Agency's MPR program. Equity payment, as stipulated 7 CFR 3560.406, in the transfer of existing direct section 515 housing, is an eligible use of guaranteed loan proceeds. In order to be considered, the transfer of direct section 515 housing and MPR projects must need repairs and undergo revitalization of a minimum of $6,500 per unit.

Eligible Financing Sources: Any form of Federal, state, and conventional sources of financing can be used in conjunction with the loan guarantee, including Home Investment Partnership Program (HOME) grant funds, tax exempt bonds, and low income housing tax credits.

Maximum Guarantee: The Agency can guarantee the ''permanent'' loan. The Agency can only guarantee construction advances for the construction of the property if a guarantee for the permanent loan is requested for the same property. The Agency cannot, however, guarantee only

the ''construction'' advances for the construction of a property.

The maximum guarantee for a permanent loan will be 90 percent of the unpaid principal and interest up to default and accrued interest 90 calendar days from the date the liquidation plan is approved by the Agency, as defined in 7 CFR 3565.452. Penalties incurred as a result of default are not covered by the guarantee. The Agency may provide a lesser guarantee based upon its evaluation of the credit quality of the loan. The Agency liability under any guarantee will decrease or increase, in proportion to any decrease or increase in the amount of the unpaid portion of the loan, up to the maximum amount specified in the Loan Note Guarantee.

The maximum guarantee of construction advances will not at any time exceed the lesser of 90 percent of the amount of principal and interest up to default advanced for eligible uses of loan proceeds or 90 percent of the original principal amount and interest up to default of the loan. Penalties incurred as a result of default are not covered by the guarantee. The Agency may provide a lesser guarantee based upon its evaluation of the credit quality of the loan.

Reimbursement of Losses: Any losses will be split on a pro-rata basis between the lender and the Agency from the first dollar lost.

Interest Credit: The Housing and Recovery Act of 2008 (HERA) made changes to several affordable housing programs. One of the changes was the elimination of the reference to the Applicable Federal Rate (AFR) within section 42(i)(2)(D) of the Internal Revenue Code of 1986. The change in the tax code has an impact on the Section 538 GRRHP. Prior to the HERA, GRRHP used the AFR to calculate the effective rate to the borrower through the Agency's payment of interest credit. Interest credit was awarded by the Agency to bring the effective interest rate of the loan to the AFR. Since the reference to the AFR in section 42(i)(2)(D) of the tax code was eliminated by HERA, the section 538 reference to the AFR is no longer applicable. To date the Congress has not made a corresponding change to section 538 of the Housing Act of 1949, therefore the Agency is providing an alternative method of applying Interest Credit.

Until such time appropriate legislative and regulatory changes to the law and regulation governing the section 538 program can be effected, the program will proceed under the following interim guidance:

All loan guarantees obligated under the Fiscal Year 2009 NOFA will apply the interest credit basis points awarded to the note rate negotiated between the borrower and the lender (i.e., 7% note rate—250 interest credit basis points = 4.5% effective note rate to the borrower).

At least 20 percent of all loans made during the fiscal year must receive interest credit. Requests for interest credit must be made in the response to the NOFA. Lenders are not permitted to make requests for interest credit after the selection process has taken place. When interest credit is requested, lenders must state in the response the maximum number of basis points that will be used to calculate the interest. Priority points will be awarded only to those responses submitting proposed interest rates equal to or less than 250 basis points. Any response submitted that exceeds 250 basis points will receive a deduction of 20 points from its Priority Score (refer to ''Scoring the Priority Criteria for Selection of Projects'' section of this Notice). An increasing amount of points will be deducted from the Priority Score of any response requesting 300 or more basis points.

Due to limited funding, and in order to distribute interest credit assistance as broadly as possible and minimize program costs, the Agency will limit the interest credit to $1.5 million of the guaranteed loan funds per project. For example, if an eligible request were made for interest credit on a loan of $2.5 million, up to $1.5 million of the loan would receive interest credit. Interest credit is only available for the permanent loan (not construction loans). Lenders with projects that are viable with or without interest credit are encouraged to submit a response reflecting financial and market feasibility under both funding options. Responses requesting consideration under both options will not affect interest credit selection. Due to limited interest credit funds and the responsibility of USDA Rural Development to target and give priority to rural areas most in need, responses requesting interest credit must score a minimum of 55 points under the criteria established in this Notice.

Surcharges for Guarantee of Construction Advances: There is no surcharge for the guarantee of construction advances for FY 2009.

Program Fees for FY 2009: As a condition of receiving a loan guarantee, the Agency will charge the following guarantee fees to the lender.

(1) Initial guarantee fee. The Agency will charge an initial guarantee fee equal to one percent of the guaranteed loan amount. For purposes of calculating this fee, the guaranteed loan amount is the product of the percentage of the guarantee times the initial principal amount of the guaranteed loan.

(2) Annual guarantee fee. An annual guarantee fee of at least 50 basis points (one-half percent) of the outstanding principal amount of the loan as of December 31 will be charged each year or portion of a year that the guarantee is in effect.

(3) There is a non-refundable application fee of $2,500 when the application is submitted.

(4) There is a flat fee of $500 when a lender requests USDA Rural Development to extend the term of a guarantee commitment.

(5) There is a flat fee of $500 when a lender requests USDA Rural Development to reopen an application when a commitment has expired.

(6) There is a flat fee of $1,250 when a lender requests USDA Rural Development to approve the transfer of property and assumption of the loan to an eligible prospective borrower.

(7) There is no lender application fee for lender approval in FY 2009.

Eligible Lenders: An eligible lender for the section 538 GRRHP as required by 7 CFR 3565.102 must be a licensed business entity or Housing Finance Agency (HFA) in good standing in the state or states where it conducts business. Lender eligibility requirements are contained in 7 CFR 3565.102. Please review 7 CFR 3565.102 for a complete list of all of the criteria. Below is a list of some of the eligible lender criteria under 7 CFR 3565.102:

(1) Licensed business entity that meets the qualifications and has the approval of the Secretary of Housing and Urban Development (HUD) to make multi-family housing loans that are insured under the National Housing Act. A complete list of HUD approved lenders can be found on the HUD Web site at *http://www.hud.gov.*

(2) A licensed business entity that meets the qualifications and has the approval of the Ginnie Mae or Freddie Mac or Fannie Mae corporations to make multi-family housing loans that are sold to the same corporations. A complete list of Freddie Mac approved lenders can be found in Freddie Mac's Web site at *http://www.freddiemac.com.* Fannie Mae approved lenders are found at *http://www.fanniemae.com.* For a list of Ginnie Mae issuers, contact Ginnie Mae at *http://www.ginniemae.gov.*

(3) A state or local HFA with a top-tier rating from Moody's or Standard & Poors, or member of the Federal Home Loan Bank system, and the demonstrated ability to underwrite,

originate, process, close, service, manage, and dispose of multi-family housing loans in a prudent manner.

(4) Be a GRRHP approved lender, defined as an entity with a current executed multi-family housing Lender's Agreement with USDA Rural Development.

(5) Lenders that can demonstrate the capacity to underwrite, originate, process, close, service, manage, and dispose of multi-family housing loans in a prudent manner. In order to be approved the lender will have to have an acceptable level of financial soundness as determined by a lender rating service. The submission of materials demonstrating capacity will be required if the lender's response is selected. Lenders who are otherwise ineligible may become eligible if they maintain a correspondent relationship with an eligible lender that does have the capacity to underwrite, originate, process, close, service, manage, and dispose of multi-family housing loans in a prudent manner. In this case, the eligible lender must submit the response and application on company letterhead. All contractual and legal documentation will be signed between USDA Rural Development and the lender that submitted the response and application.

GRRHP Lender Approval Application: Lenders whose responses are selected will be notified by the USDA Rural Development to submit a request for GRRHP lender approval application within 30 days of notification. Lenders who request GRRHP approval must meet the standards in the 7 CFR 3565.102 and 103. Lenders that have received GRRHP lender approval in the past and are in good standing do not need to reapply for GRRHP lender approval. Requirements for retaining approved lender status are defined in 7 CFR 3565.105.

Submission of Documentation for GRRHP Lender Approval: All lenders that have not yet received GRRHP lender approval must submit a complete lender application to: Director, Multi-Family Housing Guaranteed Loan Division, Rural Development, U.S. Department of Agriculture, Room 1263, STOP 0781, 1400 Independence Avenue, SW., Washington, DC 20250–0781. Lender applications must be identified as ''Section 538 Guaranteed Rural Rental Housing Program'' on the envelope.

As the Section 538 program does not have a formal application form, a complete application consists of a cover letter requesting GRRHP lender approval and the following documentation:

(1) Request for GRRHP lender approval on the lender's letterhead;

(2) Lenders who are HUD, Ginnie Mae, Freddie Mac or Fannie Mae multi-family approved lenders are required to show evidence of this status, such as a copy of a letter designating the distinction;

(3) The lender's Loan Origination, Loan Servicing, and Portfolio Management Handbooks. These handbooks should detail the lender's policies and procedures on loan origination through termination for multi-family loans;

(4) Portfolio performance data;

(5) Copies of standard documents that will be used in processing GRRHP loans;

(6) Resumes and qualifications of key personnel that will be involved in the GRRHP;

(7) Identification of standards and processes that deviate from those outlined in the GRRHP Origination and Servicing Handbook (HB–1–3565) found at *http://www.rurdev.usda.gov/regs/hblist.html#hbw6.*

(8) A copy of the most recent audited financial statements;

(9) Lender specific information including: (a) Legal name and address, (b) list of principal officers and their responsibilities, (c) certification that the officers and principals of the lender have not been debarred or suspended from Federal programs, (d) Form AD 1047, (e) certification that the lender is not in default or delinquent on any Federal debt or loan, or possesses an outstanding finding of deficiency in a Federal housing program, and

(f) certification of the lender's credit rating; and

(10) Documentation on bonding and insurance.

Additional Construction Lender Requirements

The Agency can guarantee the ''permanent'' loan. The Agency can only guarantee construction advances for the construction of the property if a guarantee for the permanent loan is requested for the same property. The Agency cannot, however, guarantee only the ''construction'' advances for the construction of a property.

A lender making a construction loan must demonstrate an ability to originate and service construction loans, in addition to meeting the other requirements of 7 CFR part 3565, subpart C. A lender who originates and services construction/permanent loans must agree to manage the construction and draw activities in the manner described in the Chapter 5 of HB–1–3565. Lenders must meet either the basic or the demonstrated eligibility test in paragraphs 2.4 and 2.5 of HB–1–3565 and the lender approval requirements set forth in paragraph 2.6 of HB–1–3565. Lenders must clearly identify policies and processes for multi-family construction lending. Lenders must also provide a summary of their multi-family construction lending activity in the same form as specified in paragraph 2.5 of HB–1–3565. The Agency may, at its discretion, consider other types of construction loans—such as those for commercial development—as a substitute for multi-family construction experience.

Lender Responsibilities: Lenders will be responsible for the full range of loan origination, underwriting, management, servicing, compliance issues, and property disposition activities associated with their projects. The lender will be expected to provide guidance to the prospective borrower on the Agency requirements during the application phase. Once the guarantee is issued, the lender is expected to service each loan it underwrites or contract these services to another capable entity.

Discussion of Notice Responses

Content of Notice Responses: All responses require lender information and project specific data. Incomplete responses will not be considered for funding. Lenders will be notified of incomplete responses. Complete responses are to include a signed cover letter from the lender on the lender's letterhead and the following information:

(1) *Lender Certification*—The lender must certify that the lender will make a loan to the prospective borrower for the proposed project, under specified terms and conditions subject to the issuance of the GRRHP guarantee. Lender certification must be on the lender's letterhead and signed by both the lender and the prospective borrower.

(2) *Project Specific Data*—The lender must submit the project specific data below on the lender's letterhead, signed by both the lender and the prospective borrower.

Data element	Information that must be included
Lender Name	Insert the lender's name.
Lender Tax ID #	Insert lender's tax ID #.
Lender Contact Name	Name of the lender contact for loan.
Mailing Address	Lender's complete mailing address.
Phone #	Phone # for lender contact.
Fax #	Insert lender's fax #.
E-mail Address	Insert lender contact e-mail address.
Borrower Name and Organization Type	State whether borrower is a Limited Partnership, Corporation, Indian Tribe, etc.
Equal Opportunity Survey	Optional Completion
Tax Classification Type	State whether borrower is for profit, not for profit, etc.
Borrower Tax ID #	Insert borrower's tax ID #.
Borrower DUNS #	Insert DUNS number.
Borrower Address, including County	Insert borrower's address and county.
Borrower Phone #	Insert borrower's phone #.
Principal or Key Member for the Borrower	Insert name and title.
Borrower Information and Statement of Housing Development Experience.	Attach relevant information.
New Construction, Acquisition With Rehabilitation, or the Revitalization, Repair, and Transfer (as stipulated in 7 CFR 3560.406) of Existing Direct Section 515 Housing or MPR.	State whether the project is new construction or acquisition with rehabilitation. Transfer costs, including equity payments, are subject to Agency approval and must be an eligible use of loan proceeds in 7 CFR 3565.205.
Project Location Town or City	Town or city in which the project is located.
Project County	County in which the project is located.
Project State	State in which the project is located.
Project Zip Code	Insert zip code.
Project Congressional District	Congressional District for project location.
Project Name	Insert project name.
Project Type	Family, senior (all residents 55 years or older), or mixed.
Property Description and Proposed Development Schedule	Provide as an attachment.
Total Project Development Cost	Enter amount for total project.
# of Units	Insert the # of units in the project.
Ratio of 3–5 bedroom units to total units	Insert percentage of 3–5 bedroom units to total units.
Cost Per Unit	Total development cost divided by # of units.
Rent	Proposed rent structure.
Median Income for Community	Provide median income for the community.
Evidence of Site Control	Attach relevant information.
Description of Any Environmental Issues	Attach relevant information.
Loan Amount	Insert the loan amount.
Interest Credit (IC)	Is interest credit requested for this loan?
Basis Points	Lenders seeking interest credit must provide the maximum basis points that will be used to calculate the interest rate. Priority points will only be given for basis points equal to or less than 250 basis points.
If Above Is Yes, Should Proposal Be Considered Under Non-Interest Credit Selection If Scoring Does Not Meet The Minimum Point Threshold of 55 Points for an Interest Credit Award?	If Yes, proposal must show financial feasibility for Non-IC consideration.
Borrower's Proposed Equity	Insert amount.
Tax Credits	Have tax credits been awarded? If tax credits were awarded, submit a copy of the award notice/evidence of award with your response. If not, when do you anticipate an award will be made (announced)? What is the [estimated] value of the tax credits?
Other Sources of Funds	List all funding sources other than tax credits and amounts for each source.
Loan to Total Development Cost	Guaranteed loan divided by the total development costs of project.
Debt Coverage Ratio	Net Operating Income divided by debt service payments.
Percentage of Guarantee	Percentage guarantee requested.
Collateral	Attach relevant information.
Empowerment Zone (EZ) or Enterprise Community (EC), Colonia, Tribal Lands, or State's Consolidated Plan or State Needs Assessment.	Yes or No. Is the project in a recognized EZ or EC, Colonia, on an Indian Reservation, or in a place identified in the State's Consolidated Plan or State Needs Assessment as a high need community for multi-family housing?
Is the Property Located in a Federally Declared Disaster Area?	If yes, please provide documentation (i.e., Presidential Declaration document).
Population	Provide the population of the county, city, or town where the project is or will be located.
Is a Guarantee for Construction Being Requested?	State yes or no. The Agency can guarantee the construction advances of the property if the guarantee for the permanent loan is requested for the same property.
Loan Term	Minimum 25-year term. Maximum 40-year term (includes construction period). May amortize up to 40 years. Balloon mortgages permitted after the 25th year.

Scoring of Priority Criteria for Selection of Projects: All 2009 responses will be scored based on the criteria set forth below to establish their priority for obligation of funds. Per 7 CFR 3565.5(b), priority will be given to projects: in smaller rural communities, in the most needy communities having the highest percentage of leveraging, having the lowest interest rate, having the highest ratio of 3–5 bedroom units to total units, or located in Empowerment Zones/ Enterprise Communities or on tribal lands. In addition, the Agency may, at its sole discretion, set aside assistance for or rank projects that meet important program goals. This Fiscal Year additional points will be awarded to responses for the revitalization, repair, and transfers of existing direct Section 515 housing.

Prior to March 31, 2009, projects with an overall score of 25 points or more and a loan to development cost ratio less than 70 percent will be processed and, when ready, obligated on a first-come-first-serve basis, provided funds are available. Projects that score less than 25 points, and projects that score 25 points or more and do not have a loan to development cost ratio less than 70 percent, may be processed up to the point of obligation, but will not be obligated until after March 31, 2009. After March 31, 2009, the Agency will select the highest scoring proposals using the procedure outlined in the **DATES** section of this Notice.

All projects that score 55 points or more on the seven priority criteria, and request and demonstrate a need for an interest credit subsidy, will receive interest credit awards, subject to the availability of funding.

The seven priority criteria for projects are listed below.

Priority 1—Projects located in eligible rural communities with the lowest populations will receive the highest points.

Population size	Points
0–10,000 people	15
10,001–15,000 people	10
15,001–20,000 people	5

Priority 2—The most needy communities as determined by the median income from the most recent census data will receive points. The Agency will allocate points to projects located in communities having the lowest median income. Points for median income will be awarded as follows:

Median income (dollars)	Points
Less than $45,000	20
$45,000—less than $55,000	15
$55,000—less than $65,000	10
$65,000—less than $75,000	5
$75,000 or more	0

Priority 3—Projects that demonstrate partnering and leveraging in order to develop the maximum number of units and promote partnerships with state and local communities will also receive points. Points will be awarded as follows:

Loan to total development cost ratio (percentage %)	Points
90–100	0
Less than 90–70	15
Less than 70–50	20
Less than 50	30

Priority 4—The development of projects on Tribal Lands, or in an Empowerment Zone or Enterprise Community will receive points. The USDA Rural Development will attribute 20 points to projects that are developed in any of the locations described in this priority. The development of projects in a Colonia or in a place identified in the State's Consolidated Plan or State Needs Assessment as a high-need community for multi-family housing will receive points. The USDA Rural Development will attribute 20 points to projects that are developed in any of the locations described in this priority.

Priority 5—The USDA Rural Development will award points to projects with the highest ratio of 3–5 bedroom units to total units as follows:

Ratio of 3–5 bedroom units to total units	Points
More than 50%	10
21%–50%	5
Less than 21%—more than 0%	1

Priority 6—USDA Rural Development will award points for interest credit basis points 250 points and below used to calculate the borrower's effective note interest rate. For all responses, including Section 515 transfers that include equity payments, the score for basis points is as follows:

Basis points	Points
0 to 100 basis points	20
101 to 200 basis points	15
201 to 250 basis points	10
251 to 299 basis points	−20
300 to 349 basis points	−30
350 to 399 basis points	−50
400 and above basis points	−70

Priority 7—Notice responses for the revitalization, repair, and transfer (as stipulated in 7 CFR 3560.406) of existing direct section 515 housing and properties involved in the Agency's MPR program (transfer costs, including equity payments, are subject to Agency approval and must be an eligible use of loan proceeds listed in 7 CFR 3565.205) will receive an additional 30 points.

Notifications: Responses will be reviewed for completeness and eligibility. The USDA Rural Development will notify those lenders whose responses are selected via letter. The USDA Rural Development will request lenders without GRRHP lender approval to apply for GRRHP lender approval within 30 days upon receipt of notification of selection. For information regarding GRRHP lender approval, please refer to the section entitled ''*Submission of Documentation for GRRHP Lender Approval*'' in this Notice.

Lenders will also be invited to submit a complete application and the required application fee of $2,500 to the USDA Rural Development State Office where the project is located.

Submission of GRRHP Applications: Notification letters will instruct lenders to contact the USDA Rural Development State Office immediately following notification of selection to schedule required agency reviews.

USDA Rural Development State Office staff will work with lenders in the development of an application package. In response to the Notice, lenders must submit a response to the office address identified in the Notice for the scoring and ranking of a proposed GRRHP project. The lender must provide the requested information concerning the project, to establish the purpose of the proposed project, its location, and how it meets the established priorities for funding. The Agency will determine the highest ranked responses based on priority criteria and a threshold score.

Notice responses will at least include the following [but the Agency, at its sole discretion, may request additional information]:

(1) The Project

(a) A brief description of the proposed location of the project, including town, county, state, and congressional district.

(b) A description of the property and improvements, including lot size, number of units, building type, type of construction, etc., including preliminary drawings, if available.

(c) The proposed development schedule.

(d) Total project development cost.

(e) The proposed rent structure and area median income (HUD published area median incomes can be found online at *http://www.huduser.org*).

(f) Evidence of site control by the proposed borrower or a purchase option.

(g) Description of any environmental issues that may affect the project.

(h) Amount of loan to be guaranteed.

(i) Type of project (*e.g.*, elderly or family).

(2) The Proposed Financing

(a) Proposed loan amount and the proposed borrower's equity.

(b) Proposed use of interest credit—If the lender proposes to use interest credit, this section should include the maximum basis points the lender will charge the borrower for the project. Selection and scoring criteria that the project must meet to receive interest credit will be published in the Notice.

(c) Estimated development budget (total and cost/unit) and the proposed sources and uses of funds. This information should include all proposed financing sources—the amount, type, rates and terms of loans, tax credits, or grant funds. Letters of application and commitment letters should be included, if available.

(d) Estimated loan-to-development cost ratio for the guaranteed loan.

(e) Proposed Agency guarantee percentage for guaranteed loan (under no condition can the percentage exceed 90 percent of the loan amount).

(f) Collateral—all security, in addition to the real property, proposed to secure the loan.

(3) The Proposed Borrower

(a) The name of the borrower and the type of ownership entity. List the general partners if a limited partnership, officers if a corporation or members of a Limited Liability Corporation.

(b) Borrower's contact name, mailing address, phone and fax numbers, and e-mail address.

(c) Certification that the borrower or principals of the ownership are not barred from participating in Federal housing programs and are not delinquent on any Federal debt.

(d) Borrower's unaudited or audited financial statements.

(e) Statement of borrower's housing development experience.

(4) Lender Eligibility and Approval Status

Evidence that the lender is either an approved lender for the purposes of the GRRHP or that the lender is eligible to apply for approved lender status. The lender's application for approved lender status can be submitted with the response but must be submitted to the National Office within 30 calendar days of the lender's receipt of the ''Notice to Proceed with Application Processing'' letter.

(5) Competitive Criteria

Information that shows how the proposal is responsive to the selection criteria specified in the Notice.

(6) Lender Certification

A commitment letter signed by the lender, on the lender's letterhead, indicating that the lender will make a loan to the borrower for the proposed project, under specified terms and conditions subject only to the issuance of a guarantee by the Agency.

The deadline for the submission of a complete application and application fee is 90 days from the date of notification of response selection. If the application and fee are not received by the appropriate State Office within 90 days from the date of notification, the selection is subject to cancellation, thereby allowing another response that is ready to proceed with processing to be selected. The State Office has the ability to extend this 90 day deadline for receipt of an application only for good cause.

Obligation of Program Funds: The Agency will only obligate funds to projects that meet the requirements for obligation, including having undergone a satisfactory environmental review in accordance with the National Environmental Protection Act (NEPA) and having submitted the $2,500 application fee and completed Form RD 3565–1 for the selected project.

Conditional Commitment: Once required documents for obligation and the application fee are received and all NEPA requirements have been met, the USDA Rural Development State Office will issue a conditional commitment, which stipulates the conditions that must be fulfilled before the issuance of a guarantee, in accordance with 7 CFR 3565.303.

Issuance of Guarantee: The USDA Rural Development Office will issue a guarantee to the lender for a project in accordance with 7 CFR 3565.303. No guarantee can be issued without a complete application, review of appropriate certifications, satisfactory assessment of the appropriate level of environmental review, and the completion of any conditional requirements.

Non-Discrimination Statement

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410, or call (800) 795–3272 (voice), or (202) 720–6382 (TDD). ''USDA is an equal opportunity provider, employer, and lender.''

Dated: January 9, 2009.

Russell T. Davis,

Administrator, Rural Housing Service.

[FR Doc. E9–1074 Filed 1–16–09; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

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

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Report of Whaling Operations.

Form Number(s): None.

OMB Approval Number: 0648–0311.

Type of Request: Regular submission.

Burden Hours: 31.

Number of Respondents: 250.

Average Hours per Response: 5 minutes.

Needs and Uses: Native Americans are allowed to conduct certain aboriginal subsistence whaling in accordance with the provisions of the International Whaling Commission (IWC). The captains participating in these operations must submit certain information to the relevant Native American whaling organization about strikes on and catch of whales. Anyone retrieving a dead whale is also required to report. Captains must place a distinctive permanent identification mark on any harpoon, lance, or explosive dart used, and must also provide information on the mark and

self-identification information. The relevant Native American whaling organization receives the reports, compiles them, and submits the information to National Oceanic and Atmospheric Administration (NOAA). The information is used to monitor the hunt and to ensure that quotas are not exceeded. The information is also provided to the International Whaling Commission, which uses it to monitor compliance with its requirements.

Affected Public: Individuals or households; Not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

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

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

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

Dated: January 13, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–992 Filed 1–16–09; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

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

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Coastal Zone Management Program Administration.

Form Number(s): None.

OMB Approval Number: 0648–0119.

Type of Request: Regular submission.

Burden Hours: 8,125.

Number of Respondents: 34.

Average Hours per Response: Coastal Zone Management Act (CZMA) Performance Management System data entry, 27 hours; CZMA sections 306/306A/309/310/6217—section A, B and C semi-annual performance reports (first year of awards), 27 hours; second year of awards, 10 hours; third year of awards, 5 hours; section C annual performance reports, 8 hours; amendments and program changes documentation, 8 hours; section 306A documentation, 5 hours; section 309 assessment and strategy documents, 240 hours; Nonpoint Pollution Control program, 4 hours; Section 301—section A semi-annual performance reports, 1 hour.

Needs and Uses: Under the authority of the Coastal Zone Management Act of 1972, coastal zone management grants provide funds to states and territories to implement federally approved coastal zone management plans, revise assessment documents and multi-year strategies, submit requests to approve amendments or program changes, and to submit section 306A documentation on their approved coastal zone management plans. Funds are also provided to states and territories to develop their coastal management documents. The information submitted is used to determine if activities achieve national coastal management and enhancement objectives and whether states and territories are adhering to their approved plans.

Affected Public: State, Local or Tribal Government.

Frequency: Semi-annually, annually and on occasion.

Respondent's Obligation: Required to obtain or maintain benefits.

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

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

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

Dated: January 13, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–993 Filed 1–16–09; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–008]

Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Notice of Intent to Rescind Administrative Review

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

SUMMARY: In response to a request from Allied Tube & Conduit Corporation, a domestic interested party, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Taiwan. This review covers one firm, Yieh Hsing Enterprise Co., Ltd. (Yieh Hsing), for the period May 1, 2007, through April 30, 2008. The Department intends to rescind this review after determining that Yieh Hsing did not have entries during the period of review (POR) upon which to assess antidumping duties.

EFFECTIVE DATE: January 21, 2009.

FOR FURTHER INFORMATION CONTACT: Steve Bezirganian or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1131 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION: The Department published an antidumping duty order on certain circular welded carbon steel pipes and tubes from Taiwan on May 7, 1984. *See Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan: Antidumping Duty Order*, 49 FR 19369 (May 7, 1984). The Department published a notice of ''Opportunity to Request an Administrative Review'' of the antidumping duty order for the period May 1, 2007, through April 30, 2008, on May 5, 2008. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 73 FR 24532 (May 5, 2008). On May 30, 2008, Allied Tube & Conduit Corporation, a producer of the domestic like product, requested that the Department conduct an administrative review of Yieh Hsing's exports of merchandise covered by the order. In response to the request from Allied Tube & Conduit Corporation, on July 1, 2008, the Department published the initiation of the antidumping duty administrative review on certain

circular welded carbon steel pipes and tubes from Taiwan, pursuant to section 751(a) of the Tariff Act of 1930, as amended (the Act). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 73 FR 37409 (July 1, 2008).

On August 18, 2008, Yieh Hsing submitted a letter to the Department certifying that it had no shipments of subject merchandise to the United States during the POR. On August 20, 2008, Allied Tube & Conduit Corporation submitted a letter requesting that the review be extended to cover Yieh Phui Enterprise Company, Ltd. (Yieh Phui), noting that Yieh Phui had been found to be the successor–in-interest to Yieh Hsing in a prior proceeding. On August 25, 2008, Yieh Hsing and another interested party, SeAH Steel America (SeAH), each submitted letters objecting to the extension of the review to cover Yieh Phui. On August 27, 2008, Allied Tube & Conduit Corporation filed a response to SeAH's comments, reiterating its request that the review be extended to cover Yieh Phui. On November 14, 2008, the Department determined that the review should not be extended to Yieh Phui. See the November 14, 2008 memorandum to the file entitled ''Treatment of Yieh Hsing Enterprise Co., Ltd. (Yieh Hsing) and Yieh Phui Enterprise Co. Ltd. (Yieh Phui): 2007/2008 Administrative Review of the Antidumping Duty Order on Circular Welded Carbon Steel Pipes and Tubes from Taiwan.''

On November 18, 2008, the Department conducted a data query of U.S. Customs and Border Protection (CBP) import entry information, and found no evidence of entries during the POR involving subject merchandise manufactured or shipped by Yieh Hsing. *See* the December 23, 2008, memorandum from Steve Bezirganian to the File. The Department issued a ''No Shipment Inquiry'' to CBP, to confirm that there were no POR exports of subject merchandise manufactured and/or exported by Yieh Hsing. *See* CBP message number 8357202, dated December 22, 2008. CBP only responds to the Department's inquiry when CBP finds that there have been shipments. CBP did not respond to our inquiry. Therefore, we preliminarily determine there were no Yieh Hsing shipments or entries of subject merchandise exported by Yieh Hsing to the United States during the POR.

Scope of the Order

The merchandise covered by the order is certain circular welded carbon steel pipes and tubes from Taiwan, which are defined as: welded carbon steel pipes and tubes, of circular cross section, with walls not thinner than 0.065 inch, and 0.375 inch or more but not over 4.5 inches in outside diameter, currently classified under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7306.30.5025, 7306.30.5032, 7306.30.5040, and 7306.30.5055. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Intent To Rescind Administrative Review

Pursuant to 19 CFR 351.213(d)(3), the Department may rescind an administrative review if it concludes that during the POR there were no entries, exports, or sales of the subject merchandise. The Department's practice, supported by precedent, requires that there be entries during the POR upon which to assess antidumping duties. *See, e.g., Stainless Steel Bar from Italy: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Rescission of Review*, 70 FR 17656 (April 7, 2005) unchanged in *Stainless Steel Bar from Italy: Final Results of Antidumping Duty Administrative Review and Rescission of Review*, 70 FR 46480 (August 10, 2005).

Yieh Hsing certified that it had no entries of subject merchandise during the 2007–2008 POR, and the Department's review of official data from CBP did not indicate otherwise. Therefore, we have preliminarily determined that Yieh Hsing had no shipments of subject merchandise during the POR, and we intend to rescind the 2007–2008 administrative review.

Public Comment

Interested parties may submit case briefs not later than 30 days after the date of publication of this notice. See 19 CFR 351.309(c). Rebuttal briefs, which must be limited to issues raised in such briefs, must be filed not later than five days after the time limit for filing casing briefs. See 19 CFR 351.309(d). Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. Further, parties submitting written comments should provide the Department with an additional copy of the public version of any such comments on diskette. An interested party may request a hearing within 30 days of publication of this notice. Any hearing, if requested, will be held 37 days after the date of publication of this notice, or the first working day thereafter. *See* 19 CFR 351.310. We will issue our final decision concerning the conduct of the review no later than 120 days from the date of publication of this notice.

This notice is published in accordance with section 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: January 13, 2009.

Gary Taverman,

Acting Deputy Assistant Secretaryfor Antidumping and Countervailing Duty Operations.

[FR Doc. E9–1115 Filed 1–16–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–868]

Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce (''Department'') published its preliminary results of the administrative review of the antidumping duty order on folding metal tables and chairs (''FMTCs'') from the People's Republic of China (''PRC'') on July 14, 2008.[1] The period of review (''POR'') is June 1, 2006, through May 31, 2007. We invited interested parties to comment on our preliminary results. Based on our analysis of the comments received, we have made changes to our margin calculations. Therefore, the final results differ from the preliminary results. The final dumping margins for this review are listed in the ''Final Results of Review'' section below.

EFFECTIVE DATE: January 21, 2009.

FOR FURTHER INFORMATION CONTACT: Lilit Astvatsatrian or Charles Riggle, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–6412 or (202) 482–0650, respectively.

[1] *See Folding Metal Tables and Chairs from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent to Revoke in Part, 73 FR 40285 (July 14, 2008) (''Preliminary Results'').*

Background

On July 14, 2008, the Department published its preliminary results. On August 4, 2008, Meco Corporation (''Meco''), the petitioner in the underlying investigation, and Cosco Home and Office Products (''Cosco''), a U.S. importer of subject merchandise, provided additional comments on the appropriate surrogate values to use as a means of valuing the factors of production, including financial statements from Zuari Industries Limited (2006–2007) (''Zuari'') and Maximaa Systems Limited (2006–2007) (''Maximaa''), Indian producers of merchandise that is identical or comparable to the subject merchandise. On August 13, 2008, the Department received a request for a hearing from Meco. On August 14, 2008, Cosco and Feili Furniture Development Limited Quanzhou City, Feili Furniture Development Co., Ltd., Feili Group (Fujian) Co., Ltd., and Feili (Fujian) Co., Ltd. (collectively ''Feili''), a respondent, submitted rebuttals to the surrogate value information. On August 19, 2008, Meco provided a rebutting exhibit to Cosco's August 14, 2008, rebuttal submission. As provided in section 782(i) of the Act, we verified the information submitted by Feili for use in our final results.[2] On October 1 and 3, 2008, the Department received case briefs from Meco and New–Tec Integration (Xiamen) Co., Ltd. and New–Tec Integration Co., Ltd. (collectively ''New–Tec''), a respondent, respectively. On October 6, 8, and 20, 2008, New–Tec, Cosco, Meco, and Feili submitted rebuttal briefs, respectively. On November 6, 2008, the Department held a public hearing. On November 10, 2008, the Department extended the time period for completion of the final results until December 11, 2008.[3] On December 17, 2008, the Department fully extended the time period of the final results until January 12, 2009.[4]

We have conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.213.

Scope of Order

The products covered by this order consist of assembled and unassembled folding tables and folding chairs made primarily or exclusively from steel or other metal, as described below:

1) Assembled and unassembled folding tables made primarily or exclusively from steel or other metal (folding metal tables). Folding metal tables include square, round, rectangular, and any other shapes with legs affixed with rivets, welds, or any other type of fastener, and which are made most commonly, but not exclusively, with a hardboard top covered with vinyl or fabric. Folding metal tables have legs that mechanically fold independently of one another, and not as a set. The subject merchandise is commonly, but not exclusively, packed singly, in multiple packs of the same item, or in five piece sets consisting of four chairs and one table. Specifically excluded from the scope of the order regarding folding metal tables are the following:

Lawn furniture;
Trays commonly referred to as ''TV trays;''

Side tables;
Child–sized tables;
Portable counter sets consisting of rectangular tables 36'' high and matching stools; and, Banquet tables. A banquet table is a rectangular table with a plastic or laminated wood table top approximately 28'' to 36'' wide by 48'' to 96'' long and with a set of folding legs at each end of the table. One set of legs is composed of two individual legs that are affixed together by one or more cross–braces using welds or fastening hardware. In contrast, folding metal tables have legs that mechanically fold independently of one another, and not as a set.

2) Assembled and unassembled folding chairs made primarily or exclusively from steel or other metal (folding metal chairs). Folding metal chairs include chairs with one or more cross–braces, regardless of shape or size, affixed to the front and/or rear legs with rivets, welds or any other type of fastener. Folding metal chairs include: those that are made solely of steel or other metal; those that have a back pad, a seat pad, or both a back pad and a seat pad; and those that have seats or backs made of plastic or other materials. The subject merchandise is commonly, but not exclusively, packed singly, in multiple packs of the same item, or in five piece sets consisting of four chairs and one table. Specifically excluded from the scope of the order regarding folding metal chairs are the following:

Folding metal chairs with a wooden back or seat, or both;
Lawn furniture;
Stools;
Chairs with arms; and
Child–sized chairs.

The subject merchandise is currently classifiable under subheadings 9401.71.0010, 9401.71.0030, 9401.79.0045, 9401.79.0050, 9403.20.015, 9403.20.0030, 9403.70.8010, 9403.70.8020, and 9403.70.8030 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise is dispositive.

Based on a request by RPA International Pty., Ltd. and RPS, LLC (collectively, ''RPA''), the Department ruled on January 13, 2003, that RPA's poly–fold metal folding chairs are within the scope of the order because they are identical in all material respects to the merchandise described in the petition, the initial investigation, and the determinations of the Secretary.

On May 5, 2003, in response to a request by Staples, the Office Superstore Inc. (''Staples''), the Department issued a scope ruling that the chair component of Staples' ''Complete Office–To-Go,'' a folding chair with a tubular steel frame and a seat and back of plastic, with measurements of: height: 32.5 inches; width: 18.5 inches; and depth: 21.5 inches, is covered by the scope of the order because it is identical in all material respects to the scope description in the order, but that the table component, with measurements of: width (table top): 43 inches; depth (table top): 27.375 inches; and height: 34.875 inches, has legs that fold as a unit and meets the requirements for an exemption from the scope of the order.

On September 7, 2004, the Department found that table styles 4600 and 4606 produced by Lifetime Plastic Products Ltd. are within the scope of the order because these products have all of the components that constitute a folding metal table as described in the scope.

On July 13, 2005, the Department issued a scope ruling determining that ''butterfly'' chairs are not within the scope of the antidumping duty order because they do not meet the physical description of merchandise covered by the scope of the order as they do not have cross braces affixed to the front and/or rear legs, and the seat and back is one piece of cloth that is not affixed

[2] *See* ''Verification of the Sales and Factors Response of Feili in the Antidumping Review of Folding Metal Tables and Chairs from the Peoples Republic of China,'' (September 5, 2008).

[3] *See Folding Metal Tables and Chairs from the People's Republic of China: Extension of Time Limit for the Final Results of Antidumping Duty Administrative Review*, 73 FR 66595 (November 10, 2008).

[4] *See Folding Metal Tables and Chairs from the People's Republic of China: Extension of Time Limit for the Final Results of Antidumping Duty Administrative Review*, 73 FR 76615 (December 17, 2008).

to the frame with screws, rivets, welds, or any other type of fastener.

On July 13, 2005, the Department issued a scope ruling determining that folding metal chairs imported by Korhani of America Inc. are within the scope of the antidumping duty order because the imported chair has a wooden seat, which is padded with foam and covered with fabric or polyvinyl chloride, attached to the tubular steel seat frame with screws, and has cross braces affixed to its legs.

On May 1, 2006, the Department issued a scope ruling determining that ''moon chairs'' are not included within the scope of the antidumping duty order because moon chairs have different physical characteristics, different uses, and are advertised differently than chairs covered by the scope of the order.

On October 4, 2007, the Department issued a scope ruling determining that International E–Z Up Inc.'s (''E–Z Up'') Instant Work Bench is not included within the scope of the antidumping duty order because its legs and weight do not match the description of the folding metal tables in the scope of the order.

On April 18, 2008, the Department issued a scope ruling determining that the VIKA Twofold 2–in–1 Workbench/Scaffold (''Twofold Workbench/Scaffold'') imported by Ignite USA, LLC from the PRC is not included within the scope of the antidumping duty order because its rotating leg mechanism differs from the folding metal tables subject to the order, and its weight is twice as much as the expected maximum weight for folding metal tables within the scope of the order.

Analysis of Comments Received

All issues raised in the post–preliminary comments by parties in this review are addressed in the memorandum from Gary Taverman, Acting Deputy Assistant Secretary for Import Administration, to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration, ''Issues and Decision Memorandum for the 2006–2007 Administrative Review of Folding Metal Tables and Chairs from the People's Republic of China'' (January 12, 2009) (''Issues and Decision Memorandum''), which is hereby adopted by this notice. A list of the issues that parties raised and to which we responded in the Issues and Decision Memorandum is attached to this notice as an appendix. The Issues and Decision Memorandum is a public document and is on file in the Central Records Unit (''CRU'') in room 1117 in the main Department building, and is also accessible on the Web at *http://ia.ita.doc.gov/frn*. The paper copy and electronic version of the memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made changes in the margin calculations for Feili, Dongguan Shichang Metals Factory Co., Ltd. (''Shichang''), a respondent, and New–Tec.

General Issues

We have revised the surrogate value for electricity. For the final results, we find that the best available information with which to value electricity is the electricity price data for small, medium, and large industries, as published by the Central Electricity Authority of the Government of India in its publication titled *Electricity Tariff & Duty and Average Rates of Electricity Supply in India*, dated July 2006.[5] These electricity rates represent actual country–wide, publicly–available information on tax–exclusive electricity rates charged to industries in India. Since the rates are contemporaneous with the POR, we have not inflated the values.

We excluded the financial statement of Godrej and Boyce Manufacturing Co. Ltd. for the year ending March 31, 2007, and used the 2007 financial statement of Maximaa Systems Limited for the calculation of surrogate financial ratios.[6]

Feili

In light of the Department's pending anti–circumvention investigation, we find that Feili has not satisfied all three requirements for revocation under 19 CFR 351.222. Accordingly, we are not revoking the antidumping order with respect to Feili.

Final Results of Review

We determine that the following dumping margins exist for the POR:

Exporter/Manufacturer	Weighted–Average Margin Percentage
Feili*	0.02
New–Tec*	0.06
Shichang*	0.00

* This rate is *de minimis*.

[5] *See* Memorandum to the File, ''Final Results of the 2006-2007 Administrative Review of Folding Metal Tables and Chairs from the People's Republic of China: Surrogate Value Memorandum,'' at 2 (January 12, 2009) (''Final Surrogate Value Memorandum''), and attachment to Letter to All Interested Parties, titled ''Source for Electricity Valuation and Final Briefing Schedule,'' September 15, 2008.

[6] *See* Final Surrogate Value Memorandum, at 2 and Attachment III, and Issues and Decision Memorandum, at Comment 1.

Assessment

The Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. For assessment purposes, we calculated exporter/importer- (or customer) -specific assessment rates for merchandise subject to this review. Where appropriate, we calculated an *ad valorem* rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total entered values associated with those transactions. For duty–assessment rates calculated on this basis, we will direct CBP to assess the resulting *ad valorem* rate against the entered customs values for the subject merchandise. Where appropriate, we calculated a per–unit rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total sales quantity associated with those transactions. For duty–assessment rates calculated on this basis, we will direct CBP to assess the resulting per–unit rate against the entered quantity of the subject merchandise. Where an importer- (or customer) -specific assessment rate is *de minimis* (*i.e.*, less than 0.50 percent), the Department will instruct CBP to assess that importer (or customer's) entries of subject merchandise without regard to antidumping duties. We intend to instruct CBP to liquidate entries containing subject merchandise exported by the PRC–wide entity at the PRC–wide rate we determine in the final results of this review. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this review.

Cash–Deposit Requirements

The following cash–deposit requirements will be effective upon publication of these final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for subject merchandise exported by Feili, New–Tec, and Shichang, the final weighted–average margins are below *de minimis*; therefore, no cash deposit of estimated antidumping duties will be required; (2) for previously reviewed or investigated exporters not listed above that have separate rates, the cash–deposit rate will continue to be the exporter–specific rate

published for the most recent period; (3) for all PRC exporters of subject merchandise, which have not been found to be entitled to a separate rate, the cash–deposit rate will be the PRC–wide rate of 70.71 percent; and (4) for all non–PRC exporters of subject merchandise that have not received their own rate, the cash–deposit rate will be the rate applicable to the PRC exporter that supplied that non–PRC exporter. These deposit requirements shall remain in effect until further notice.

Notification to Interested Parties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Pursuant to 19 CFR 351.402(f)(3), failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO as explained in the administrative protective order itself. 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 the terms of an APO is a sanctionable violation.

This notice of the final results of this administrative review is issued and published in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: January 12, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretaryfor Import Administration.

Appendix

List of Comments and Issues in the Issues and Decision Memorandum

Comment 1: Use of the Appropriate Financial Statements for Calculation of Surrogate Financial Ratios

Comment 2: Use of Market Economy Purchase Prices for Certain New–Tec Factors of Production

Comment 3A: Likelihood of Future Dumping as a Result of Raw Material Price Increases if the Order is Revoked, in Part

Comment 3B: Whether to Revoke Order in Part While the Circumvention Inquiry is Pending

[FR Doc. E9–1106 Filed 1–16–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–808]

Stainless Steel Plate in Coils from Belgium: Notice of Extension of Time Limit for Preliminary Results of Administrative Review

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

EFFECTIVE DATE: January 21, 2009.

FOR FURTHER INFORMATION CONTACT: Joy Zhang or George McMahon at (202) 482–1168 and (202) 482–1167, respectively; AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Background

On July 1, 2008, the Department of Commerce (the ''Department'') initiated an administrative review of the antidumping duty order on stainless steel plate in coils from Belgium with respect to Ugine & ALZ Belgium (''U&A Belgium''). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part and Deferral of Administrative Review*, 73 FR 37409 (July 1, 2008). The period of review (POR) is May 1, 2007 through April 30, 2008. The preliminary results of this review are currently due no later than January 31, 2009.

Extension of Time Limits for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order or finding for which a review is requested. Section 751(a)(3)(A) of the Act further states that if it is not practicable to complete the review within the time period specified, the administering authority may extend the 245–day period to issue its preliminary results by up to 120 days.

We determine that completion of the preliminary results of this review within the 245-day period is not practicable for the following reasons. This review requires the Department to gather and analyze a significant amount of information pertaining to the company's sales practices, manufacturing costs and corporate relationships, which is complicated due to recent changes in its corporate structure. Furthermore, the company subject to this review recently converted its accounting system, which resulted in a request for additional time to submit its questionnaire response to the Department. Given the number and complexity of issues in this case, and in accordance with section 751(a)(3)(A) of the Act, we are extending the time period for issuing the preliminary results of review by 120 days. Therefore, the preliminary results are now due no later than June 1, 2009. The final results continue to be due 120 days after publication of the preliminary results.

We are issuing and publishing this notice in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: January 13, 2009.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Antidumping and Countervailing Duty Operations.

[FR Doc. E9–1114 Filed 1–16–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Imports of Certain Apparel Articles: Interim Procedures for the Implementation of the Earned Import Allowance Program Established Under the Andean Trade Preference Act of 2008

AGENCY: Department of Commerce, International Trade Administration.

ACTION: Interim Procedures, Request for Comments

SUMMARY: The Department of Commerce is issuing interim procedures implementing provisions under the Andean Trade Preference Act of 2008 (''the Act''), enacted in its entirety by Congress on October 3, 2008. Section 2 of the Act contains amendments to Title IV of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (Public Law 109-53; 119 Stat. 495). Under Section 2 of the Act, Title IV of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act is amended by adding Section 404 of the Act creating a benefit for eligible apparel articles wholly assembled in the Dominican Republic that meet the requirements for a ''2 for 1'' earned import allowance. The amendment requires the Secretary of Commerce to establish a program to

provide earned import allowance certificates to any producer or entity controlling production of eligible apparel articles in the Dominican Republic, such that apparel wholly assembled in the Dominican Republic from fabric or yarns, regardless of their source, and imported directly from the Dominican Republic may enter the United States duty-free, pursuant to the satisfaction of the terms governing issuance of the earned import allowance certificate by the producer or entity controlling production of eligible apparel articles in the Dominican Republic.

DATES: These interim procedures are effective as of December 1, 2008. Although these procedures are not subject to the requirement to provide prior notice and opportunity for public comment under 5 U.S.C. 553(b)(A) (''Administrative Procedures Act''), Commerce will consider written comments received by 5:00 p.m. on March 23, 2009.

ADDRESSES: Comments should be addressed to: Janet Heinzen, Acting Deputy Assistant Secretary for Textiles and Apparel, Room 3001, United States Department of Commerce, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Robert Carrigg, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-2573.

SUPPLEMENTARY INFORMATION:

BACKGROUND:

The Department of Commerce is issuing interim procedures implementing Section 2 of the Act, which was enacted in its entirety by Congress on October 3, 2008. Section 2 of the Act contains amendments creating a benefit for apparel from the Dominican Republic in Title IV of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (Public Law 109-53; 119 Stat. 495). These amendments are also cited as the Earned Import Allowance Program.

Under Section 404 of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act, Title IV is amended by creating an uncapped benefit for eligible apparel articles wholly assembled in the Dominican Republic that meet the requirements for a ''2 for 1'' earned import allowance. The Act requires that the Secretary of Commerce establish an Earned Import Allowance program under Section Title IV such that eligible apparel articles wholly assembled in the Dominican Republic from fabrics or yarns and imported directly from the Dominican Republic shall enter the United States free of duty, without regard to the source of the fabrics (not including denim), fabric components, or yarns from which the articles are made, if such apparel articles are accompanied by an earned import allowance certificate (''certificate'') that reflects the amount of credits equal to the total square meter equivalent (''SME'') of such apparel articles, in accordance with the program outlined below. The Secretary of Commerce has delegated his authority under the Act to implement and administer the Earned Import Allowance Program to the International Trade Administration's Office of Textiles and Apparel (''OTEXA'').

This notice sets forth the interim procedures OTEXA will follow in implementing the provisions of the Earned Import Allowance Program. In accordance with these procedures, OTEXA will issue certificates to qualifying apparel producers to accompany imports of eligible apparel articles wholly formed in the Dominican Republic and exported from the Dominican Republic. Such certificates will be issued as long as there is a sufficient balance of SMEs available as a result of the purchase of qualifying woven fabrics, as defined below, intended for production of apparel in the Dominican Republic. OTEXA, promptly upon promulgation of these interim procedures, intends to begin the process of opening and administering qualifying apparel producers' accounts to issue certificates as appropriate.

These procedures may be modified in the future to address concerns that may arise as OTEXA gains experience in implementing them. Pursuant to the Secretary's delegation of authority, OTEXA may reconsider, and/or subsequently amend any determination to deposit credits or request to issue certificates that may have been procured by error, fraud, or similar faults.

Interim Procedures:

1. Introduction: OTEXA will issue a certificate to any producer or entity controlling production in the Dominican Republic (''qualifying apparel producer'') based on the following elements: (1) One SME credit shall be issued to a qualifying apparel producer for every two SMEs of qualifying woven fabric that the qualifying apparel producer can demonstrate that it purchased for the manufacture in the Dominican Republic of eligible apparel articles wholly assembled in the Dominican Republic. SME quantities are to be calculated by the use of the appropriate conversion factor, defined below. OTEXA shall, as requested by a qualifying apparel producer, create and maintain an account for such qualifying apparel producer, into which such credits shall be deposited. (2) Such qualifying apparel producer may redeem credits for certificates reflecting such number of credits as the qualifying apparel producer may request and has available. Requests for deposits of credits for purchases of qualifying woven fabrics as well as redemption of said credits for earned import allowance certificates will be made through a dedicated on-line system, known as the Dominican Republic 2 for 1 Earned Import Allowance Online System (''DR 2 for 1 online system'').

2. Definitions:

a. The Act: The Andean Trade Preference Act of 2008.

b. Conversion Factor: Conversion factors listed in ''Correlation: U.S. Textile and Apparel Industry Category System with the Harmonized Tariff Schedule of the United States of America, 2008,'' or its successor publications, of the United States Department of Commerce.

c. Imported Directly from the Dominican Republic: Articles are ''imported directly from the Dominican Republic'' if -

(1) the articles are shipped directly from the Dominican Republic into the United States without passing into the territory of any intermediate country; or

(2) the articles are shipped from the Dominican Republic into the United States through the territory of an intermediate country, and -

(A) the articles in the shipment do not enter into the commerce of any intermediate country, and the invoices, bills of lading, and other shipping documents specify the United States as the final destination; or

(B) the invoices and other documents do not specify the United States as the final destination, but the articles in the shipment -

(i) remain under the control of the customs authority in the intermediate country;

(ii) do not enter into the commerce of the intermediate country except for the purpose of a sale other than at retail; and

(iii) have not been subjected to operations in the intermediate country other than loading, unloading, or other activities necessary to preserve the articles in good condition.

d. Qualifying Apparel Producer: An individual, corporation, partnership, association, or other entity or group that exercises direct, daily operational

control over the apparel production process in the Dominican Republic; or an individual, corporation, partnership, association or other entity that is not a producer and that controls the apparel production process in the Dominican Republic through a contractual relationship or other indirect means.

e. Qualifying Woven Fabric: For the purposes of these procedures, the term ''qualifying woven fabric'' means woven fabric of cotton, wholly formed in the United States from yarns wholly formed in the United States and certified by the producer or entity controlling production as being suitable for use in the manufacture of apparel items such as trousers, bib and brace overalls, breeches and shorts, skirts and divided skirts or pants, all the foregoing of cotton, purchased on or after August 1, 2007, expressly for production of apparel in the Dominican Republic, except that:

(1) fabric otherwise eligible as qualifying woven fabric shall not be ineligible asqualifying woven fabric because the fabric contains nylon filament yarn to which Section 213(b)(2)(A)(vii)(IV) of the Caribbean Basin Economic Recovery Act (''CBERA'') applies;

(2) fabric that would otherwise be ineligible as qualifying woven fabric because thefabric contains yarns not wholly formed in the United States shall not be ineligible as qualifying woven fabric if the total weight of all such yarns is not more than 10 percent of the total weight of the fabric, except that any elastomeric yarn contained in an eligible article must be wholly formed in the United States; and

(3) fabric otherwise eligible as qualifying fabric shall not be ineligible as qualifying fabric because the fabric contains yarns or fibers that have been designated as not commercially available pursuant to--

(a) article 3.25(4) or Annex 3.25 of the Agreement;

(b) Annex 401 of the North American Free Trade Agreement;

(c) section 112(b)(5) of the African Growth and Opportunity Act;

(d) section 204(b)(3)(B)(i)(III) or (ii) of the Andean Trade Preference Act;

(e) section 213(b)(2)(A)(v) or 213A(b)(5)(A) of the Caribbean Basin Economic Recovery Act; or

(f). any other provision, relating to determining whether a textile or apparel article is an originating good eligible for preferential treatment, of a law that implements a free trade agreement entered into by the United States that is in effect at the time the claim for preferential treatment is made.

f. Qualifying Apparel Articles: the term 'eligible apparel articles' means the following articles classified in chapter 62 of the Harmonized Tariff System of the United States (and meeting the requirements of the rules relating to chapter 62 of the HTS contained in general note 29(n) of the HTS) of cotton (but not of denim): trousers, bib and brace overalls, breeches and shorts, skirts and divided skirts, and pants.

g. Wholly Assembled: A good is ''wholly assembled'' in the Dominican Republic if all its components, of which there must be at least two, pre-existed in essentially the same condition as found in the finished good and were combined to form the finished good in the Dominican Republic. Minor attachments and minor embellishments (for example, appliqués, beads, spangles, embroidery, and buttons) not appreciably affecting the identity of the good, and minor subassemblies (for example, cuffs, plackets, and pockets), shall not affect the determination of whether a good is ''wholly assembled'' in the Dominican Republic.

3. Submitting a Request to Open an Account: A qualifying apparel producer, as defined in section 2(d) of these procedures, may request that OTEXA open an account to which records of purchases of qualifying woven fabric, as defined in section 2(e) of these procedures may be deposited toward a balance from which to draw certificates. Such request should be made online, via the DR 2 for 1 online system, located on the OTEXA website. In making a request to open an account, the qualifying apparel producer must provide:

a. The full name and address of the qualifying apparel producer;

b. All designated contacts and contact information, and any designees authorized to have access to the account; and

c. A statement affirming the accuracy and authenticity of the information submitted to OTEXA.

Once the application has been received by the DR 2 for 1 online system and reviewed and approved by OTEXA, the qualifying apparel producer will be assigned a unique user identification number, and a password to enable future access to its online account. The qualifying apparel producer may request to update contact and designee information in its account at any time through the DR 2 for 1 online system.

4. Submitting a Request to Deposit Credits. A qualifying apparel producer with an existing account may submit a request to deposit credits for purchases of qualifying woven fabric. The request must contain the following information:

a. The name of the qualifying apparel producer;

b. A complete description of the qualifying woven fabric;

c. The quantity, in SMEs, of the qualifying woven fabric;

d. A statement that the qualifying woven fabric is intended for the production of eligible apparel articles in the Dominican Republic; and

e. Supporting documentation: documentation, which, in their totality includes:

(1) the U.S. manufacturer of the qualifying woven fabric;

(2) the full description of the fabric in question, including any non-U.S. components or inputs and their manufacturer;

(3) the name of the qualifying apparel producer as the ultimate consignee; and

(4) that the fabric purchased is intended for production of eligible apparel articles in the Dominican Republic.

f. An affirmation from the qualifying apparel producer as to the accuracy and authenticity of the information provided.

The request must be submitted via the DR 2 for 1 online system. All supporting documentation must be submitted either electronically via the DR 2 for 1 online system, or via fax to 202-482-0858 or 202-482-0667. OTEXA will review the request and supporting documentation and shall make a determination whether to approve or deny the request to deposit credits. Should there be insufficient information with which to make a determination, OTEXA may request additional information from the qualifying apparel producer, the manufacturer of the fabric at issue, or any other entity identified in supporting documentation, as provided by section 6.

5. Submitting a Request for an Earned Income Allowance Certificate. A qualifying apparel producer may request the issuance of a certificate via the DR 2 for 1 online system. The qualifying apparel producer must log on to the DR 2 for 1 online system to access its account, and submit a request to redeem credits and be issued a certificate. As long as there are sufficient credits available, a certificate will be automatically generated by the DR 2 for 1 online system, and the credits will be automatically withdrawn from the qualifying apparel producer's account. If there are insufficient credits in the qualifying apparel producer's account, the request for a certificate will automatically be denied by the DR 2 for 1 online system.

6. Verification of Submitted Information. OTEXA may, at any time, verify the information submitted by a qualifying apparel producer or its designee. OTEXA may require any textile mill or other entity located in the United States that exports to the Dominican Republic qualifying woven fabric, upon such export or upon request, documentation to OTEXA: (a) verifying that the qualifying woven fabric was exported to a producer in the Dominican Republic or to an entity controlling production; and (b) identifying such producer or entity controlling production, and the quantity and description of qualifying woven fabric exported to such producer or entity controlling production. OTEXA may also require that a producer or entity controlling production submit documentation to verify purchases of qualifying woven fabric. OTEXA may make available to each person or entity identified in documentation submitted under these provisions information contained in the documentation that relates to the purchase of qualifying woven fabric involving such person or entity. OTEXA may establish and impose penalties for the submission to OTEXA of fraudulent information under this program, other than a claim under the customs laws of the United States or under title 18, United States Code.

7. Contact Information: Questions regarding the Earned Import Allowance program or the DR 2 for 1 online system may contact OTEXA via email at OTEXA__DR2for1@mail.doc.gov, or by phone to the Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

Dated: January 15, 2009.

R. Matthew Priest,

Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. E9–1215 Filed 1–15–09; 4:15 pm]

BILLING CODE 3510–DS

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XM75

Endangered and Threatened Species; Recovery Plan

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

ACTION: Notice of availability.

SUMMARY: The National Marine Fisheries Service (NMFS) announces the availability of the recovery plan for the U.S. Distinct Population Segment (DPS) of smalltooth sawfish (*Pristis pectinata*) as required by the Endangered Species Act of 1973 (ESA).

ADDRESSES: The final plan is provided on NMFS' Protected Resources Internet Web site at: *http://www.nmfs.noaa.gov/pr/recovery/plans.htm*.

Requests for a copy of the recovery plan may be submitted to the Smalltooth Sawfish Plan Coordinator at: NMFS, Southeast Regional Office, Protected Resources Division, 263 13th Avenue South, St. Petersburg, Florida, 33701.

FOR FURTHER INFORMATION CONTACT: Shelley Norton at (727) 824–5312, or by e-mail at *shelley.norton@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

Congress passed the ESA (16 U.S.C. 1531 *et seq.*) to protect species of plants and animals in danger of extinction. NMFS and the U.S. Fish and Wildlife Service (FWS) share responsibility for the administration of the ESA. NMFS is responsible for most endangered and threatened marine species, including the U.S. DPS of smalltooth sawfish (*Pristis pectinata*). Listed endangered or threatened species under NMFS jurisdiction are identified in 50 CFR 224.101(a) and 50 CFR 223.102, respectively. The List of Endangered and Threatened Species, which contains species under the jurisdiction of both agencies, is provided in 50 CFR 17.11(h). The U.S. DPS of smalltooth sawfish is listed as endangered.

Section 4(f)(1) of the ESA requires that recovery plans be developed and implemented for the conservation and survival of endangered and threatened species, unless such plans would not promote the conservation of the species. A plan was prepared at the request of the Assistant Administrator for Fisheries to promote the recovery of smalltooth sawfish.

Summary of Comments Received

Below we address the comments received pertaining to the Draft Smalltooth Sawfish Recovery Plan (Plan) published August 28, 2006. In response to our request for public comments, we received over 6,000 written responses to the Plan. The majority of the responses expressed general support for the Plan. Five commenting agencies and 3 scientific peer reviewers provided more specific comments. Responses to specific comments are provided below.

Peer Review Comments

Comment 1: A commenter suggested the use of circle hooks for recreational fishers as a means to reduce bycatch. Additionally, another commenter stated that studies on post-release mortality should be a higher priority.

Response: Action 1.1.5 recommends investigating fishing devices such as circle hooks that may reduce the capture, injury, and mortality of smalltooth sawfish in recreational fisheries. NMFS agrees with the commenter who stated we should make studies on post-release mortality a higher priority. NMFS changed the priority numbers of Action 1.1.3 from a priority 2 to a priority 1 because new data on related species indicates the use of circle hooks may decrease post-release mortality.

Comment 2: A commenter noted the need to develop systematic sampling programs. Additionally, a commenter stated NMFS should plan for long-term monitoring and tagging of animals.

Response: Action Items 3.2 and 3.4 identify the need for surveys and NMFS is currently developing the specific sampling design programs to accomplish our recovery goals. The Plan also plans for long-term monitoring (Action 3.2.4) and tagging (Action 3.1.2) of animals to monitor the recovery process.

Comment 3: A commenter suggested allowing additional permits for non-directed research to allow tagging of and release of captured animals.

Response: Researchers working within the range of smalltooth sawfish and with gears that may incidentally capture the species can apply for an ESA permit to tag smalltooth sawfish. Researchers who are required to obtain an ESA permit for work on other federally endangered or threatened species may request authorization from NMFS to tag incidentally caught smalltooth sawfish.

Comment 4: A commenter stated that NMFS needs to have a long-term commitment to surveying and tagging smalltooth sawfish.

Response: The Plan looks forward 100 years and includes actions and budgeting requirements for the implementation of all Action Items, including surveying and tagging of smalltooth sawfish.

Comment 5: A commenter questioned the ability to detect increases in catch per unit effort (CPUE) data for the abundance criterion for juveniles in Objective 3.

Response: NMFS is currently developing randomized, stratified survey methodologies that will detect

changes in CPUE throughout the species range. Additionally, NMFS may need to continue to utilize recreational and commercial capture or sighting records to determine changes or trends in relative abundance.

Comment 6: A commenter requested information regarding gillnet prohibitions by state.

Response: Appendix C of the Plan summarizes the existing state laws or regulations related to gillnets within the species' historic range.

Comment 7: A commenter stated that the Plan did not consistently note the difference in population increase rates. They were noted as a percent or described as a proportion in the Plan.

Response: NMFS has modified the Plan to use percent throughout.

Comment 8: A commenter asked if the Everglades National Park creel data (Figure 7) accounted for fishing effort.

Response: Yes, the results presented do take into account fishing effort. Catch per Unit Effort was calculated using the number of fishers.

Comment 9: A commenter asked if sawfish were always taken as bycatch in nearshore fisheries.

Response: A review of historical fishing records and literature on the species indicates no directed fisheries existed for the species but limited directed take occurred for aquaria and trade of sawfish parts, thus historical sawfish captures were predominantly as bycatch in fisheries targeting other species.

Comment 10: A commenter stated the Plan does not provide adequate discussion on how to address a declining or stable population.

Response: The Plan identifies several actions (1.1.1, 1.1.18, etc.) that address monitoring and minimization of existing threats. If population level monitoring indicates a decrease or leveling off of the population below target levels, NMFS will identify the cause and develop an action or actions to address the problem. NMFS periodically reviews the effectiveness of the Plan and the status of the species and makes adjustments to the Plan if necessary (including additional mitigation measures, etc.).

Comment 11: A commenter stated that studying the connectivity between the U.S. population and populations in Mexico, Cuba, and the Bahamas should be a higher priority because the species is not listed in those countries.

Response: Action 3.1 identifies the need to investigate the relationship between the U.S. population of sawfish and those in neighboring countries; however, NMFS ranked threats such as bycatch and habitat as being higher priority actions. The listed entity and the subject of the Plan is the U.S. DPS of smalltooth sawfish. While additional information on nearby populations is of scientific interest and value, NMFS believes, based on currently available information, we should focus our efforts on the recovery of the U.S. DPS because we believe the U.S. population is distinct from all other populations. We believe actions affecting smalltooth populations outside of the United States do not affect the U.S. smalltooth sawfish's recovery efforts.

Comment 12: A commenter expressed concern regarding the priority levels given the timing of various research activities.

Response: NMFS addressed this comment by re-evaluating the research activities in the Plan. The research priorities numbers were reassessed by the team and were modified to match the timing of the action. Actions that must occur before others can take place were given higher priority based on timing. The action relating to (1) connectivity of populations (Action 3.1) was not a high priority because focus needs to be on the US DPS, so it was given a priority level of 3; (2) post-release mortality (Action 1.1.3) was upgraded to priority level 1; and (3) collection of reproductive data (Action 3.3.1) was not critical for the development of the PVA because reproductive data on a comparable species, the largetooth sawfish (P. perotteti), was used, so its priority level was not changed.

Comment 13: A commenter stated that the lack of reproductive biology information on the species is a problem, especially when the PVA is developed.

Response: As discussed above, existing reproductive data from largetooth sawfish (*P. perotteti*) can be and were used by NMFS internally to develop a preliminary PVA model for the smalltooth sawfish. As species-specific data become available, we can update the PVA model and examine its reliability with continued use of congener data.

Comment 14: A commenter stated that NMFS should determine how many smalltooth sawfish fins are sold in the shark fin trade. The commenter also stated that the shark fin trade is increasing.

Response: The Plan identifies the fin trade as a threat to sawfish but available fin trade data does not indicate that finning is a major threat to the recovery of the species. Action 1.2 in the Plan identifies the need to monitor trade of sawfish parts to ensure the long-term viability of the species.

Comment 15: The Department of the Navy (DoN) has requested exemptions for maintenance dredging activities.

Response: Exemptions are outside of the scope of the authority of recovery planning documents. NMFS will address the effects of future proposed DoN actions on listed species during the section 7 consultation process.

Comment 16: DoN stated they may potentially carry more of the burden of recovering the smalltooth sawfish.

Response: All Federal agencies have express responsibilities under section 7 of the ESA. Section 7 (a)(1) states ''all other federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of the Act by carrying out programs for the conservation of endangered and threatened species....'' Additionally, section 7 (a)(2) of the ESA states ''federal agencies shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary....'' The DoN owns or manages some of the remaining known high quality sawfish habitat located within the current range of the species (Florida). However, the small percentage of high quality habitat under the DoN's jurisdiction suggests they should not be unduly affected by the majority of the recovery efforts.

Comment 17: The DoN expressed concern in regards to Recovery Objective ι2. This states the downlisting criteria of maintaining and protecting 95 percent of mangrove shoreline habitat at the time of listing (2003). The DoN stated that the objective seems ambitious and unachievable and stated that NMFS should fund mangrove studies to determine the extent of the loss of mangrove habitats that existed in 1940 and 2003 before determining recovery levels. Additionally, the DoN asked how NMFS would know the mangrove recovery criteria have been met.

Response: Recovery plan levels are consistent with Federal and state regulations that protect mangrove habitats and require permits and mitigation for unavoidable impacts. Mangrove habitats are currently protected in the state of Florida under the Mangrove Trimming and Preservation Act, as amended in 1996. Maintaining 95 percent of remaining mangrove habitat should be achievable

with the existing laws and regulations in place. Based on the existing data on juvenile smalltooth sawfish habitat usage patterns, mangrove habitats are essential for juvenile smalltooth sawfish. NMFS funded a mangrove study in 2008 to determine the changes in mangrove abundance within the range of juvenile smalltooth sawfish to determine the extent of habitat modification that occurred since the 1940s and since the time of listing. NMFS will modify mangrove related recovery criteria based on the results of the study as appropriate.

Comment 18: The DoN noted the focus of the Plan's recovery efforts are in south Florida.

Response: South Florida was historically the center of abundance for the species and is currently the center of its abundance and the only documented location of a reproducing population. Recovery actions are also identified for areas outside of Florida (North Carolina to Texas). As the population expands and recovers areas outside of south Florida will become increasingly important for the species.

Comment 19: The DoN expressed concern over whether freshwater flow regimes to nursery areas have been established.

Response: The Recovery Plan was written based on the ''best available science'' and since research has shown that estuarine areas with freshwater sources are important to juvenile smalltooth sawfish, it is considered an important factor. Data on specific freshwater flow requirements are lacking for the species. If and when improved data on the salinity requirements of the species are known, they will be incorporated into the Plan.

Comment 20: The DoN expressed concern that the abundance of sawfish was not quantified at the time of listing.

Response: The Plan contains recovery criteria based on the use of relative abundance because the species is endangered, highly mobile, and quantifying absolute abundance is not currently possible. The current population is estimated to consist of a few thousand animals (Simpfendorfer, 2004). Absolute abundance cannot be determined for the species but relative abundance may be obtained by using various data sets as indices of abundance. The ENP creel and guide survey provides monitoring back to 1989 prior to the date of listing. Other surveys conducted by federal and state agencies began prior to listing and are ongoing (Florida Independent Monitoring Program, etc.). These data sets will be used to document relative abundance through time. More baseline information is still required and increased survey and monitoring efforts are planned for the near future. Monitoring data (captures and or sightings) should provide us with a measure of increase or decrease in relative abundance that can be used to estimate the overall population size. Given the rate of population increase or decrease, these surveys will provide a reasonable proxy for the population estimate at the time of listing. Thus, the need to complete surveys prior to adopting the recovery objective is not required.

Comment 21: The DoN stated the lower Florida Keys do not provide good habitat for juvenile sawfish because the salinity of the waters surrounding the area are often hyposaline or hypersaline, not euryhaline.

Response: NMFS has limited and highly variable documented encounters of juvenile smalltooth sawfish in the Florida Keys (See Poulakis and Seitz [2004] and Simpfendorfer and Wiley [2005]). At this time, we cannot identify specific habitat features important to juveniles in the Florida Keys but we do know that juveniles are occasionally sighted or captured in the area.

Comment 22: The DoN stated that riverine mangroves are functionally different from those found in the lower Florida Keys systems and are less important to sawfish. The DoN also stated that NMFS should consider creating a new recovery region for the lower Keys and classify the various types of mangrove habitats prior to designating critical habitat.

Response: Current data on habitat usage by juvenile smalltooth sawfish indicate they primarily utilize habitats that contain the following features: shallow and euryhaline waters and red mangroves. These habitats are not solely located within rivers so we do not agree that riverine mangroves are more important to juvenile smalltooth sawfish than non-riverine mangroves. The delineation of the recovery regions is based primarily on biogeographical boundaries. Based on the encounter data and the similarity between habitats located within the upper and lower Florida Keys, NMFS did not consider changing the boundaries of Recovery Region I.

Comment 23: A commenter suggested that NMFS establish optimum water quality and habitat targets for the Caloosahatchee River.

Response: The Plan includes recovery actions to identify and maintain or restore appropriate water quality, including the timing of freshwater releases, for juvenile sawfish (Action 2.2 and associated sub-actions). This includes the Caloosahatchee River. At this time there is insufficient data available on appropriate water quality levels in areas utilized by juvenile sawfish; however, research currently underway is collecting data in the Caloosahatchee River to address this need.

Comment 24: A commenter recommended NMFS clearly define the specific importance of the Caloosahatchee River.

Response: The Caloosahatchee River is currently an important area for smalltooth sawfish. The Caloosahatchee River falls within Recovery Region G, one of six where there is a requirement for maintaining nursery habitats. The plan recognizes the need to recover this species over a broad geographic range, of which the Caloosahatchee River is one component.

Comment 25: A commenter stated that recovery actions should have information about the importance of specific areas. This information is requested to aid in local government planning processes.

Response: NMFS has established ongoing research in specific areas, including in the Caloosahatchee River, which will lead to detailed information for management at the local level; however, specific detailed discussions within the Plan are beyond the scope of the Plan and were therefore not included. NMFS will work with local governments to provide guidance on local management strategies for smalltooth sawfish as the Plan is implemented.

Comment 26: A commenter recommended specific discussion of the effects on smalltooth sawfish from Lake Okeechobee water releases.

Response: Action 2.2 addresses the need to monitor and manage natural and freshwater flow regimes for the species. Freshwater releases from Lake Okeechobee and their effects on smalltooth sawfish are specifically identified in the Plan. Specific cause and effect information from water releases are unknown at this time.

Comment 27: A commenter recommended NMFS designate critical habitat for the smalltooth sawfish.

Response: NMFS proposed critical habitat on November 20, 2008 (73 FR 70290).

Comment 28: A commenter suggested NMFS support the funding of smalltooth sawfish conservation efforts.

Response: The Plan lays out an implementation and cost schedule that will permit NMFS to set priorities for funding and regulatory action and provide for recovery of the species.

Actual implementation of actions in the Plan will depend on available funding.

Comment 29: A commenter recommended the formation of a smalltooth sawfish implementation team.

Response: NMFS has formed a Smalltooth Sawfish Implementation Team. More information on this team can be found at: *http://www.flmnh.ufl.edu/fish/Gallery/Descript/STSawfish/STSawfish.html*.

Comment 30: A commenter suggested that NMFS require new gear and equipment for release of smalltooth sawfish.

Response: NMFS developed Safe Handling and Release Guidelines for the species (Appendix B), and made revisions to the plan to recommend use of circle hooks to reduce hooking injury and mortality. Training in safe handling and release methods for captured smalltooth sawfish is required in some of NMFS federally-managed fisheries. Additionally, specific types of release equipment are required to be on-board boats in specific federally-managed fisheries.

Comment 31: A commenter stated that future developments should not destroy mangroves.

Response: As stated in the response to comment 117, federal, state, and local laws protect mangroves and may be applicable to development projects on a case-by-case basis. The Plan establishes objectives for protection and restoration of mangroves but the Plan itself cannot impose requirements on future development projects.

Comment 32: One commenter recommended that eBay should not be able to sell any parts of sawfish.

Response: Smalltooth sawfish are protected under Appendix 1 of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. Trade of parts is prohibited.

Comment 33: Numerous (6,000) commenters expressed general support for the recovery plan.

Summary of Changes

Below we describe the changes made to the final Plan that were not discussed in the comment section.

Change 1: The Recovery Criteria for nursery habitat was clarified to include the protection of non-mangrove habitats. Historic and current juvenile encounters indicate they are located in areas outside the range of mangroves. We believe we will need nursery areas outside of the range of mangroves to recover the species, but at this time cannot determine the specific features utilized by juveniles. Once we identify the habitat features utilized by juveniles in non-mangrove habitats, we need to protect and/or restore these areas for recovery of the species.

Change 2: Section II, Recovery Strategy was rearranged to streamline the document and remove redundancy.

Change 3: Figures 8a, 8b, and 8c were renamed as ''Protected Areas'' because they include upland areas as well as marine areas.

Change 4: Citations and Recovery Actions were updated to reflect new publication dates or accomplishment of some actions.

Change 5: Latitude and longitude locations were placed in the Recovery Regions Map (Figure 9) to clarify where each recovery region begins and ends.

Change 6: NMFS made several changes to the Implementation Schedule. We provided additional comments in the ''Comments'' section of the table to note ongoing research. Some action start dates were delayed based on expected budget constraints. Additionally, some of the priority numbers were raised or lowered based on comments from the public. The following Actions were modified or added:

- Action 1.1.3 was changed from a priority 2 to a priority 1.
- Action 1.1.7 was changed from a priority 2 to a priority 3.
- Action 1.1.17 start date was changed to FY08.
- Action 1.5.1 was given a priority of 3.
- Action 2.1.3 start date was changed to FY09.
- Action 2.1.6 was changed from a priority 2 to a priority 1.
- Action 2.1.8 was changed to clarify the function of the area.
- Action 2.1.10 start date was moved to FY08.
- Action 2.1.11 was clarified to include nursery areas only within Florida because Florida is believed to be the center of the population.
- Action 2.2.1 was changed from a priority 2 to a priority 1 and start year was changed to FY08.
- Action 2.2.2 was changed from a priority 2 to a priority 1.
- Action 2.3.3 start date was changed to FY08
- Action 3.1.3 start date was changed to FY08.
- Action 3.3.4 was changed from a priority 1 to a priority 3.
- Action 3.3.5 was changed from a priority 2 to a priority 3.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: January 13, 2009.

Angela Somma,

Chief, Endangered Species Division, National Marine Fisheries Service.

[FR Doc. E9–1118 Filed 1–16–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XM79

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scientific and Statistical Committee on February 6, 2009 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Friday, February 6, 2009 at 8:30 a.m.

ADDRESSES: *Meeting address*: The meeting will be held at the Radisson Airport Hotel, 2081 Post Road, Warwick, RI 02886; telephone: (401) 739–3000; fax: (401) 732–9309.

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 Scientific and Statistical Committee (SSC) will review the process to be used by the Scallop Plan Development Team to develop recommendations, as part of Amendment 15 to the Scallop Fishery Management Plan, for acceptable biological catch (ABCs), annual catch limits (ACLs) and accountability measures (AMs), as well as methods for analyzing the social and economic impacts of management measures. The SSC also will review recommendations from the Skate Plan Development Team regarding updated Skate Total Allowable Landings (TALs), as well as ABCs, ACLs and AMs, as part of Amendment 3 to the Skate Fishery Management Plan, using new data reviewed during the recent Data Poor Stocks Peer Review Meeting.

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 listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent 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, Executive Director, at 978–465–0492, at least 5 days prior to the meeting date.

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

Dated: January 14, 2009.

Tracey L. Thompson,

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

[FR Doc. E9–1084 Filed 1–16–09; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Notice of Additional Conditions on the No-Action Relief When Foreign Boards of Trade That Have Received Staff No-Action Relief To Permit Direct Access to Their Automated Trading Systems From Locations in the United States List for Trading From the U.S. Linked Futures and Option Contracts and a Revision of Commission Policy Regarding the Listing of Certain New Option Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (Commission) is providing notice requiring foreign boards of trade that may receive Commission staff no-action relief permitting them to make their automated trading systems directly available from the U.S. to comply with additional conditions for the no-action relief to remain effective if they list for trading from the U.S. contracts that are linked to contracts traded on certain U.S.-based entities. Separately, the Commission is providing notice that it is revising its policy regarding the notification procedures applicable to listing an option on a futures contract that already is (or can be) listed for trading from the U.S.

DATES: *Effective Date:* The conditions and notification procedures are effective immediately.

FOR FURTHER INFORMATION CONTACT: Duane C. Andresen, Senior Special Counsel, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20581. Telephone: 202–418–5492. E-mail: *dandresen@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Since 1996,[1] Commission staff has issued no-action letters [2] to foreign boards of trade (FBOT) stating that, subject to compliance with certain conditions, the staff will not recommend that the Commission take enforcement action against the FBOT or its members if the FBOT permits its members or participants in the United States to have direct access [3] to its electronic trading system without seeking designation under the Commodity Exchange Act (CEA or Act) as a contract market (DCM) or registration as a derivatives transaction execution facility (DTEF).[4] On June 2, 1999, the Commission issued an order which, among other things, withdrew proposed rules that would have governed automated access to FBOTs from the U.S. and instructed the Commission staff to begin immediately processing no-action requests from FBOTs seeking to place trading terminals in the U.S., and to issue responses where appropriate, pursuant to the general guidelines included in the Eurex (DTB) no-action process, or other guidelines established by the Commission.[5] On October 22, 2006, the Commission issued a Statement of Policy that affirmed the use of the no-action process to permit FBOTs to provide direct access to their electronic trading systems to U.S. members or authorized participants.[6]

Commission staff has issued 21 no-action letters since the DTB letter, all of which grant the no-action relief requested subject to a series of terms and conditions. The terms and conditions, among other things, assure the Division (1) That the FBOT continues to be a bona fide FBOT subject to effective regulation in its home country; (2) that direct access is restricted to authorized entities; (3) that the Division receives notice of any material changes in the information provided to it in support of the no-action request including, without limitation, any modification of the FBOT's membership criteria, the location of its management, personnel or operations, the basic structure, nature, or operation of the trading system, or the regulatory or self-regulatory structure applicable to its members; and (4) that satisfactory information-sharing arrangements between the Commission, the FBOT, and the FBOT's relevant regulatory authorities will remain in effect.

With respect to the listing of new contracts, initially FBOTs that received no-action relief that wished to list additional futures and option contracts for trading by direct access from the U.S. were required to request in writing and receive supplemental no-action relief from Commission staff prior to listing the new contracts. On June 30, 2000, the Commission issued a Statement of Policy that permitted FBOTs with no-action relief to list additional futures and option contracts for trading from the U.S. merely by filing with Commission staff no later

[1] In February 1996, Commission staff issued no-action relief to Deutsche Terminborse (DTB), an automated international futures and options exchange headquartered in Frankfurt, Germany, that permitted DTB, subject to certain terms and conditions, to place computer terminals in the U.S. offices of its members for principal trading. *See* CFTC Interpretative Letter No. 96–28 (1996–1997 Transfer Binder) Comm. Fut. L. Rep. (CCH) para. 26,669 (Feb. 29. 1996). In June 1998, DTB merged with the Swiss Options and Financial Futures Exchange and DTB changed its name to Eurex Deutschland.

[2] *See* Commission Rule 140.99, 17 CFR 140.99 (2006), which defines the term ''no-action letter'' as a written statement issued by the staff of a Division of the Commission or of the Office of General Counsel that it will not recommend enforcement action to the Commission for failure to comply with a specific provision of the Act or of a Commission rule, regulation or order if a proposed transaction is completed or a proposed activity is conducted by the beneficiary.

[3] Direct access means that the member in the U.S. may enter an order directly into the trade matching engine to be matched according to the trade matching algorithm. Direct access is different from an automated order routing system (AORS) in that an order transmitted via AORS is intermediated in that it is entered into the trade matching engine by or through the intermediary, *i.e.*, the intermediary, not the member in the U.S., has direct access.

[4] The no-action letters issued to FBOTs, formerly referred to as ''foreign terminal no-action letters,'' are currently referred to as ''direct access no-action letters'' and are published on the Commission's Web site at: *http://www.cftc.gov/dea/deaforeignterminaltable.htm.* Hereinafter the letters are simply referred to as ''no-action letters.'' Reference to DTEFs in the no-action letters was added following the establishment of that registration category by the Commodity Futures Modernization Act of 2000.

[5] Access to Automated Boards of Trade, 64 FR 32829 (June 18, 1999).

[6] Boards of Trade Located Outside of the United States and No-Action Relief from the Requirement to Become a Designated Contract Market or Derivatives Transaction Execution Facility, 71 FR 64443 (November 2, 2006).

than the business day preceding the initial listing of the contracts: (1) A copy of the initial terms and conditions of the additional contracts and (2) a certification that it is in compliance with the terms and conditions of its no-action letter and that the additional futures and option contracts would be traded in accordance with such terms and conditions.[7] On April 14, 2006, in light of its experience since the issuance of the Statement of Policy and in recognition of the fact that the listing of new products may raise previously unidentified regulatory issues, the Commission issued a revision to the new contract listing policy (Notice of Revision).[8] The Commission determined to establish a ten business day advance notification requirement in order to give Commission staff the opportunity to review the terms and conditions of proposed additional contracts to address any regulatory issues raised prior to the contract being made available for trading by direct access from the U.S.

II. Additional Conditions on the No-Action Relief

On January 17, 2006, ICE Futures Europe[9] notified the Division pursuant to the Statement of Policy of its intent to list for direct access from the U.S. a West Texas Intermediate (WTI) Light Sweet Crude Oil Futures Contract that cash-settled on the price of a physically-settled Light Sweet Crude Oil Futures contract traded on the New York Mercantile Exchange (NYMEX), a U.S. DCM. On April 12, 2006, ICE Futures Europe notified the Division of its intent to list for direct access from the U.S. the ICE Futures New York Harbour Heating Oil Futures Contract and the ICE Futures New York Harbour Unleaded Gasoline Blendstock (RBOB) Futures Contract, each of which cash-settled on the price of physically-settled contracts traded on the NYMEX. On April 2, 2007, ICE Futures Europe notified the Division of its intent to launch the ICE Futures WTI Light Sweet Crude Oil Options Contract. On December 19, 2007 the Dubai Mercantile Exchange (DME)[10] notified the Division pursuant to the Notice of Revision of its intent to list for trading for direct access from the U.S. on DME Direct the DME WTI Crude Oil Financial Futures Contract which cash-settled based on the NYMEX Light, Sweet Crude Oil futures settlement price on the penultimate trading day.

The listing for trading by direct access from the U.S. by ICE Futures Europe and DME of contracts which settle on the price of contracts traded on a CFTC-regulated exchange raises very serious concerns for the Commission. Such linkages can create virtually a single market for the subject contracts consisting of both the underlying contract at the CFTC-regulated exchange and the cash-settled ''look-alike'' contract traded on the FBOT. In the absence of certain preventive measures at the FBOT, this contract linkage could compromise the Commission's ability to carry out its market surveillance responsibilities, as well as the integrity of prices established on CFTC-regulated exchanges.

In response to these concerns, the Division amended the no-action relief granted to ICE Futures Europe and DME, in letters dated June 17, 2008 and July 3, 2008 respectively,[11] by adding certain conditions[12] with respect to any ICE Futures Europe or DME contract which settles against any price, including the daily or final settlement price, of (1) a contract listed for trading on a DCM or DTEF, or (2) a contract listed for trading on an exempt commercial market (ECM) that has been determined to be a significant price discovery contract[13] (collectively, linked contracts).[14] The purpose of the conditions is to ensure that ICE Futures Europe and DME apply to any linked contract comparable principles or requirements regarding the daily publication of trading information and the imposition of position limits or accountability levels for speculators as apply to the DCM, DTEF or ECM contract against which the linked contract settles. The conditions would also ensure that ICE Futures Europe and DME provide the Commission with information regarding the extent of speculative and nonspeculative trading in linked contracts that is comparable to the information provided to the Commission by DCMs, DTEFs or ECMs for publication of the Commitments of Traders Reports.

Accordingly, the ICE Futures Europe and DME no-action letters were amended with respect to the linked contracts to include the following conditions, to be satisfied within 120 days of the date of the amended no-action letter:

(1) ICE Futures Europe (DME) will impose on linked contracts, by rule or otherwise, position limits or position accountability levels (including related hedge exemption provisions) that are comparable to the existing position limits or position accountability levels (including related hedge exemption provisions) as adopted by: (i) The DCM, DTEF or ECM for the contract against which the linked contract settles or (ii) the DCM, DTEF or ECM for a

[7] *See* Statement of Policy of the Commodity Futures Trading Commission Regarding the Listing of New Futures and Option Contracts by Foreign Boards of Trade That Have Received Staff No-Action Relief to Place Electronic Trading Devices in the U.S., 65 FR 41641 (July 6, 2000). The Statement of Policy did not apply to broad-based stock index futures and option contracts that are now covered by Section 2(a)(1)(C) of the Commodity Exchange Act. Foreign boards of trade were (and presently are) required to seek and receive written supplemental no-action relief from Commission staff prior to offering or selling such contracts.

[8] *See* Notice of Revision of Commission Policy Regarding the Listing of New Futures and Option Contracts by Foreign Boards of Trade That Have Received Staff No-Action Relief To Provide Direct Access to Their Automated Trading Systems from Locations in the United States, 71 FR 19877 (April 18, 2006). The notice of revision did not alter a FBOT's obligation to seek and receive written supplemental no-action relief from Commission staff prior to offering or selling broad-based stock index futures and option contracts. The FBOT is still required to file with Commission staff a copy of the initial terms and conditions of the additional contracts and a certification that it is in compliance with the terms and conditions of its no-action letter and that the additional futures and option contracts would be traded in accordance with such terms and conditions.

[9] On November 12, 1999, the Division of Trading and Markets granted to the International Petroleum Exchange of London (IPE) (now ICE Futures Europe) no-action relief to make its electronic trading and order matching system, Energy Trading System II (ETS), available to IPE members in the United States. CFTC Staff Letter No. 99–69 (November 12, 1999). The November 12, 1999 IPE no-action letter was amended by the Division of Market Oversight (Division) four times between July 26, 2002 and April 14, 2003 as trading of the contracts was transitioned from the ETS to the ICE Platform operated by IntercontinentalExchange, Inc., in Atlanta, Georgia and trading hours were extended.

[10] On May 24, 2007, the Division granted to the DME no-action relief to make its electronic trading and order matching system, known as DME Direct, available to DME members in the U.S. CFTC Staff Letter No. 07–06 (May 24, 2007).

[11] CFTC Staff Letter No. 08–09 (June 17, 2008); CFTC Staff Letter No. 08–10 (July 3, 2008).

[12] The no-action letters include a provision pursuant to which the Division may further condition the relief granted therein. *See, e.g.*, CFTC Staff Letter No. 99–69 (November 12, 1999), issued to the International Petroleum Exchange, Inc., which states as follows: ''As with all no-action letters, the Division retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the no-action relief provided herein, in its discretion.''

[13] In 2008 Congress authorized the Commission to determine, in its discretion, that a contract performs a significant price discovery function under criteria established in Section 2(h)(7) of the CEA, including price linkage, arbitrage, material price reference, and material liquidity. When the Commission by order makes such a determination, the ECM on which the significant price discovery contract is traded must assume, with respect to that contract, all the responsibilities and obligations of a registered entity under the CEA and Commission regulations, and must comply with nine core principles established by Section 2(h)(7)(C). *See* CFTC Reauthorization Act of 2008, Pub. L. 110–246 at sec. 12304. *See also* Notice of Proposed Rulemaking: ''Significant Price Discovery Contracts on Exempt Commercial Markets,'' 73 FR 75888 (December 12, 2008).

[14] ICE Futures Europe has listed for trading by direct access from the U.S. the four linked contracts previously identified. DME has not listed the one linked contract notified to the Division.

financially-settled equivalent of such contract;

(2) ICE Futures Europe (DME) will inform the Commission in a quarterly report of any trader that had positions in a linked contract above the applicable ICE Futures Europe (DME) position limit, whether a hedge exemption was granted, and if not, whether a disciplinary action was taken;

(3) ICE Futures Europe (DME) will publish daily trading information (*e.g.*, settlement prices, volume, open interest, and opening and closing ranges) that is comparable to the daily trading information published by the DCM, DTEF or ECM for the contract against which the ICE Futures Europe (DME) contract settles; and

(4) ICE Futures Europe (DME) will provide to the CFTC (through the Financial Services Authority (FSA) in the case of ICE Futures Europe), a daily report of large trader positions in each linked contract for all contract months in a form and manner that (a) can be fully integrated into the CFTC's market surveillance systems, including full identification of each position's beneficial owner comparable to the reporting that is provided by the DCM, DTEF, or ECM; and (b) can, (subject to any Memorandum of Understanding between the CFTC and FSA in the case of ICE Futures Europe), be fully integrated into the CFTC's *Commitments of Traders Report,* including appropriate categorization of traders and their positions.

The Commission is hereby providing notice that these conditions henceforth will be imposed on the no-action relief of any FBOT that lists for trading by direct access from the U.S. any futures or option contract which settles against any price, including the daily or final settlement price, of (1) a contract listed for trading on a DCM or DTEF, or (2) a contract listed for trading on an ECM that has been determined to be a significant price discovery contract.

III. Listing Option Contracts

Both the Statement of Policy and the Notice of Revision required separate notification for futures and option contracts in order to permit the contracts to be listed for direct access from the U.S. Thus, even if the futures contract is currently listed, the FBOT must separately notify the Division, pursuant to the ten business day advance notification requirement of the Notice of Revision, of its desire to list the option on that futures contract. In contrast, when the Commission's Office of General Counsel (OGC) issues a no-action letter to allow the offer or sale of a FBOT-traded broad-based security index futures contract to persons located in the U.S., the option on that particular futures contract may also be offered or sold in the U.S. without any further regulatory action from OGC. This leads to an unusual situation when the FBOT, pursuant to Appendix D of Part 30,[15] requests permission to list a futures contract for trading by direct access from the U.S. in the same no-action request letter in which the FBOT requests the OGC no-action position. When OGC issues the no-action letter, both the futures contract and the option on that contract may be offered or sold in the U.S. and, with the concurrence of the Division, the futures contract (but not the option on that futures contract) may be listed for direct access from the U.S. pursuant to the terms and conditions of the direct access no-action relief. The FBOT must then separately request permission from the Division to make the option contract available by direct access.

In order to eliminate this inconsistency and to streamline the procedures for listing option contracts for direct access from the U.S., the Commission is hereby providing notice that the provisions in the Notice of Revision, insofar as they apply to options on futures contracts that are, or could be,[16] listed for trading by direct access from the U.S. pursuant to the conditions of the FBOT's no-action relief, are revised as follows:

(1) If the option is on a broad-based security index futures contract which may be offered or sold in the U.S. and listed for direct access from the U.S. pursuant to a no-action letter issued by OGC, the option contract may be listed for direct access without further action by either the requesting FBOT or the Division.

(2) If the option is on a futures contract that is neither a linked contract nor a broad-based security index futures contract which may be offered or sold in the U.S., the option contract may be listed for direct access merely by filing with Commission staff no later than the business day preceding the initial listing of the contract: (i) a copy of the initial terms and conditions of the additional contract and (ii) a certification that the FBOT is in compliance with the terms and conditions of its no-action letter and that the additional option contract would be traded in accordance with such terms and conditions.

(3) If the option is on a futures contract that is a linked contract, the option contract may be listed for direct access merely by filing with Commission staff no later than the business day preceding the initial listing of the contract: (i) a copy of the initial terms and conditions of the additional contract and (ii) a certification that the FBOT is in compliance with the terms and conditions of its no-action letter, *including the conditions specifically applicable to linked contracts,* and that the additional option contract would be traded in accordance with such terms and conditions.

Issued in Washington, DC on January 14, 2009, by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. E9–1153 Filed 1–16–09; 8:45 am]

BILLING CODE 6351–01–P

[15] 17 CFR 30, App. D. (2003), 68 FR 33623.

[16] This procedure also applies where the FBOT has permission to list the futures contract for trading by direct access but has not yet done so at the time it also decides to list the option contract.

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of an Existing Collection—3038–0007.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden; it includes the actual data collection instruments [if any].

DATES: Comments must be submitted on or before February 20, 2009.

FOR FURTHER INFORMATION OR A COPY CONTACT: William Penner, Division of Clearing and Intermediary Oversight, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5407; Fax: (202) 418–5536; e-mail: *wpenner@cftc.gov* and refer to OMB Control No. 3038–0007.

SUPPLEMENTARY INFORMATION:

Title: Rules Relating to Regulation of Domestic Exchange-Traded Options (OMB Control No. 3038–0007). This is a request for extension of a currently approved information collection.

Abstract: Rules Relating to Regulation of Domestic Exchange—Traded Options, OMB Control No. 3038–0007—Extension.

The rules require futures commission merchants and introducing brokers (1) to provide their customers with

standard risk disclosure statements concerning the risk of trading commodity interests; and (2) to retain all promotional material and the source of authority for information contained therein. The purpose of these rules is to ensure that customers are advised of the risks of trading commodity interests and to avoid fraud and misrepresentation. The rules also contain procedures for contract market designation and product review and approval. These rules are promulgated pursuant to the Commission's rulemaking authority contained in sections 2, 3, 4, 4c, 4d, 4f, 5, and 8(a)(5) of the Act, 7 U.S.C. 2, 5, 6, 6c, 6d, 6f, 7, and 12(a)(5).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the CFTC's regulations were published on December 30, 1981. See 46 FR 63035 (Dec. 30, 1981). The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on November 12, 2008 (73 FR 66846).

Burden statement: The respondent burden for this collection is estimated to average .10 hours per response.

Respondents/Affected Entities: 413.

Estimated number of responses: 20,376.

Estimated total annual burden on respondents: 7,885 hours.

Frequency of collection: On occasion.

Send comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, to the addresses listed below. Please refer to OMB Control No. 3038–0007 in any correspondence.

William Penner, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581, and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for CFTC, 725 17th Street, Washington, DC 20503.

Dated: January 12, 2009.

David A. Stawick,

Secretary of the Commission.

[FR Doc. E9–1146 Filed 1–16–09; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Partially Exclusive Patent License; DRS Technologies, Inc.

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy herby gives notice of its intent to grant to DRS Technologies, Inc., a revocable, nonassignable, partially exclusive license in the United States to practice the Government-Owned invention(s) described in U.S. Patent Application 11/832,065 entitled ''Wireless Self-Contained Relay Device'', file date Aug. 1, 2007; and U.S. Patent Application 11/832,103 entitled ''Relay Device Deployer System'' file date Aug. 1, 2007.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than February 5, 2009.

ADDRESSES: Written objections are to be filed with the Office of Research and Technology Applications, Space and Naval Warfare Systems Center, San Diego, Code 72120, 53560 Hull St., San Diego, CA 92152–5001.

FOR FURTHER INFORMATION CONTACT: Stephen H. Lieberman, PhD, Office of Research and Technology Applications, Space and Naval Warfare Systems Center, San Diego, Code 72120, 53560 Hull St., San Diego, CA 92152–5001, telephone: 619–553–2778, e-Mail: *stephen.lieberman@navy.mil.*

Authority: 35 U.S.C. 207, 37 CFR Part 404.

Dated: January 13, 2009.

A.M. Vallandingham

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

[FR Doc. E9–1034 Filed 1–16–09; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent to Grant Partially Exclusive Patent License; Gem City Engineering Company

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy herby gives notice of its intent to grant to Gem City Engineering Company, a revocable, nonassignable, partially exclusive license in the United States to practice the Government-Owned invention(s) described in U.S. Patent Application 11/832,065 entitled ''Wireless Self-Contained Relay Device'', file date Aug 1, 2007; and U.S. Patent Application 11/832,103 entitled ''Relay Device Deployer System'' file date Aug 1, 2007.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than February 5, 2009.

ADDRESSES: Written objections are to be filed with the Office of Research and Technology Applications, Space and Naval Warfare Systems Center, San Diego, Code 72120, 53560 Hull St, San Diego, CA 92152–5001.

FOR FURTHER INFORMATION CONTACT: Stephen H. Lieberman, PhD, Office of Research and Technology Applications, Space and Naval Warfare Systems Center, San Diego, Code 72120, 53560 Hull St, San Diego, CA 92152–5001, telephone: 619–553–2778, E-Mail: *stephen.lieberman@navy.mil.*

Authority: 35 U.S.C. 207, 37 CFR Part 404.

Dated: January 13, 2009.

A.M. Vallandingham,

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

[FR Doc. E9–1039 Filed 1–16–09; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Record of Decision for Homeporting of Additional Surface Ships at Naval Station Mayport, FL

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy (DON), after carefully weighing the strategic, operational, and environmental consequences of the proposed action, announces its decision to homeport one nuclear-powered aircraft carrier (CVN) at Naval Station (NAVSTA) Mayport. Today's decision does not relocate a specific CVN to NAVSTA Mayport. It does initiate a multi-year process for developing operational, maintenance, and support facilities at NAVSTA Mayport to support homeporting of one CVN.

This multi-year process includes implementing projects for dredging and dredged material disposal, construction of CVN nuclear propulsion plant maintenance facilities, wharf improvements, transportation improvements, and construction of a

parking structure to replace existing parking that would be displaced by development of the CVN nuclear propulsion plant maintenance facilities. The projects necessary to create the capacity to support CVN homeporting could be completed as early as 2014. No CVN homeport change will occur before operational, maintenance, and support facility projects are completed.

Selection of the CVN to be homeported at NAVSTA Mayport would not occur until approximately one year prior to the ship's transfer to NAVSTA Mayport. Selection of a specific CVN for homeporting at NAVSTA Mayport will be based upon then current operational needs, strategic considerations, and maintenance cycles.

The DON environmental analysis included extensive studies regarding impacts associated with dredging, facility construction, and homeport operations. The environmental analysis undertaken by the DON included lengthy and detailed consultations with regulatory agencies, such as the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS), regarding impacts to endangered and threatened species, and the U.S. Army Corps of Engineers (USACE) and the Environmental Protection Agency (EPA) regarding dredging operations and the in-water disposal of dredged materials. Public awareness and participation were integral components of the Environmental Impact Statement (EIS) process.

SUPPLEMENTARY INFORMATION: The Record of Decision (ROD) has been distributed to all those individuals who requested a copy of the Final EIS and agencies and organizations that received a copy of the Final EIS. The complete text of the Navy's ROD is available for public viewing on the project Web site at *http://www.mayporthomeportingeis.com*. along with copies of the FEIS and supporting documents. Single copies of the ROD will be made available upon request by contacting Naval Facilities Engineering Command, Southeast, Attn: Mr. Royce Kemp, Building 903, Naval Air Station, Jacksonville, FL 32212–0030 Phone: 904–542–6899.

Dated: January 14, 2009.

A.M. Vallandingham,

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

[FR Doc. E9–1099 Filed 1–16–09; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare a Supplemental Environmental Impact Statement/Supplemental Overseas Environmental Impact Statement for Employment of Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) Sonar.

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) and Executive Order 12114, the Navy is announcing its intent to prepare a Supplemental Environmental Impact Statement (SEIS)/Supplemental Overseas Environmental Impact Statement (SOEIS) for the employment of SURTASS LFA sonar.

DATES: Written comments regarding the scope of this environmental document must be submitted within 45 days of January 21, 2009.

ADDRESSES: Written comments on the scope of the SURTASS LFA Sonar SEIS/SOEIS should be addressed to: Chief of Naval Operations, Code N872A, c/o SURTASS LFA Sonar SEIS/SOEIS Program Manager, 4100 Fairfax Drive, Suite 730, Arlington, Virginia 22203; or *e-mail: eisteam@mindspring.com*.

FOR FURTHER INFORMATION CONTACT: Chief of Naval Operations, Code N872A, c/o SURTASS LFA Sonar SEIS/SOEIS Program Manager, 4100 Fairfax Drive, Suite 730, Arlington, Virginia 22203; or e-mail: *eisteam@mindspring.com*.

SUPPLEMENTARY INFORMATION: The Final Overseas Environmental Impact Statement and Environmental Impact Statement (OEIS/EIS) for the Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) Sonar was completed in January 2001 and supplemented in April 2007 by the SURTASS LFA Sonar Supplemental EIS (SEIS). The Assistant Secretary of the Navy (Installations and Environment) (ASN(I&E)) reviewed the SURTASS LFA Sonar SEIS and, based upon review of the comparative analysis of the potential for environmental and socioeconomic effects from the five alternatives presented in the Final SEIS, announced the decision to employ up to four SURTASS LFA sonar systems with certain geographical restrictions and other mitigation designed to reduce adverse effects on the marine environment. This decision implemented the preferred alternative, Alternative 2, identified in the Final SEIS.

ASN (I&E) found that the analysis in the SEIS had taken the requisite ''hard look'' at the environmental consequences of the decision to employ the SURTASS LFA sonar and issued the Record of Decision (ROD) on August 15, 2007.

However, in recognition of continued concerns raised in litigation over employment of the SURTASS LFA sonar system, to support issuance of a new Final Rule under the Marine Mammal Protection Act (MMPA) for the taking of marine mammals incidental to employment of SURTASS LFA sonar systems, and to continue the Navy's commitment to responsible stewardship of the marine environment, the Deputy Assistant Secretary of the Navy (Environment) (DASN(E)) has determined that the purposes of NEPA would be furthered by the preparation of an additional supplemental analysis related to employment of the system. This analysis will focus on potential offshore (i.e., greater than 12 nautical miles (nm) (22 kilometers (km)) from any coastline) biologically important areas (OBIAs) in regions of the world where the Navy intends to use the SURTASS LFA sonar systems for routine training, testing, and military operations. The new SEIS/SOEIS will also include further analysis of whether, in some locations, using a larger coastal standoff distance, where the continental shelf extends farther than the current 12 nm standoff distance, is practicable for SURTASS LFA sonar. Further analysis of the potential for cumulative impacts involving other active sonar sources will also be addressed in the new SEIS/SOEIS. Once completed, information developed from these analyses will be used to assist the Navy in determining how to employ SURTASS LFA sonar, including the selection of operating areas that the Navy requires for routine training, testing, and military operations in requests for MMPA Letters of Authorization (LOAs) submitted to the National Marine Fisheries Service (NMFS). NMFS will be a cooperating agency under NEPA regulation (40 CFR 1501.6) for the development of the SEIS/SOEIS. The SEIS/SOEIS will comply with both NEPA and Executive Order 12114.

The Navy and NMFS are soliciting scoping comments on the above topics. With respect to any potential offshore biologically important areas in regions of the world where SURTASS LFA sonar may operate, for purposes of this NEPA analysis these areas are defined in the SURTASS LFA Final OEIS/EIS as areas outside of 12 nm (22 km) from any coastline, including islands, where marine animals of concern (those

animals listed under the Endangered Species Act (ESA) and/or marine mammals) congregate in high densities to carry out biologically important activities. Such areas may include migration corridors; breeding and calving grounds; and feeding grounds. To facilitate evaluation of any proposed area, any comment should provide the geographic boundaries of the area, a list of species of concern in the area, the basis or rationale for considering the area (e.g., the biologically important activities taking place for each species), seasonal importance if relevant, and citations to any relevant published literature for the area. The listing of OBIAs is provided in the current Final Rule (50 CFR 216.184).

Federal, state and local agencies, interested organizations and individuals are encouraged to participate in the scoping process for the SEIS/SOEIS. All scoping comments must be postmarked within 45 days from the publication of this notice in the **Federal Register** and submitted to: Chief of Naval Operations, Code N872A, c/o SURTASS LFA Sonar SEIS/SOEIS Program Manager, 4100 Fairfax Drive, Suite 730, Arlington, Virginia 22203; or *e-mail: eisteam@mindspring.com*.

Additional information concerning SURTASS LFA Sonar and pertinent environmental documents is available at: *http://www.surtass-lfa-eis.com*.

Dated: January 8, 2009.

A.M. Vallandingham,

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

[FR Doc. E9–1041 Filed 1–16–09; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 23, 2009.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 13, 2009.

Angela C. Arrington,

Leader, Information Collections Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: Extension.

Title: Title 34 CFR Part 602 The Secretary's Recognition of Accrediting Agencies.

Frequency: Annually.

Affected Public: Businesses or other for-profit.

Reporting and Recordkeeping Hour Burden:

Responses: 73.

Burden Hours: 1,241.

Abstract: In compliance with Title 34 CFR Part 602, this information is required to determine if an accrediting agency complies with the Secretary of Education's Criteria for Recognition. Only postsecondary institutions accredited by such a Recognized-accrediting agency may obtain Title IV funding for its students.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3931. 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. E9–1048 Filed 1–16–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

Overview Information Indian Education—Demonstration Grants for Indian Children; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009

Catalog of Federal Domestic Assistance (CFDA) Number: 84.299A.

DATES:

Applications Available: January 21, 2009.

Deadline for Transmittal of Applications: March 6, 2009.

Deadline for Intergovernmental Review: May 5, 2009.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Demonstration Grants for Indian Children program is to provide financial assistance to projects that develop, test, and demonstrate the effectiveness of services and programs to improve the educational opportunities and achievement of preschool, elementary, and secondary Indian students.

Priorities: This competition contains two absolute priorities and two competitive preference priorities. In accordance with 34 CFR 75.105(b)(2)(ii), the absolute priorities are from the regulations for this program (34 CFR 263.21(c)(1) and (3)). In accordance with 34 CFR 75.105(b)(2)(iv), the competitive

preference priorities are from sections 7121(d)(1)(B) and 7143 of the Elementary and Secondary Education Act of 1965, as amended (ESEA) (20 U.S.C. 7441(d)(1)(B) and 7473) and the regulations for this program in 34 CFR 263.21.

Absolute Priorities: For FY 2009 these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet one or both of the following priorities.

These priorities are:

Absolute Priority One

School readiness projects that provide age-appropriate educational programs and language skills to three- and four-year-old Indian students to prepare them for successful entry into school at the kindergarten school level.

Absolute Priority Two

College preparatory programs for secondary school students designed to increase competency and skills in challenging subject matter, including math and science, to enable Indian students to transition successfully to postsecondary education.

Competitive Preference Priorities: For FY 2009, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award up to an additional 10 points to an application, depending on how well the application meets one or both of these priorities.

These priorities are:

Competitive Preference Priority One

We award five competitive preference priority points to an applicant that presents a plan for combining two or more of the activities described in section 7121(c) of the ESEA over a period of more than one year.

Note: For *Competitive Preference Priority One,* the combination of activities is limited to the activities described in the *Absolute Priorities* section of this notice.

Competitive Preference Priority Two

We award five competitive preference priority points to an application submitted by an Indian tribe, Indian organization, or Indian institution of higher education, including a consortium of any of these entities with other eligible entities. An application from a consortium of eligible entities that meets the requirements of 34 CFR 75.127 through 75.129 and includes an Indian tribe, Indian organization, or Indian institution of higher education will be considered eligible to receive the five competitive preference points. These competitive preference points are in addition to the five competitive preference points that may be given under *Competitive Preference Priority One.*

Note: A consortium agreement, signed by all parties, must be submitted with the application in order for the application to be considered a consortium application. Letters of support do *not* meet the requirement for a consortium agreement. We will reject any application from a consortium that does not meet this requirement.

Program Authority: 20 U.S.C. 7441.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for this program in 34 CFR part 263.

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

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

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $3,255,000 for new awards for the Indian Education—Demonstration Grants for Indian Children program for FY 2009. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program. *Estimated Range of Awards:* $100,000–$300,000. *Estimated Average Size of Awards:* $250,000.

Maximum Award: We will reject any application that proposes a budget exceeding $300,000 for a single budget period of 12 months. The Assistant Secretary for Elementary and Secondary Education may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 13.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

III. Eligibility Information

1. *Eligible Applicants:* Eligible applicants for this program are State educational agencies (SEAs); local educational agencies (LEAs), including charter schools that are considered LEAs under State law; Indian tribes; Indian organizations; federally supported elementary or secondary schools for Indian students; Indian institutions (including Indian institutions of higher education); or a consortium of any of these entities.

An application from a consortium of eligible entities must meet the requirements of 34 CFR 75.127 through 75.129. An application from a consortium of eligible entities must include a signed consortium agreement with the application. Letters of support do *not* meet the requirement for a consortium agreement.

Applicants applying in consortium with or as an ''Indian organization'' must demonstrate eligibility by showing how the ''Indian organization'' meets all the criteria outlined in 34 CFR 263.20.

The term ''Indian institution of higher education'' means an accredited college or university within the United States cited in section 532 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note), any other institution that qualifies for funding under the Tribally Controlled College or University Assistance Act of 1978 (25 U.S.C. 1801 *et seq.*), and Dine College (formerly Navajo Community College), authorized in the Navajo Community College Assistance Act of 1978 (25 U.S.C. 640a *et seq.*).

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

3. *Other:* Projects funded under this competition are encouraged to budget for a two-day Project Directors' meeting in Washington, DC during each year of the project period.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write, fax, or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. *Telephone, toll free:* 1–877–433–7827. *FAX:* (301) 470–1244. If you use a telecommunications device for the deaf (TDD), *call, toll free:* 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.ed.gov/pubs/edpubs.html* or at its *e-mail address: edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program or competition as follows: CFDA number 299A.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) by contacting the person or

team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to no more than 35 pages, using the following standards:

- A page is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to the cover sheet; the budget section, including the budget narrative justification; the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section.

We will reject your application if you exceed the page limit; or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: January 21, 2009.

Deadline for Transmittal of Applications: March 6, 2009

Applications for grants under this competition must be submitted electronically using the Grants.gov application site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV.6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: May 5, 2009.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications

Applications for grants under the Demonstration Grants for Indian Children competition, CFDA Number 84.299A, must be submitted electronically using the Governmentwide Grants.gov application site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for Demonstration Grants for Indian Children at *http://www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.299, not 84.299A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted, and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is date and time stamped by the Grants.gov system—later than 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *www.grants.gov/*

section910/Grants.govRegistration Brochure.pdf). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, and all necessary assurances and certifications.
- You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date (with the exception of consortium agreements, which must be submitted within the electronic application, if applicable).

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll-free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; *and*
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Lana Shaughnessy, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E231, Washington, DC 20202–6335. *FAX:* (202) 260–7779.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.299A), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline

date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.299A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Secretary has established the following key performance measures for assessing the effectiveness of the Demonstration Grants for Indian Children program: (1) The percentage of 3- and 4-year-old American Indian and Alaska Native children achieving gains of a predetermined magnitude, at a minimum, on an approved assessment of language and communication development as evidenced by a pre- and post-test each project year; (2) the percentage of 3- and 4-year-old American Indian and Alaska Native children achieving gains of a predetermined magnitude, at a minimum, on an approved assessment of cognitive skills and conceptual knowledge as evidenced by a pre- and post-test each project year; (3) the percentage of 3- and 4-year-old American Indian and Alaska Native children achieving gains of a predetermined magnitude, at a minimum, on an approved assessment of social development as evidenced by a pre- and post-test each project year; (4) the percentage of American Indian and Alaska Native high school students successfully completing (as defined by a passing grade of C or better) at least 3 years of challenging core courses (English, mathematics, science, and social studies) by the end of their fourth year in high school; and (5) the percentage of American Indian and Alaska Native students who graduate with their incoming 9th grade cohort (not counting those who transfer to another school).

We encourage applicants to demonstrate a strong capacity to provide reliable data on these measures in their responses to the selection criteria ''Quality of project services'' and ''Quality of the project evaluation.'' All grantees will be expected to submit, as part of their performance report, information with respect to these performance measures.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Lana Shaughnessy, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E231, Washington, DC 20202–6335. *Telephone:* (202) 205–2528 or by *e-mail: Indian.education@ed.gov.*

If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: January 14, 2009.

Kerri L. Briggs,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. E9–1102 Filed 1–16–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA NO. 84.031H]

Office of Postsecondary Education; Strengthening Institutions Program (SIP), American Indian Tribally Controlled Colleges and Universities (TCCU), Alaska Native and Native Hawaiian-Serving Institutions (ANNH), Asian American and Native American Pacific Islander-Serving Institutions (AANAPISI), Native American Serving Nontribal Institutions (NASNTI), Developing Hispanic-Serving Institutions (HSI), Promoting Postbaccalaureate Opportunities for Hispanic Americans (PPOHA), and Predominantly Black Institutions (PBI) Programs for Fiscal Year (FY) 2009

Purpose of Programs: The SIP, TCCU, and ANNH Programs are authorized under Title III, Part A, of the Higher Education Act of 1965, as amended (HEA). Under these programs, institutions of higher education (IHEs or institutions) are eligible to apply for grants if they meet specific statutory and

regulatory eligibility requirements. Similarly, IHEs are eligible to apply for grants under Title V of the HEA if they meet specific statutory and regulatory requirements. The HSI and PPOHA Programs are authorized under Title V, Parts A and B of the HEA. In addition, under Title III of the HEA, institutions applying for grants under the AANAPISI, NASNTI, and PBI Programs must be eligible institutions as defined in Section 312(b) of the HEA.

An IHE that is designated as an eligible institution may also receive a waiver of certain non-Federal cost-share requirements under the Federal Supplemental Educational Opportunity Grant (FSEOG), the Federal Work Study (FWS), the Student Support Services (SSS), and the Undergraduate International Studies and Foreign Language (UISFL) programs. The FSEOG, FWS, and SSS programs are authorized under Title IV of the HEA. The UISFL Program is authorized under Title VI of the HEA. Qualified institutions may receive these waivers even if they are not recipients of grant funds under the Title III or Title V programs.

Special Note: To qualify as an eligible institution under the Title III or Title V programs, your institution must satisfy several criteria, including one related to needy student enrollment and one related to average educational and general (E&G) expenditures for a specified base year. The most recent data available for E&G expenditures are for base year 2006–2007. In order to award FY 2009 grants in a timely manner, we will use the most recent data available. Therefore, we use E&G expenditure threshold data from the base year 2006–2007. In completing your eligibility application, please use E&G expenditure data from the base year 2006–2007.

If you are designated as an eligible institution and you do not receive a new award under the Title III or Title V programs in FY 2009, your eligibility for the non-Federal cost-share waiver under the FSEOG, the FWS, the SSS, and the UISFL Programs is valid for five consecutive years. You will not need to reapply for eligibility until 2014, unless you wish to apply for a new Title III or Title V grant. All institutions interested in applying for a new FY 2009 Title III or Title V grant *or* requesting a waiver of the non-Federal cost share, must apply for eligibility designation in FY 2009. Under the HEA, institutions interested in applying for a grant under the AANAPISI, NASNTI, PBI, or PPOHA Programs must first be designated as eligible institutions.

Eligible Applicants: To qualify as an eligible institution under the Title III or Title V programs an accredited institution must, among other requirements, have an enrollment of needy students, and its average E&G expenditures per full-time equivalent (FTE) undergraduate student must be low in comparison with the average E&G expenditures per FTE undergraduate student of institutions that offer similar instruction.

The eligibility requirements for the Title III programs are found in 34 CFR 607.2 through 607.5. The regulations may be accessed at the following Web site: *http://www.access.gpo.gov/nara/cfr/waisidx_02/34cfr607_02.html*.

The eligibility requirements for the Title V HSI program are found in 34 CFR 606.2 through 34 CFR 606.5. The regulations may be accessed at the following Web site: *http://www.access.gpo.gov/nara/cfr/waisidx_01/34cfr606_01.html*.

Enrollment of Needy Students: Under 34 CFR 606.3(a) and 607.3(a), an institution is considered to have an enrollment of needy students if (1) at least 50 percent of its degree students received financial assistance under one or more of the following programs: Federal Pell Grant, FSEOG, FWS, or the Federal Perkins Loan Programs; or, (2) the percentage of its undergraduate degree students who were enrolled on at least a half-time basis and received Federal Pell Grants exceeded the median percentage of undergraduate degree students who were enrolled on at least a half-time basis and received Federal Pell Grants at comparable institutions that offered similar instruction.

To qualify under this latter criterion, an institution's Federal Pell Grant percentage for base year 2006–2007 must be more than the median for its category of comparable institutions provided in the 2006–2007 Median Pell Grant and Average E&G Expenditures per FTE Student Table in this notice.

Educational and General Expenditures per FTE Student: An institution should compare its 2006–2007 average E&G expenditures per FTE student to the average E&G expenditure per FTE student for its category of comparable institutions contained in the 2006–2007 Median Pell Grant and Average E&G Expenditures per FTE Student Table in this notice. If the institution's average E&G expenditures for the 2006–2007 base year are less than the average for its category of comparable institutions, the institution meets this eligibility requirement.

An institution's average E&G expenditures are the total amount it expended during the base year for instruction, research, public service, academic support, student services, institutional support including library expenditures, operation and maintenance, scholarships and fellowships, and mandatory transfers.

The following table identifies the relevant median Federal Pell Grant percentages for the base year 2006–2007 and the relevant average E&G expenditures per FTE student for the base year 2006–2007 for the four categories of comparable institutions:

Type of institution	2006–2007 Median Pell Grant percentage	2006–2007 Average E&G expenditures per FTE student
2-year Public Institutions	23.8	$10,606
2-year Non-profit Private Institutions	37.2	23,082
4-year Public Institutions	24.1	25,339
4-year Non-profit Private Institutions	25.3	40,877

Waiver Information: IHEs that are unable to meet the needy student enrollment requirement or the average E&G expenditures requirement may apply to the Secretary for waivers of these requirements, as described in 34 CFR 606.3(b), 606.4(c) and (d), 607.3(b), and 607.4(c) and (d). Institutions requesting a waiver of the needy student enrollment requirement or the average E&G expenditures requirement must include in their application detailed information supporting the waiver request, as described in the instructions for completing the application.

The regulations governing the Secretary's authority to waive the needy student requirement, 34 CFR 606.3(b)(2) and (3) and 607.3(b)(2) and (3), refer to ''low-income'' students or families. The

regulations define ''low-income'' as an amount that does not exceed 150 percent of the amount equal to the poverty level, as established by the U.S. Bureau of the Census, 34 CFR 606.3(c) and 607.3(c).

For the purposes of this waiver provision, the following table sets forth the low-income levels for the various sizes of families:

2006 ANNUAL LOW-INCOME LEVELS

Size of family unit	Family income for the 48 contiguous states, D.C., and outlying jurisdictions	Family income for Alaska	Family income for Hawaii
1	$14,700	$18,375	$16,905
2	19.800	24,750	22,770
3	24,900	31,125	28,635
4	30,000	37,500	34,500
5	35,100	43,875	40,365
6	40,200	50,250	46,230
7	45,300	56,625	52,095
8	50,400	63,000	57,960

Note: The 2006 annual low-income levels are being used because those are the amounts that apply to the family income reported by students enrolled for the fall 2006 semester. For family units with more than eight members, add the following amount for each additional family member: $5,100 for the contiguous 48 States, the District of Columbia and outlying jurisdictions; $6,375 for Alaska; and $5,865 for Hawaii.

The figures shown under family income represent amounts equal to 150 percent of the family income levels established by the U.S. Bureau of the Census for determining poverty status. The poverty guidelines were published by the U.S. Department of Health and Human Services in the **Federal Register** on January 24, 2006 (71 FR 3848–3849).

The information about ''metropolitan statistical areas'' referenced in 34 CFR 606.3(b)(4) and 607.3(b)(4) may be obtained by requesting the Metropolitan Statistical Areas, 1999 Publication, Order Number PB99–501538, from the National Technical Information Service, Document Sales, 5285 Port Royal Road, Springfield, VA 22161, *telephone number:* 1–800–553–6847. There is a charge for this publication.

Applications Available: January 21, 2009.

Deadline for Transmittal of Applications: February 20, 2009 for an applicant institution that wishes to be designated as eligible to apply for a FY 2009 new grant under the Title III or Title V Programs and April 6, 2009 for an applicant institution that wishes to apply only for cost-sharing waivers under the FSEOG, FWS, SSS, or UISFL Programs.

Electronic Submission of Applications: Applications for designation of eligibility must be submitted electronically using the following Web site: *http://opeweb.ed.gov/title3and5.*

To enter the Web site, you must use your institution's unique 8-digit identifier, i.e., your Office of Postsecondary Education Identification Number (OPE ID Number). Your business office or student financial aid office should have the OPE ID Number. If they do not, contact the Department using the e-mail addresses of the contact persons listed in this notice under *FOR APPLICATIONS AND FURTHER INFORMATION CONTACT.*

You will find detailed instructions for completing the application form electronically under the ''eligibility 2009'' link at either of the following Web sites: *http://www.ed.gov/programs/iduestitle3a/index.html or http://www.ed.gov/hsi.*

If your institution is unable to meet the needy student enrollment requirement or the average E&G expenditure requirement and wishes to request a waiver of one or both of these requirements, you must complete your designation application form electronically and transmit your waiver request narrative document from the following Web site: *https://opeweb.ed.gov/title3and5.*

EXCEPTION TO ELECTRONIC SUBMISSION REQUIREMENT: You may qualify for an exception to the electronic submission requirement and may submit your application in paper format if you are unable to submit an application electronically because—

- You do not have access to the Internet; or
- You do not have the capacity to upload documents to the Web site; *and*
- No later than two weeks before the application deadline date (14 calendar days; or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Mrs. Darlene B. Collins, U.S. Department of Education, 1990 K Street, NW., room 6020, Washington, DC 20006–8513. *Fax:* (202) 502–7861.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

Submission of Paper Applications by Mail.

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier), your application to the Department. You must mail the application, on or before the application deadline date, to the Department at the following address:

By mail through the U.S. Postal Service or commercial carrier: Mrs. Darlene B. Collins, U.S. Department of Education, 1990 K Street, NW., Room 6020, Washington, DC 20006–8513.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

Submission of Paper Applications by Hand Delivery.

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the application, on or before the application deadline date, to the Department at the following address: Mrs. Darlene B. Collins, U.S. Department of Education, 1990 K Street, NW., Room 6020, Washington, DC 20006–8513.

Hand delivered applications will be accepted daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 74, 75, 77, 79, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for the Title III Programs in 34 CFR part 607, and for the Title V Program in 34 CFR part 606.

Note: There are no program-specific regulations for the AANAPISI, PBI, and the PPHOA Programs. Accordingly, we encourage each potential applicant to read the HEA, the authorizing statute for these programs.

For Applications and Further Information Contact: Kelley Harris or Carnisia Proctor, Institutional Development and Undergraduate Education Service, U.S. Department of Education, 1990 K Street, NW., room 6033, Request for Eligibility Designation, Washington, DC 20202–8513.

You may contact these individuals at the following e-mail addresses or phone numbers:

Kelley.Harris@ed.gov, 202–219–7083
Carnisia.Proctor@ed.gov, 202–502–7606

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an accessible format (e.g., braille, large print, audio tape, or computer diskette) on request to the contact persons listed in this section.

Electronic Access to This Document:

You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF), on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO) toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Program Authority: 20 U.S.C. 1057–1059d, 1101–1103g and amendments to Titles III and V of the HEA by Public Law 110–315.

Dated: January 14, 2009.

Vickie L. Schray,

Acting Deputy Assistant Secretary for Higher Education Programs.

[FR Doc. E9–1098 Filed 1–16–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection

AGENCY: U.S. Department of Energy.

ACTION: Notice and request for OMB review and comment.

SUMMARY: The Department of Energy (DOE) has submitted to the Office of Management and Budget (OMB) for clearance, a proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995. The proposed collection will gather data about what constitutes an innovative research environment. It will also contribute to building a dataset for the development of a science of science and innovation policy, as part of the National Science Foundation (NSF) program by that name.

DATES: Comments regarding this collection must be received on or before February 20, 2009. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4650.

ADDRESSES: Written comments should be sent to the:

DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street, NW., Washington, DC 20503; and to:

Timothy Fitzsimmons, Materials Science and Engineering Division, SC–22.2, Office of Basic Energy Sciences, Office of Science, US Department of Energy, 1000 Independence Ave., SW., Washington DC 20585–1290, *Tim.Fitzsimmons@science.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to:

Timothy Fitzsimmons, Materials Science and Engineering Division, SC–22.2, Office of Basic Energy Sciences, Office of Science, US Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–1290, *Tim.Fitzsimmons@science.doe.gov.*

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) OMB No. ''New''; (2) Information Collection Request Title: Developing the Science of Science and Innovation Policy: Profiles of Innovativeness and Effective Research Communication. (3) Type of Request: New collection. (4) Purpose: This data collection request will bring to conclusion a long-term research effort funded by the Department of Energy's Office of Basic Energy Sciences to develop the best practices in the management of scientific innovation. This data collection request will also help support an effort under a new National Science Foundation program (SciSIP) which is developing a scientific approach to the formulation of science and innovation policy.

Survey data will be collected on researcher attitudes towards their research environment. Research managers will be asked in addition to describe laboratory policies that promote innovation. Hypotheses from the industrial innovation literature about what constitutes an innovative environment will be tested on 72 research projects in six national laboratories chosen to reflect a diversity

of scientific disciplines, specifically chemistry, biology, materials sciences, alternative energy, and geosciences. The selected projects represent four research profiles: Small- and large-scope, and incremental and radical innovation. Polices that encourage diverse work teams and the exchange of information will also be explored. (5) Type of Respondents: Research staff and research managers; (6) Estimated Number of Respondents: 1,800 researchers and 132 project leaders and managers; (7) Estimated Number of Burden Hours: 900 hours for researchers and 132 hours for project leaders and managers at six national laboratories. This is a one time collection of information. Due to calendar considerations this collection will be split between FY 2009 and FY 2010 as opposed to the original goal of completing the survey in FY 2009. (8) Estimated annual reporting and recordkeeping cost burden: zero.

Statutory Authority: Sec. 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

Issued in Washington, DC on January 12, 2009.

Raymond L. Orbach,

Under Secretary for Science.

[FR Doc. E9–1066 Filed 1–16–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–6–002]

Midcontinent Express Pipeline LLC; Notice of Amendment

January 12, 2009.

Take notice that on December 30, 2008, Midcontinent Express Pipeline LLC (Midcontinent) 3250 Lacey Road, Suite 700, Downers Grove, Illinois 60515, filed in Docket No. CP08–6–002, pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, to amend its certificate of public convenience and necessity issued on July 25, 2008. Specifically, Midcontinent proposes to change the location of the Vicksburg Compressor Station from the originally certificated location in Warren County, Mississippi to a new location 3.5 miles eastward in Hinds County, Mississippi, and to substitute a different model for the two compressor units authorized at the Atlanta Compressor Station in Cass County, Texas.

Any questions regarding this application should be directed to Bruce H. Newsome, Vice President, Regulatory, Midcontinent Express Pipeline LLC, 3250 Lacey Road, Suite 700, Downers Grove, Illinois 60515, telephone no. (630) 725–3070, and e-mail: *bruce_newsome@kindermorgan.com*.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, 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: February 2, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–1018 Filed 1–16–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

November 20, 2008.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC09–22–000.
Applicants: Astoria Energy LLC.
Description: Astoria Energy LLC submits Application for Authorization under Section 203 of the Federal Power Act and Request for Expedited and Privileged Treatment.
Filed Date: 11/13/2008.
Accession Number: 20081118–0050.
Comment Date: 5 p.m. Eastern Time on Thursday, December 4, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER97–3834–019; ER97–324–012.
Applicants: Detroit Edison Company; DTE Energy Trading, Inc.
Description: Detroit Edison Co. and DTE Energy Trading, Inc. submits an informational filing describing recent legislative change to the retail access program in Michigan.
Filed Date: 11/12/2008.
Accession Number: 20081118–0062.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 3, 2008.

Docket Numbers: ER99–2311–011; ER97–2846–014.
Applicants: Carolina Power & Light Company, Florida Power Corporation.
Description: Progress Energy submits proposed revisions to the market-based rate tariffs for PEC and PEF.
Filed Date: 11/18/2008.
Accession Number: 20081118–0061.
Comment Date: 5 p.m. Eastern Time on Tuesday, December 9, 2008.

Docket Numbers: ER99–3151–010; ER97–837–009; ER03–327–004; ER08–447–002; ER08–448–002.
Applicants: PSEG Energy Resources & Trade LLC, Public Service Electric & Gas Company, PSEG Power Connecticut LLC, PSEG Fossil LLC, PSEG Nuclear LLC.
Description: PSEG Energy Resources & Trade LLC *et al.* submits a compliance filing in response to the Commission's 10/17/08 Order.
Filed Date: 11/17/2008.
Accession Number: 20081118–0088.
Comment Date: 5 p.m. Eastern Time on Monday, December 8, 2008.

Docket Numbers: ER99–3665–009; ER02–1947–010.
Applicants: Occidental Power Marketing L.P., Occidental Power Services, Inc.
Description: Occidental Power Marketing, LP *et al.* submits revised tariff sheets in compliance with the October 9 order.
Filed Date: 11/14/2008.
Accession Number: 20081118–0049.
Comment Date: 5 p.m. Eastern Time on Friday, December 5, 2008.

Docket Numbers: ER01–468–010; ER00–3621–011; ER04–318–006; ER05–37–007; ER05–36–007; ER05–34–007; ER05–35–007; ER04–249–007; ER99–1695–014; ER02–23–013; ER97–30–008; ER07–1306–006; ER97–3561–007; ER96–2869–015.
Applicants: Dominion Energy Marketing, Inc.; Dominion Nuclear Connecticut, Inc.; Dominion Energy Kewaunee, Inc.; Dominion Energy Manchester Street, Inc.; Dominion Energy Brayton Point, LLC; Dominion Energy New England, Inc.; Dominion Energy Salem; Dominion Retail, Inc.; Elwood Energy, LLC; Fairless Energy, LLC; NedPower Mount Storm, LLC; Kincaid Generation, LLC; Virginia Electric and Power Company; State Line Energy, LLC.
Description: Dominion Resources Services, Inc. *et al.* submits the compliance filing as required in the Commission's Order No. 697.
Filed Date: 11/17/2008.
Accession Number: 20081119–0196.
Comment Date: 5 p.m. Eastern Time on Monday, December 8, 2008.

Docket Numbers: ER05–849–010.
Applicants: California Independent System Operator C.
Description: The California Independent System Operator Corporation submits revisions to the definition of On-Site Self-Supply and to Sections 1.1 *et al.* of the Station Power Protocol in CAISO tariff in compliance with FERC's 10/17/08 Order.
Filed Date: 11/17/2008.
Accession Number: 20081118–0084.
Comment Date: 5 p.m. Eastern Time on Monday, December 8, 2008.

Docket Numbers: ER07–1356–006; ER07–1112–005; ER07–1113–005; ER07–1115–005; ER07–1116–004; ER07–1117–006; ER07–1358–006; ER07–1119–005; ER07–1120–005; ER07–1122–005; ER00–2885–021; ER01–2765–020; ER08–148–005; ER05–1232–014; ER02–1582–018; ER02–2102–020; ER03–1283–015.
Applicants: BE Alabama LLC, BE Allegheny LLC, BE CA LLC, BE Colquitt LLC, BE Ironwood LLC, BE KJ LLC, BE Louisiana LLC, BE Rayle LLC, BE Red Oak LLC, BE Satilla LLC, BE Walton LLC, Cedar Brakes I, L.L.C., Cedar Brakes II, LLC, Central Power & Lime, Inc., J.P. Morgan Ventures Energy Corporation, Mohawk River Funding IV, L.L.C., Utility Contract Funding, L.L.C., Vineland Energy LLC.
Description: J.P. Morgan Companies submits response to a recent request from Commission Staff regarding the updated market power analysis power and compliance filing that the JPMorgan Companies etc.
Filed Date: 11/13/2008.
Accession Number: 20081118–0058.
Comment Date: 5 p.m. Eastern Time on Friday, November 28, 2008.

Docket Numbers: ER08–556–002; ER06–615–020.
Applicants: California Independent System Operator C.
Description: California Independent System Operator Corp submits a compliance filing to the October 16 Order.
Filed Date: 11/17/2008.
Accession Number: 20081119–0199.
Comment Date: 5 p.m. Eastern Time on Monday, December 8, 2008.

Docket Numbers: ER08–637–006.
Applicants: Midwest Independent Transmission System.
Description: Midwest Independent Transmission System Operator, Inc, submits Compliance Filing responding to the Order Conditionally Accepting Compliance Filing and Requiring Further Compliance Filing.
Filed Date: 11/17/2008.
Accession Number: 20081118–0086.
Comment Date: 5 p.m. Eastern Time on Monday, December 8, 2008.

Docket Numbers: ER08–1202–003.
Applicants: Huntrise Energy Fund LLC.
Description: Huntrise Energy Fund LLC amends its petition for acceptance of initial tariff, waivers and blanket authority filed on 6/19/08.
Filed Date: 11/17/2008.
Accession Number: 20081118–0083.
Comment Date: 5 p.m. Eastern Time on Monday, December 8, 2008.

Docket Numbers: ER08–1144–001.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnections, LLC submits for filing revisions to Schedule 11 of the Amended and Restated Operating Agreement of PJM Interconnection, LLC pursuant to the FERC Order Accepting Tariff Revisions etc.
Filed Date: 11/17/2008.
Accession Number: 20081118–0085.
Comment Date: 5 p.m. Eastern Time on Monday, December 8, 2008.

Docket Numbers: ER08–1593–001.
Applicants: New England Power Company.
Description: Compliance Refund Report.
Filed Date: 11/18/2008.

Accession Number: 20081118–5128.
Comment Date: 5 p.m. Eastern Time on Tuesday, December 9, 2008.

Docket Numbers: ER09–298–000.
Applicants: Delmarva Power & Light Company.
Description: Delmarva Power & Light Co., Inc. submits request to change one point of injection referenced in the current interconnection agreement.
Filed Date: 11/14/2008.
Accession Number: 20081118–0042.
Comment Date: 5 p.m. Eastern Time on Friday, December 5, 2008.

Docket Numbers: ER09–299–000.
Applicants: Xcel Energy Services, Inc.
Description: Northern States Power Co-MN submits Notice of Termination of the Transmission Capacity and Planning Agreement between Northern States Power Company and Cooperative Power Association etc.
Filed Date: 11/17/2008.
Accession Number: 20081118–0079.
Comment Date: 5 p.m. Eastern Time on Monday, December 8, 2008.

Docket Numbers: ER09–300–000.
Applicants: Midwest Independent Transmission System.
Description: Midwest Independent Transmission System Operator, Inc submits proposed revisions to Attachment P contained in the Midwest ISO Open Access Transmission, Energy and Operating Reserve Markets Tariff.
Filed Date: 11/17/2008.
Accession Number: 20081118–0080.
Comment Date: 5 p.m. Eastern Time on Monday, December 8, 2008.

Docket Numbers: ER09–301–000.
Applicants: Florida Power Corporation.
Description: Florida Power Corporation submits Cost-Based Power Sales Agreement with Utilities Commission *et al.*
Filed Date: 11/17/2008.
Accession Number: 20081118–0081.
Comment Date: 5 p.m. Eastern Time on Monday, December 8, 2008.
Docket Numbers: ER09–302–000.
Applicants: Ameren Energy Marketing Company.
Description: Ameren Energy Marketing Company *et al.* submits amendments to AEG's and AERG's Ancillary Services Rate Schedules to permit AEM to continue to provide ancillary services etc.
Filed Date: 11/14/2008.
Accession Number: 20081119–0097.
Comment Date: 5 p.m. Eastern Time on Friday, December 5, 2008.

Docket Numbers: ER09–303–000.
Applicants: Union Electric Company.
Description: Union Electric Company submits filing amendments to AmerenUE's Ancillary Service Rate Schedule to permit AmerenUE to continue to provide ancillary services at its current rates for a very limited period of time etc.
Filed Date: 11/14/2008.
Accession Number: 20081119–0095.
Comment Date: 5 p.m. Eastern Time on Friday, December 5, 2008.

Docket Numbers: ER09–304–000.
Applicants: KCP&L Greater Missouri Operations Company.
Description: KCP&L Greater Missouri Operations Company submits notice of succession with respect to the electric tariffs, rate schedules, and service agreements etc.
Filed Date: 11/17/2008.
Accession Number: 20081118–0082.
Comment Date: 5 p.m. Eastern Time on Monday, December 8, 2008.

Docket Numbers: ER09–305–000.
Applicants: Cabrillo Power I LLC.
Description: Cabrillo Power I LLC submits the notice of termination of its Original Rate Schedule FERC 3, the Interim Dual Fuel Agreement between Cabrillo I and the California Independent System Operator Corporation.
Filed Date: 11/14/2008.
Accession Number: 20081119–0096.
Comment Date: 5 p.m. Eastern Time on Friday, December 5, 2008.

Docket Numbers: ER09–306–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Co. submits revised rate sheets to the Transmission Substation Facilities Agreement with the City of Azusa.
Filed Date: 11/18/2008.
Accession Number: 20081119–0195.
Comment Date: 5 p.m. Eastern Time on Tuesday, December 9, 2008.

Docket Numbers: ER09–307–000.
Applicants: Cabrillo Power II LLC.
Description: Cabrillo Power II LLC submits Notice of Termination of its First Revised Rate Schedule FERC 2, Reliability Must-Run Agreement with California Independent System Operator Corp.
Filed Date: 11/14/2008.
Accession Number: 20081119–0359.
Comment Date: 5 p.m. Eastern Time on Friday, December 5, 2008.

Docket Numbers: ER09–308–000.
Applicants: Cabrillo Power II LLC.
Description: Cabrillo Power II LLC submits Original Rate Schedule FERC No. 3 Reflecting Interim Black Start Agreement between Cabrillo Power II LLC and the California Independent System Operator Corporation.
Filed Date: 11/14/2008.
Accession Number: 20081119–0093.
Comment Date: 5 p.m. Eastern Time on Friday, December 5, 2008.

Take notice that the Commission received the following open access transmission tariff filings:
Docket Numbers: OA07–7–001; ER08–332–001; ER07–46–002; ER07–46–002
Applicants: Northwestern Corporation.
Description: NorthWestern Corporation submits Second Revised Sheet No. 8 *et al.* to FERC Electric Tariff, Seventh Revised Volume No. 8 *et al.* to be effective 11/17/08.
Filed Date: 11/17/2008.
Accession Number: 20081119–0198.
Comment Date: 5 p.m. Eastern Time on Monday, December 8, 2008.

Docket Numbers: OA07–58–002; OA08–72–001.
Applicants: Northwestern Corporation.
Description: NorthWestern Corporation submits Second Revised Sheet No. 41 *et al.* to FERC Electric Tariff, Seventh Revised Volume No. 41 to be effective 7/13/07.
Filed Date: 11/17/2008.
Accession Number: 20081119–0197.
Comment Date: 5 p.m. Eastern Time on Monday, December 8, 2008.

Docket Numbers: OA08–14–002.
Applicants: Midwest Independent Transmission System.
Description: Midwest Independent Transmission System Operator, Inc responds to FERC's 10/17/08 data request.
Filed Date: 11/17/2008.
Accession Number: 20081119–0315.
Comment Date: 5 p.m. Eastern Time on Monday, December 8, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic

service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–1016 Filed 1–16–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

January 09, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER00–586–007.
Applicants: Madison Gas & Electric Company.
Description: Madison Gas and Electric Company submits revisions to its Market-Based Power Sales Tariff, First Revised Volume 4, to be effective 1/6/09.
Filed Date: 01/05/2009.
Accession Number: 20090106–0242.
Comment Date: 5 p.m. Eastern Time on Monday, January 26, 2009.

Docket Numbers: ER00–3080–005.
Applicants: Otter Tail Power Company.
Description: Otter Tail Power Company submits an updated market power analysis.
Filed Date: 12/31/2008.
Accession Number: 20090105–0231.
Comment Date: 5 p.m. Eastern Time on Friday, February 27, 2009.

Docket Numbers: ER00–3767–006; ER05–841–003.
Applicants: Praxair, Inc., Praxair Plainfield Inc.
Description: Praxair, Inc. and Praxair Plainfield, Inc. submits an errata to their 12/18/08 filing of Substitute First Revised Sheet 2 *et al.* to FERC Electric Tariff, Second Revised Volume 1 in compliance with Order 697.
Filed Date: 01/06/2009.
Accession Number: 20090108–0112.
Comment Date: 5 p.m. Eastern Time on Tuesday, January 27, 2009.

Docket Numbers: ER01–1860–003.
Applicants: Cobb Electric Membership Corp.
Description: Cobb Electric Membership Corp submits updated Market Power Analysis pursuant to Orders 697 & 697–A.
Filed Date: 12/31/2008.
Accession Number: 20090106–0101.
Comment Date: 5 p.m. Eastern Time on Friday, February 27, 2009.

Docket Numbers: ER03–533–004; ER03–762–012.
Applicants: Alliant Energy Corporate Services, Inc., Alliant Energy Neenah, LLC.
Description: Alliant Energy Corporate Services, Inc. *et al.* submit updated Market Power Analysis.
Filed Date: 01/05/2009.
Accession Number: 20090108–0107.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 24, 2009.

Docket Numbers: ER04–805–010.
Applicants: Wabash Valley Power Association, Inc.
Description: Wabash Valley Power Association, Inc. submits a Notice of Change in Status in compliance with reporting requirements adopted by the FERC in Order 652, Reporting Requirement for Change in Status for Public Utilities with Market-Based.
Filed Date: 12/31/2008.
Accession Number: 20090107–0146.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 21, 2009.

Docket Numbers: ER08–367–001; ER06–615–035.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corporation submits Fourth Revised Version of FERC Electric Tariff, 125 FERC 61,262 issued on 12/4/08.
Filed Date: 01/05/2009.
Accession Number: 20090107–0147.
Comment Date: 5 p.m. Eastern Time on Monday, January 26, 2009.

Docket Numbers: ER08–371–003.
Applicants: Cooperative Energy Incorporated.
Description: Cooperative Energy, Inc. submits its Updated Market Power Analysis pursuant to Order Nos. 697 and 697–A etc.
Filed Date: 12/31/2008.
Accession Number: 20090106–0083.
Comment Date: 5 p.m. Eastern Time on Friday, February 27, 2009.

Docket Numbers: ER09–79–001.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc submits the corrected executed Meter Agent Service Agreement filed on 10/15/08 with Smoky Hills Wind Project II, LLC etc.
Filed Date: 12/31/2008.
Accession Number: 20090106–0078.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 21, 2009.

Docket Numbers: ER09–84–002.
Applicants: American Electric Power Service Corporation.
Description: Ohio Power Company *et al.*, submits Revised Interconnection Agreement between American Electric Power Service Corp and West Penn Power Co *et al.*
Filed Date: 01/06/2009.
Accession Number: 20090107–0319.
Comment Date: 5 p.m. Eastern Time on Tuesday, January 27, 2009.

Docket Numbers: ER09–488–000.
Applicants: American Electric Power Service Corporation.
Description: Ohio Power Company and Columbus Southern Power Company requests acceptance of a Fifteenth Revised Interconnection and Local Delivery Service Agreement with Buckeye Power, Inc etc.
Filed Date: 12/29/2008.
Accession Number: 20090106–0075.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 21, 2009.

Docket Numbers: ER09–489–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits a letter agreement with Granite Wind LLC.
Filed Date: 12/31/2008.
Accession Number: 20090106–0076.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 21, 2009.

Docket Numbers: ER09–490–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits the amended Interconnection Service and Facilities Agreement with AES Huntington Beach, LLC, Service Agreement 4 under SCE's Transmission Owner Tariff, FERC Electric Tariff, Second Revised Volume 6.
Filed Date: 12/31/2008.
Accession Number: 20090106–0077.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 21, 2009.

Docket Numbers: ER09–491–000.
Applicants: New England Power Pool.
Description: New England Power Pool Participants Committee submits counterpart signature pages of the New England Power Pool Agreement, dated as of 9/1/71, as amended etc.
Filed Date: 12/31/2008.
Accession Number: 20090105–0226.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 21, 2009.

Docket Numbers: ER09–492–000.
Applicants: Virginia Electric and Power Company.
Description: Virginia Electric and Power Company submit revised Service Agreement for Wholesale Distribution Service between Dominion and Industrial Power Generating Company.
Filed Date: 01/02/2009.
Accession Number: 20090105–0232.
Comment Date: 5 p.m. Eastern Time on Friday, January 23, 2009.

Docket Numbers: ER09–493–000.
Applicants: Southwest Power Pool Inc.
Description: Southwest Power Pool, Inc submits Meter Agent Services Agreement between Tenaska Power Services Co as the Market Participant and Southwestern Public Service Company as the Meter Agent.
Filed Date: 01/02/2009.
Accession Number: 20090105–0229.
Comment Date: 5 p.m. Eastern Time on Friday, January 23, 2009.

Docket Numbers: ER09–494–000.
Applicants: PJM Interconnection L.L.C.
Description: PJM Interconnection, L.L.C. submits amendments to the PJM Open Access Transmission Tariff.
Filed Date: 12/31/2008.
Accession Number: 20090105–0228.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 21, 2009.

Docket Numbers: ER09–495–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits revised pages to its Open Access Transmission Tariff to implement ministerial tariff revisions to the Rate Formula template for Westar Energy, Inc.
Filed Date: 12/31/2008.
Accession Number: 20090105–0230.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 21, 2009.

Docket Numbers: ER09–496–000.
Applicants: PJM Interconnection L.L.C.
Description: PJM Interconnection, L.L.C. submits an executed interconnection service agreement among PJM, North Allegheny Wind, L.L.C. *et al.*
Filed Date: 12/31/2008.
Accession Number: 20090105–0227.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 21, 2009.

Docket Numbers: ER09–497–000.
Applicants: PJM Interconnection L.L.C.
Description: PJM Interconnection, L.L.C. submits amendments to Schedule 12 Appendix of the PJM Tariff.
Filed Date: 01/05/2009.
Accession Number: 20090107–0153.
Comment Date: 5 p.m. Eastern Time on Monday, January 26, 2009.

Docket Numbers: ER09–498–000.
Applicants: Vickers Power, L.L.C.
Description: Vickers Power, L.L.C. submits Market-Based Rate Authority and Request for Waivers.
Filed Date: 01/05/2009.
Accession Number: 20090107–0151.
Comment Date: 5 p.m. Eastern Time on Monday, January 26, 2009.

Docket Numbers: ER09–499–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits an executed Amended and Restated Large Generator Interconnection Agreement among the Midwest ISO *et al.*
Filed Date: 01/05/2009.
Accession Number: 20090107–0149.
Comment Date: 5 p.m. Eastern Time on Monday, January 26, 2009.

Docket Numbers: ER09–500–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits a revised tariff sheet designated to cancel PacificCorp's First Revised Rate 258 with Sierra Pacific Power Company.
Filed Date: 01/05/2009.
Accession Number: 20090107–0150.
Comment Date: 5 p.m. Eastern Time on Monday, January 26, 2009.

Docket Numbers: ER09–501–000.
Applicants: PJM Interconnection L.L.C.
Description: PJM Interconnection submits an executed interconnection service agreement entered into among PJM, WM Renewable Energy, L.L.C. and Virginia Electric and Power Company.
Filed Date: 01/05/2009.
Accession Number: 20090107–0148.
Comment Date: 5 p.m. Eastern Time on Monday, January 26, 2009.

Docket Numbers: ER09–506–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits proposed revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff to incorporate etc.
Filed Date: 01/06/2009.
Accession Number: 20090108–0106.
Comment Date: 5 p.m. Eastern Time on Tuesday, January 27, 2009.

Docket Numbers: ER09–507–000.
Applicants: PSEG Power Connecticut L.L.C..
Description: PSEG Power Connecticut submits for filing Revised Reliability Must Run Agreements to Include Carbon Dioxide Emissions Allowance Costs.
Filed Date: 01/06/2009.
Accession Number: 20090107–0320.
Comment Date: 5 p.m. Eastern Time on Tuesday, January 27, 2009.

Docket Numbers: ER09–508–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits Service Agreement 539 for Network Integration Transmission Service with Bonneville Power Administration etc.
Filed Date: 01/06/2009.
Accession Number: 20090107–0318.
Comment Date: 5 p.m. Eastern Time on Tuesday, January 27, 2009.

Docket Numbers: ER09–509–000.
Applicants: Entergy Services, Inc.
Description: Entergy Mississippi, Inc. submits an executed Affected System Study Funding Agreement with Tennessee Valley Authority pursuant to Order 614.
Filed Date: 01/06/2009.
Accession Number: 20090107–0321.
Comment Date: 5 p.m. Eastern Time on Tuesday, January 27, 2009.

Docket Numbers: ER09–510–000.
Applicants: Central Hudson Gas & Electric Corp.
Description: Central Hudson Gas & Electric Corporation submits Eighth Revised Sheet 9 *et al.* to Rate Schedule FERC No 202.
Filed Date: 01/05/2009.
Accession Number: 20090107–0322.
Comment Date: 5 p.m. Eastern Time on Monday, January 26, 2009.

Docket Numbers: ER09–511–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits Service Agreement No 537 under its Seventh Revised Volume No 11 Open Access Transmission Tariff.
Filed Date: 01/06/2009.
Accession Number: 20090107–0323.
Comment Date: 5 p.m. Eastern Time on Tuesday, January 27, 2009.

Docket Numbers: ER09–512–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits an Amended and Restated Interconnection and Operating Agreement among the Midwest ISO, Rainy River Energy Corporation-Wisconsin, etc.

Filed Date: 01/06/2009.

Accession Number: 20090107–0324.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 27, 2009.

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. E9–1033 Filed 1–16–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP09–8–000]

Tuscarora Gas Transmission Company; Notice Deferring Technical Conference

January 12, 2009.

On January 12, 2009, Tuscarora Gas Transmission Company (Tuscarora) filed a request for deferral of the technical conference scheduled in the above-captioned proceeding for January 15, 2009.[1] Tuscarora states that it has reached a settlement in principle with the active parties in this proceeding, and that it anticipates filing an offer of settlement that will resolve all of the issues in this proceeding by February 12, 2009. Therefore, Tuscarora requests that the Commission defer the date of the technical conference until mid-February 2009, to allow the parties time to prepare and review the offer of settlement. Tuscarora states that it is authorized by the active parties in this proceeding to express their support for this request to defer both the technical conference date and the effective date of the suspended tariff sheets.[2]

By this notice, Tuscarora's request for deferral of the dates related to the technical conference is granted. The technical conference scheduled for January 15, 2009, is thereby postponed until further notice.

For further information please contact Timothy Duggan at (202) 502–8326 or e-mail *Timothy.Duggan@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. E9–1017 Filed 1–16–09; 8:45 am]

BILLING CODE 6717–01–P

[1] The Commission directed that a technical conference be held to address the issues raised by Tuscarora's October 1, 2008 tariff filing in this proceeding. *Tuscarora Gas Transmission Co.*, 125 FERC ¶ 61,133 (2008). The technical conference was originally scheduled for December 11, 2008. At the request of the active parties, the Commission issued a notice on December 8, 2008, that postponed the date of the technical conference to January 15, 2009.

[2] Given agreement in principle among the active parties, Tuscarora agrees not to move into effect the tariff sheets previously suspended by the Commission in this proceeding prior to June 1, 2009. This deferral of the effectiveness of the suspended tariff sheets will afford time for a possible settlement to be filed and considered by the Commission.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP03–75–003; CP03–75–004; CP05–361–001; CP05–361–002]

Freeport LNG Development, L.P.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Freeport LNG Export and Bog Liquefaction and Truck Delivery Facilities Projects and Request for Comments on Environmental Issues

January 12, 2009.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will address the environmental impacts of the Freeport LNG Export Project (Export Project) and Bog Liquefaction and Truck Delivery Facilities Project (BOG/Truck Project) collective called the Freeport Projects proposed by Freeport LNG Development, L.P. (Freeport LNG) in Brazoria County, Texas.[1] This EA will be used by the Commission in its decision-making process to determine whether or not to authorize the projects.[2]

This notice announces the opening of the scoping process we[3] will use to gather environmental input from the public and interested agencies on the projects. Your input will help the Commission staff determine which issues need to be addressed.

This notice is being sent to affected landowners; federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. State and local government representatives are asked to notify their constituents of this planned project and encourage them to comment on their areas of concern.

Summary of the Proposed Projects

Export Project

The purpose of the project is to add Liquefied Natural Gas (LNG) export

[1] During routine terminal operations, ambient heat in the LNG storage tanks and piping causes small amount of LNG to evaporate. The vaporizing LNG is referred to as BOG or boil-off gas. The BOG increases the storage tank pressure until a point where it must be transferred, flared, or re-liquefied.

[2] On November 19, and December 9, 2008, Freeport LNG filed its applications with the Commission under section 3 of the Natural Gas Act and Part 157 of the Commission's regulations. The Commission issued its Notices of Application on December 2, and 16, 2009.

[3] 'We,' 'us,' and 'our' refer to the environmental staff of the FERC's Office of Energy Projects.

capabilities/functionality to the previously authorized Freeport LNG Terminal Facilities located in Brazoria County, Texas. Freeport LNG is seeking authorization to operate its facility for the purpose of exporting LNG. Freeport LNG proposes to operate its existing Freeport LNG Terminal facility to export LNG on a short-term basis by holding cargos of imported LNG in its LNG tanks for re-export. To accomplish this, Freeport LNG would replace a check valve and upgrade a control valve. Both valves are on the existing dock of the Freeport LNG Terminal. The existing dock is shown in the figure included as Appendix 1.[4]

The proposed replacement and modification of the valves would allow the LNG to be transferred from the LNG storage tanks through the existing LNG transfer lines to the unloading/loading arms and to a receiving ship for export and transportation.

BOG/Truck Project

The purpose of the project is to provide greater latitude to acquire LNG for maintenance and operation of the existing Phase I facilities at the previously authorized Freeport LNG Terminal Facilities located in Brazoria County, Texas during periods when LNG deliveries may not otherwise be available. The general locations of these facilities are shown on the map in Appendix 1. The BOG liquefaction facilities would consist of:

- One BOG liquefaction heat exchanger;
- One BOG liquefaction expander-compressor;
- Two BOG refrigeration compressor units (approximately 1,380 horsepower each);
- Natural gas piping, 4- to 12-inch-diameter aboveground piping; and
- LNG piping, 4-inch-diameter aboveground piping.

These facilities would allow Freeport to liquefy about 5 million cubic feet per day of BOG and return it to the LNG storage tanks in order to keep the tanks in the necessary cryogenic state. The BOG liquefaction system would also require pressure and temperature controllers; and associated electrical, control, lighting instrumentation, and communication systems.

In addition, Freeport LNG is proposing certain facility modifications to enable it to undertake LNG truck unloading activities in the event that the BOG liquefaction facilities are not available. LNG would be trucked in from an existing commercial LNG supplier (Clean Energy Fuels Corporation) located 40 miles north of Houston. The truck unloading facilities would require the installation of a single 4-inch-diameter inlet connection and valves on one of the existing LNG transfer lines and a 25 horsepower portable electric pump, if needed. Freeport LNG would use these facilities to transfer the LNG from the trucks to the existing tanks. Freeport LNG anticipates that it would receive truck deliveries per day, totaling 66,000 gallons of LNG during the periods when delivery by truck would be required.

If approved, Freeport LNG proposes to commence construction of the proposed facilities in spring of 2009.

Land Requirements

Since the Freeport LNG Terminal already includes all required plant components to facilitate the Export Project other than the valve modifications, no land disturbance would be required.

The land that would be disturbed for the BOG/Truck Project would be within the footprint of the existing LNG facility.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action. The FERC will use the EA to consider the environmental impact that could result if the project is authorized under section 3 of the Natural Gas Act. NEPA also requires us to discover and address concerns the public may have about proposals. 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 of Intent, the Commission staff requests public comments on the scope of the issues to be addressed in the EA. All comments received will be considered during preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- Land use;
- Water resources, fisheries, ballast water, and wetlands;
- Cultural resources;
- Vegetation and wildlife;
- Threatened and endangered species;
- Air quality and noise;
- Hazardous waste; and
- Public safety.

In the EA, we will also evaluate possible alternatives to the proposed projects, and make recommendations on how to lessen or avoid impacts on affected resources.

Our independent analysis of the issues will be 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, interested individuals, affected landowners, newspapers, 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

With this NOI, we are 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. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Additional agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this NOI.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Freeport LNG. This preliminary list of issues may be changed based on your comments and our analysis.

- Potential impacts on water quality.
- Potential impacts on air quality and potential noise emissions may occur.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the Freeport Projects. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your

[4] 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 Public Participation section of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

comments are timely and properly recorded, please send in your comments so that they will be received in Washington, DC on or before February 11, 2009.

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 CP03–75–003 and CP03–75–004 with your submission. The docket numbers 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;'' or

(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 St., NE., Room 1A, Washington, DC 20426.

Label one copy of the comments for the attention of Gas Branch 2, PJ11.2.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all who own homes within distances defined in the Commission's regulations of certain aboveground facilities.

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (Appendix 2). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor,'' which is an official party to the proceeding. 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.

Additional Information

Additional information about the project is available from the Commission's 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 project docket number excluding the last three digits (i.e., CP03–75) 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 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 rulemakings.

In addition, the FERC now 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*.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–1020 Filed 1–16–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP09–47–000]

Wyoming Interstate Company, Ltd.; Notice of Technical Conference

January 12, 2009.

Take notice that the Commission will convene a technical conference in the above-referenced proceeding on Wednesday, January 28, 2009, at 10 a.m. (EDT), in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's November 26, 2008 Order [1] in Docket No. RP09–47–000 directed that a technical conference be held to address the issues raised by the October 31, 2008 tariff filing by Wyoming Interstate Company, Ltd. (WIC) to provide the first annual update to the cost/revenue true-up accepted in Docket No. RP07–699–000. Commission Staff and interested persons will have the opportunity to discuss all of the issues raised by WIC's filing including, but not limited to, technical, engineering and operational issues, and issues related to the interpretation of tariff provisions governing WIC's fuel tracking mechanism, and specifically, its cost/revenue true-up.

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 (866) 208–3372 (voice) or (202) 502–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

All interested persons are permitted to attend. For further information please contact Timothy Duggan at (202) 502–8326 or e-mail *Timothy.Duggan@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. E9–1019 Filed 1–16–09; 8:45 am]

BILLING CODE 6717–01–P

[1] *Wyoming Interstate Co., Ltd.*, 125 FERC ¶ 61,240 (2008).

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2008–0221; FRL–8765–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Recordkeeping and Reporting Requirements for Allegations of Significant Adverse Reactions to Human Health or the Environment; EPA ICR No. 1031.09, OMB No. 2070–0017

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: TSCA Recordkeeping and Reporting Requirements for Allegations of Significant Adverse Reactions to Human Health or the Environment; EPA ICR No. 1031.09, OMB No. 2070–0017. The ICR, which is abstracted below, describes the nature of the information collection activity and its expected burden and costs.

DATES: Additional comments may be submitted on or before February 20, 2009.

ADDRESSES: Submit your comments, referencing docket ID Number EPA–HQ–OPPT–2008–0221 to (1) EPA online using *www.regulations.gov* (our preferred method), by e-mail to *oppt.ncic@epa.gov* or by mail to: Document Control Office (DCO), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, *Mail Code:* 7407T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, Mailcode: 7408-M, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* 202–554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 18, 2008 (73 FR 34733), EPA sought comments on this renewal ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any additional comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a docket for this ICR under Docket ID No. EPA-HQ-OPPT–2008–0221, which is available for online viewing at *http://www.regulations.gov*, or in person at the OPPT Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the OPPT Docket is 202–566–0280. Use *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in *www.regulations.gov*. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in *www.regulations.gov*. For further information about the electronic docket, go to *www.regulations.gov*.

Title: Recordkeeping and Reporting Requirements for Allegations of Significant Adverse Reactions to Human Health or the Environment.

ICR Status: This ICR is currently scheduled to expire on January 31, 2009. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Section 8(c) of the Toxic Substances Control Act (TSCA) requires companies that manufacture, process, or distribute chemicals to maintain records of significant adverse reactions to health or the environment alleged to have been caused by such chemicals. Since section 8(c) includes no automatic reporting provision, EPA can obtain and use the information contained in company files only by inspecting those files or requiring reporting of records that relate to specific substances of concern. Therefore, under certain conditions, and using the provisions found in 40 CFR part 717, EPA may require companies to report such allegations to the Agency.

EPA uses such information on a case-specific basis to corroborate suspected adverse health or environmental effects of chemicals already under review by EPA. The information is also useful to identify trends of adverse effects across the industry that may not be apparent to any one chemical company.

Responses to the collection of information are mandatory (*see* 40 CFR part 717). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to range between 1 minute and 8 hours per response, depending upon the nature of the response. Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of

information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by this action are companies that manufacture, process, import, or distribute in commerce chemical substances or mixtures.

Estimated No. of Potential Annual Respondents: 13,521.

Frequency of Collection: On occasion.

Estimated No. of Potential Annual Responses: 6,897.

Estimated average number of responses for each respondent: 0.43.

Estimated Total Annual Burden on Respondents: 23,536 hours.

Estimated Total Annual Costs: $1,486,311.

Changes in Burden Estimates: There is a decrease of 1,012 hours (from 24,548 hours to 23,536 hours) in the total estimated annual respondent burden compared with that currently in the OMB inventory. This decrease primarily reflects EPA's current estimate of the number of employees in affected respondent companies. Because the allegation rate is based on the number of employees, the decrease in the estimated number of employees results in a decrease in total allegations, and thus a reduction in burden. This change is an adjustment.

Dated: January 13, 2009.

John Moses,

Acting Director, Collection Strategies Division.

[FR Doc. E9–1144 Filed 1–16–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8765–3]

Draft National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges From Horse, Cattle and Dairy Concentrated Animal Feeding Operations (CAFOs) in New Mexico (Except Indian Country)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed permit issuance.

SUMMARY: EPA Region 6 Water Quality Protection Division, today is proposing for public comment the issuance of a National Pollutant Discharge Elimination System general permit for discharges from eligible owners/operators of existing concentrated animal feeding operations (CAFOs), in New Mexico, except those discharges on Indian Country. All currently operating animal feeding operations that are defined as CAFOs or designated as CAFOs by the permitting authority (See Part VII Definitions, ''CAFOs'') and that are subject to 40 CFR Part 412, Subparts A (Horses) and C (Dairy Cows and Cattle Other than Veal Calves) are eligible for coverage under this permit. Hereinafter, this NPDES general permit will be referred to as ''permit'' or ''CAFO permit'' or ''CAFO general permit.'' Eligible CAFOs may apply for authorization under the terms and conditions of this permit, by submitting a notice of intent (NOI) to be covered by this permit.

This permit covers the types of animal feeding operations listed above which meet the definition of a CAFO and discharge or propose to discharge pollutants to waters of the United States. A CAFO proposes to discharge if it is designed, constructed, operated, or maintained such that a discharge will occur.

DATES: Comments must be submitted in writing to EPA on or before February 20, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. NMG010000 by one of the following methods:

- *E-mail: smith.diane@epa.gov.*
- *Mail:* Ms. Diane Smith, Environmental Protection Agency, Water Quality Protection Division (6WQ–NP), 1445 Ross Ave., Suite 1200, Dallas, TX 75202.
- *Hand Delivery:* EPA Region 6, 7th Floor Reception Desk, 1445 Ross Ave., Suite 1200, Dallas, TX 75202. Such deliveries are only accepted during normal business hours.

Instructions: Direct your comments to Docket ID No. NMG010000. EPA's policy is that all comments received will be included in the public docket without change and may be made available online, 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 e-mail. If you send an e-mail comment directly to EPA your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and may be made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in docket index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically or in hard copy from Ms. Diane Smith at the address above. The Docket may also be viewed at the EPA Region 6 Offices from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. For more information on scheduling a time to view the Docket or to obtain copies of available documents, please contact Ms. Diane Smith at 214–665–2145 or *smith.diane@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Scott Stine, NPDES Permits and TMDL Branch (6WQ–PP), Environmental Protection Agency, 1445 Ross Ave., Suite 1200, Dallas, TX 75202; telephone number: (214) 665–7182; fax number: (214) 665–2191; e-mail address: *stine.scott@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

Today's CAFO general permit would potentially apply to the following activities:

Category	Examples of affected entities	North American Industry Classification System (NAICS) codes
Industry	Operators of concentrated animal feeding operations subject to the following national effluent limitation guidelines:	
	Horses and Sheep (40 CFR Part 412, Subpart A	
	Dairy Cows and Cattle Other than Veal Calves (40 CFR Part 412, Subpart C)	1121

EPA does not intend the preceding table to be exhaustive, but provides it as a guide for readers regarding entities likely to be regulated by this action. This table lists the types of activities that EPA is now aware of that could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility is regulated by this action, you should carefully examine the definition of ''concentrated animal feeding operation'' in existing EPA regulations at 40 CFR 122.23. (also found in Part VII of the draft permit). If you have questions regarding the applicability of this action to a particular entity, consult the person listed for technical information in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How Do I Obtain a Copy of the Proposed Permit?

The proposed general permit and fact sheet which sets forth principal facts and the significant factual, legal, and policy questions considered in the development of the proposed general permit, may both be obtained via the Internet at *http://www.epa.gov/region6/water/npdes/cafo/index.htm.* To obtain hard copies of these documents or any other information in the administrative record, please contact Ms. Diane Smith using the contact information provided above.

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

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

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

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

D. Public Hearings

EPA has not scheduled any public hearings to receive public comment concerning the proposed permit. All persons will continue to have the right to provide written comments during the public comment period. However, interested persons may request a public hearing pursuant to 40 CFR 124.12 concerning the proposed permit. Requests for a public hearing must be sent or delivered in writing to the same address as provided above for public comments prior to the close of the comment period. Requests for a public hearing must state the nature of the issues proposed to be raised in the hearing. Pursuant to 40 CFR 124.12, EPA shall hold a public hearing if it finds, on the basis of requests, a significant degree of public interest in a public hearing on the proposed permit. If EPA decides to hold a public hearing, a public notice of the date, time and place of the hearing will be made at least 30 days prior to the hearing. Any person may provide written or oral statements and data pertaining to the proposed permit at the public hearing.

E. Permit Issuance

After the close of the public comment period, EPA will develop a response to comments document and issue a permit. This permit will not be issued until after all public comments have been considered and appropriate changes made to the permit. EPA's response to public comments received will be included in the docket as part of the permit decisions. Once the permit becomes effective, operators may seek authorization to discharge by filing a Notice of Intent (NOI) to be covered under the new CAFO permit in accordance with the terms and conditions of the permit.

II. Background of Permit Proposal

A. Statutory and Regulatory History

The Clean Water Act (''CWA'') establishes a comprehensive program ''to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.'' 33 U.S.C. 1251(a). The CWA also includes the objective of attaining ''water quality which provides for the protection and propagation of fish, shellfish and wildlife.'' 33 U.S.C. 1251(a)(2)). To achieve these goals, the CWA requires EPA to control the discharges through the issuance of National Pollutant Discharge Elimination System (''NPDES'') permits.

Section 301(a) of the Clean Water Act (CWA), 33 U.S.C. 1311(a), prohibits the discharge of pollutants to waters of the U.S. in the absence of authorizing permits, including NPDES permits. The CWA section 402, 33 U.S.C. 1342, authorizes EPA to issue NPDES permits allowing such discharges on condition that they in part will comply with requirements implementing CWA sections 301, 304, and 401 [33 U.S.C. 1311, 1314, and 1341].

In February 2003, EPA issued revised Clean Water Act (CWA) permitting requirements and effluent limitations for CAFOs. The revised regulations expanded the number of CAFOs required to seek NPDES permit coverage and added requirements applicable to land application of manure by CAFOs. In February 2005, the Second Circuit Court of Appeals issued its decision in *Waterkeeper Alliance et al.* v. *EPA* regarding legal challenges to the 2003

rule. Among other things, the court directed EPA to remove the requirement for all CAFOs to apply for NPDES permits, and to add requirements for Nutrient Management Plans (NMPs) to be submitted by CAFOs with their permit applications, reviewed by permitting authorities and the public, and the NMP terms incorporated into permits. EPA published a final regulation in the **Federal Register** on Novermber 20, 2008, revising national effluent limitation guidelines for discharges from CAFOs. See 73 FR 70,418. Today's proposed permit reflects these revised guidelines and other applicable NPDES permitting requirements at 40 CFR parts 122 and 125.

B. Summary of Permit Proposal

EPA Region 6 is proposing to reissue General NPDES Permit No. NMG010000 for discharges from concentrated animal feeding operations (CAFOs) in New Mexico (except Indian Country). This permit was originally issued in the **Federal Register** at 58 FR 7610 with an effective date of March 10, 1993, and an expiration date of March 10, 1998. Applicable requirements from that 1993 permit are continued in the proposed permit.

The proposed permit adds additional requirements contained in revised CAFO regulations at 40 CFR 122 and 412 which were published in the **Federal Register** at 73 FR 70,418 (November 20, 2008.)

C. Significant Changes From Previous CAFO General Permit

This proposed permit implements revised regulatory requirements from the 2003 and 2008 revisions to the regulations. The permit adds new requirements relating to NMPs for permitted CAFOs. CAFO operators were required to develop and implement NMPs under the 2003 rule; the 2008 rule requires CAFOs to submit the NMPs along with their notice of intent (NOI). EPA Region 6 as the permitting authority will review the NMPs submitted along with the NOIs and will also establish the terms of the NMP that are enforceable elements of the permit. The region will provide the public with an opportunity for meaningful review and comment on the NMPs and the terms of the NMPs will be incorporated into the permit.

Under the CWA, the Permitting Authority may issue general permits to regulate numerous facilities which have similar discharges and are subject to the same conditions and limitations within a specified geographic area (*i.e.*, state or watershed) [40 CFR 122.28]. Using general permits conserves resources and reduces the paperwork burden associated with obtaining discharge authorization for the regulated community.

D. Geographic Coverage

The proposed permit would authorize discharges in the state of New Mexico, except those discharges that occur on Indian Country. CAFOs discharging on Indian Country would be required to apply for an individual permit.

III. Compliance With the Regulatory Flexibility Act

A. EPA's Approach to Compliance With the Regulatory Flexibility Act for General Permits

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

The legal question of whether a general permit (as opposed to an individual permit) qualifies as a ''rule'' or as an ''adjudication'' under the Administrative Procedure Act (APA) has been the subject of periodic litigation. In a recent case, the court held that the CWA Section 404 Nationwide general permit before the court did qualify as a ''rule'' and therefore that the issuance of that general permit needed to comply with the applicable legal requirements for the issuance of a ''rule.'' *National Ass'n of Home Builders* v. *U.S. Army Corps of Engineers,* 417 F.3d 1272, 1284–85 (DC Cir. 2005) (Army Corps general permits under Section 404 of the Clean Water Act are rules under the APA and the Regulatory Flexibility Act; ''Each NWP [nationwide permit] easily fits within the APA's definition 'rule'. * * * As such, each NWP constitutes a rule * * * '').

As EPA stated in 1998, ''the Agency recognizes that the question of the applicability of the APA, and thus the RFA, to the issuance of a general permit is a difficult one, given the fact that a large number of dischargers may choose to use the general permit.'' 63 FR 36489, 36497 (July 6, 1998). At that time, EPA ''reviewed its previous NPDES general permitting actions and related statements in the **Federal Register** or elsewhere,'' and stated that ''[t]his review suggests that the Agency has generally treated NPDES general permits effectively as rules, though at times it has given contrary indications as to whether these actions are rules or permits.'' *Id.* at 36496. Based on EPA's further legal analysis of the issue, the Agency ''concluded, as set forth in the proposal, that NPDES general permits are permits [i.e., adjudications] under the APA and thus not subject to APA rulemaking requirements or the RFA.'' *Id.* Accordingly, the Agency stated that ''the APA's rulemaking requirements are inapplicable to issuance of such permits,'' and thus ''NPDES permitting is not subject to the requirement to publish a general notice of proposed rulemaking under the APA or any other law * * * [and] it is not subject to the RFA.'' *Id.* at 36497.

However, the Agency went on to explain that, even though EPA had concluded that it was not legally required to do so, the Agency would voluntarily perform the RFA's small-entity impact analysis. *Id.* EPA explained the strong public interest in the Agency following the RFA's requirements on a voluntary basis: ''[The notice and comment] process also provides an opportunity for EPA to consider the potential impact of general permit terms on small entities and how to craft the permit to avoid any undue burden on small entities.'' *Id.* Accordingly, with respect to the NPDES permit that EPA was addressing in that **Federal Register** notice, EPA stated that ''the Agency has considered and addressed the potential impact of the general permit on small entities in a manner that would meet the requirements of the RFA if it applied.'' *Id.*

Subsequent to EPA's conclusion in 1998 that general permits are adjudications rather than rules, as noted above, the DC Circuit recently held that nationwide general permits under section 404 are ''rules'' rather than ''adjudications.'' Thus, this legal question remains ''a difficult one'' (*supra*). However, EPA continues to believe that there is a strong public policy interest in EPA applying the RFA's framework and requirements to the Agency's evaluation and consideration of the nature and extent of any economic impacts that a CWA general permit could have on small entities (*e.g.*, small businesses). In this regard, EPA believes that the Agency's evaluation of the potential economic impact that a general permit would have on small entities, consistent with the RFA framework discussed below, is relevant to, and an essential component of, the Agency's assessment of whether

a CWA general permit would place requirements on dischargers that are appropriate and reasonable. Furthermore, EPA believes that the RFA's framework and requirements provide the Agency with the best approach for the Agency's evaluation of the economic impact of general permits on small entities. While using the RFA framework to inform its assessment of whether permit requirements are appropriate and reasonable, EPA will also continue to ensure that all permits satisfy the requirements of the Clean Water Act. Accordingly, EPA has committed to operating in accordance with the RFA's framework and requirements during the Agency's issuance of CWA general permits (in other words, the Agency has committed that it will apply the RFA in its issuance of general permits as if those permits do qualify as ''rules'' that are subject to the RFA).

B. Application of RFA Framework to Proposed Issuance of CAFO General Permit for New Mexico (Except Indian Country)

EPA has determined, consistent with the discussion in section IV.B above, that the proposed issuance of today's proposed permit would not affect a substantial number of small entities. Although general permits are considered to be adjudications and not rules and therefore not legally subject to the regulatory flexibility act, the Agency as a matter of policy is evaluating on an individual basis whether or not a specific general permit would have a significant economic impact on a substantial number of small entities. Upon considering EPA's current guidance, entitled Final Guidance for EPA Rulewriters: Regulatory Flexibility Act as Amended by the Small Business Regulatory Enforcement and Fairness Act, EPA concludes that since this general permit affects less than 100 small entities at any one time, EPA believes that it does not have a significant economic impact on a substantial number of small entities.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: January 13, 2009.

Miguel I. Flores,

Director, Water Quality Protection Division, EPA Region 6.

[FR Doc. E9–1200 Filed 1–16–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2008–0943; FRL–8763–6]

Board of Scientific Counselors (BOSC), Executive Committee Meeting—February 9–10, 2009

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the Environmental Protection Agency, Office of Research and Development (ORD), gives notice of one meeting of the Board of Scientific Counselors (BOSC) Executive Committee.

DATES: The meeting will be held on February 9, 2009, from 2 p.m. to 5:15 p.m. EDT and continued on February 10, 2009, from 8:30 a.m. to 3 p.m. EDT. The meeting may adjourn early if all business is finished. Requests for the draft agenda or for making oral presentations at the meeting will be accepted up to one business day before the meeting.

ADDRESSES: The meeting will be held at the Marriott Courtyard Arlington Crystal City, 2899 Jefferson Davis Highway, Arlington, VA 22202. Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2008–0943, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* Send comments by electronic mail (e-mail) to: *ORD.Docket@epa.gov,* Attention Docket ID No. EPA–HQ–ORD–2008–0943.
- *Fax:* Fax comments to: (202) 566–0224, Attention Docket ID No. EPA–HQ–ORD–2008–0943.
- *Mail:* Send comments by mail to: Board of Scientific Counselors (BOSC), Executive Committee Meeting—2008 Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–ORD–2008–0943.
- *Hand Delivery or Courier.* Deliver comments to: EPA Docket Center (EPA/DC), Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. EPA–HQ–ORD–2008–0943. Note: this is not a mailing address. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2008–0943. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Board of Scientific Counselors (BOSC), Executive Committee Meeting—February 9–10, 2009 Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the ORD Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer via mail at:

Heather Drumm, Mail Code 8104–R, Office of Science Policy, Office of Research and Development, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via phone/voice mail at: (202) 564–8239; via fax at: (202) 565–2911; or via e-mail at: *drumm.heather@epa.gov.*

SUPPLEMENTARY INFORMATION:

General Information

Any member of the public interested in receiving a draft BOSC agenda or making a presentation at the meeting may contact Heather Drumm, the Designated Federal Officer, via any of the contact methods listed in the **FOR FURTHER INFORMATION CONTACT** section above. In general, each individual making an oral presentation will be limited to a total of three minutes.

Proposed agenda items for the teleconference include, but are not limited to: Presentation(s) of ORD responses to BOSC reports; nanotech research presentation, review of subcommittee draft reports; subcommittee and workgroup updates. The meeting is open to the public.

Information on Services for Individuals with Disabilities: For information on access or services for individuals with disabilities, please contact Heather Drumm at (202) 564–8239 or *drumm.heather@epa.gov.* To request accommodation of a disability, please contact Heather Drumm, preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: January 8, 2009.

Mary Ellen Radzikowski,

Acting Director, Office of Science Policy.

[FR Doc. E9–1105 Filed 1–16–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to OMB for Review and Approval, Comments Requested

January 13, 2009.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before February 20, 2009. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via Internet at *Nicholas_A._Fraser@omb.eop.gov* or via fax at (202) 395–5167 and to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC or via Internet at *Cathy.Williams@fcc.gov* or *PRA@fcc.gov*. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB control number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.''

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0678.

Title: Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Stations and Space Stations.

Form No.: FCC Form 312 and Schedule S.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 4,112 respondents; 4,112 responses.

Estimated Time per Response: 0.25–24 hours.

Frequency of Response: On occasion and annual reporting requirements; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The Commission has statutory approval for the information collection requirements under 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. Sections 154(i), 157(a), 303(c), 303(f), 303(g) and 303(r).

Total Annual Burden: 42,579 hours.

Total Annual Cost: $784,766,976.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality pertaining to the information collection requirements in this collection.

Needs and Uses: On October 17, 2008, the Federal Communications Commission (''Commission'') released an Eighth Report and Order and Order on Reconsideration titled, ''In the Matter of 2000 Biennial Regulatory Review—Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations; Streamlining the Commission's Rules and Regulations for Satellite Applications and Licensing Procedures'' (FCC 08–246), IB Docket Nos. 00–248 and 95–117. In the Eighth Report and Order, the Commission further streamlined the Commission's non-routine earth station processing rules by adopting a new earth station procedure that will enable the Commission to treat more applications routinely than is possible under the current earth station procedures. This rulemaking facilitates the provision of broadband Internet access services.

The PRA information collection requirements contained in the Eighth Report and Order are as follows:

1. The Commission plans to modify the ''Application for Satellite Space and Earth Station Authorizations'' (FCC Form 312), including Schedule B, in the International Bureau Filing System (''MyIBFS'') to reflect the off-axis equivalent isotropically radiated power (EIRP) envelope compliance

requirement. In the interim, earth station applicants must submit a table as an attachment to the FCC Form 312 to show their compliance with the off-axis EIRP requirement.

2. Earth station licensees who plan to use a contention protocol must certify that their contention protocol usage will be reasonable. In the future, the Commission will revise the FCC Form 312 in MyIBFS to provide a streamlined method for earth station applicants planning to use a contention protocol to make this certification.

The information collection requirements accounted for in this collection are necessary to determine the technical and legal qualifications of applicants or licensees to operate a station, transfer or assign a license, and to determine whether the authorization is in the public interest, convenience and necessity. Without such information, the Commission could not determine whether to permit respondents to provide telecommunication services in the U.S. Therefore, the Commission would be unable to fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended, and the obligations imposed on parties to the World Trade Organization (WTO) Basic Telecom Agreement.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–1161 Filed 1–16–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

FDIC Advisory Committee on Economic Inclusion (ComE-IN); Notice of Meeting

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of open meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, notice is hereby given of a meeting of the FDIC Advisory Committee on Economic Inclusion, which will be held in Washington, DC. The Advisory Committee will provide advice and recommendations on initiatives to expand access to banking services by underserved populations.

DATES: Thursday, February 5, 2009, from 8:30 a.m. to 4 p.m.

ADDRESSES: The meeting will be held in the FDIC Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Committee Management Officer of the FDIC, at (202) 898–7043.

SUPPLEMENTARY INFORMATION:

Agenda: The agenda will be focused on identifying and amplifying effective strategies for moving underserved households into the financial mainstream. The agenda may be subject to change. Any changes to the agenda will be announced at the beginning of the meeting.

Type of Meeting: The meeting will be open to the public, limited only by the space available on a first-come, first-served basis. For security reasons, members of the public will be subject to security screening procedures and must present a valid photo identification to enter the building. The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (703) 562–6067 (Voice or TTY) at least two days before the meeting to make necessary arrangements. Written statements may be filed with the committee before or after the meeting.

This ComE-IN meeting will be Webcast live via the Internet at: *http://www.vodium.com/goto/fdic/advisorycommittee.asp*. This service is free and available to anyone with the following systems requirements: *http://www.vodium.com/home/sysreq.html*. Adobe Flash Player is required to view these presentations. The latest version of Adobe Flash Player can be downloaded at *http://www.adobe.com/shockwave/download/download.cgi?P1_Prod_Version=ShockwaveFlash*. Installation questions or troubleshooting help can be found at the same link. For optimal viewing, a high speed Internet connection is recommended. The ComE-IN meeting videos are made available on-demand approximately two weeks after the event.

Dated: January 14, 2009.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Committee Management Officer.

[FR Doc. E9–1023 Filed 1–16–09; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

[Notice 2009–1]

Filing Dates for the Illinois Special Election in the 5th Congressional District

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: Illinois has scheduled elections on March 3, 2009, and April 7, 2009, to fill the U.S. House of Representatives seat in the Fifth Congressional District vacated by Representative Rahm Emanuel.

Committees required to file reports in connection with the Special Primary Election on March 3, 2009, shall file a 12-day Pre-Primary Report. Committees required to file reports in connection with both the Special Primary and Special General Election on April 7, 2009, shall file a 12-day Pre-Primary Report, a 12-day Pre-General Report, and a 30-day Post-General Report.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin R. Salley, Information Division, 999 E Street, NW., Washington, DC 20463; *Telephone:* (202) 694–1100; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Principal Campaign Committees

All principal campaign committees of candidates who participate in the Illinois Special Primary and Special General Elections shall file a 12-day Pre-Primary Report on February 19, 2009; a 12-day Pre-General Report on March 26, 2009; and a 30-day Post-General Report on May 7, 2009. (*See* chart below for the closing date for each report).

All principal campaign committees of candidates participating *only* in the Special Primary Election shall file a 12-day Pre-Primary Report on February 19, 2009. (*See* chart below for the closing date for each report).

Unauthorized Committees (PACs and Party Committees)

Political committees filing on a semiannual basis in 2009 are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the Illinois Special Primary or Special General Elections by the close of books for the applicable report(s). (See chart below for the closing date for each report).

Committees filing monthly that support candidates in the Illinois Special Primary or Special General Elections should continue to file according to the monthly reporting schedule.

Additional disclosure information in connection with the Illinois Special Election may be found on the FEC Web site at *http://www.fec.gov/info/report_dates.shtml*.

Calendar of Reporting Dates for Illinois Special Election

Report	Close of books [1]	Reg./Cert. & overnight mailing deadline	Filing deadline
QUARTERLY FILING COMMITTEES INVOLVED IN *ONLY* THE SPECIAL PRIMARY (03/03/09) MUST FILE:			
Pre-Primary	02/11/09	[2] 02/16/09	02/19/09
April Quarterly	03/31/09	04/15/09	04/15/09
SEMIANNUAL FILING COMMITTEES INVOLVED IN *ONLY* THE SPECIAL PRIMARY (03/03/09) MUST FILE:			
Pre-Primary	02/11/09	02/16/09 [2]	02/19/09
Mid-Year	06/30/09	07/31/09	07/31/09
QUARTERLY FILING COMMITTEES INVOLVED IN BOTH THE SPECIAL PRIMARY (03/03/09) AND SPECIAL GENERAL (04/07/09) MUST FILE:			
Pre-Primary	02/11/09	[2] 02/16/09	02/19/09
Pre-General	03/18/09	03/23/09	03/26/09
Post-General	04/27/09	05/07/09	05/07/09
July Quarterly	06/30/09	07/15/09	07/15/09
SEMIANNUAL FILING COMMITTEES INVOLVED IN BOTH THE SPECIAL PRIMARY (03/03/09) AND SPECIAL GENERAL (04/07/09) MUST FILE:			
Pre-Primary	02/11/09	[2] 02/16/09	02/19/09
Pre-General	03/18/09	03/23/09	03/26/09
Post-General	04/27/09	05/07/09	05/07/09
Mid-Year	06/30/09	07/31/09	07/31/09
QUARTERLY FILING COMMITTEES INVOLVED IN *ONLY* THE SPECIAL GENERAL (04/07/09) MUST FILE:			
Pre-General	03/18/09	03/23/09	03/26/09
Post-General	04/27/09	05/07/09	05/07/09
July Quarterly	06/30/09	07/15/09	07/15/09
SEMIANNUAL FILING COMMITTEES INVOLVED IN *ONLY* THE SPECIAL GENERAL (04/07/09) MUST FILE:			
Pre-General	03/18/09	03/23/09	03/26/09
Post-General	04/27/09	05/07/09	05/07/09
Mid-Year	06/30/09	07/31/09	07/31/09

[1] The reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered up through the close of books for the first report due.

[2] Notice that the registered/certified & overnight mailing deadline falls on a weekend or federal holiday. The report should be postmarked on or before that date.

Dated: January 12, 2009.

ON BEHALF OF THE COMMISSION.

Steven T. Walther,

Chairman, Federal Election Commission.

[FR Doc. E9–989 Filed 1–16–09; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 4, 2009.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. John B. Jones and Emma D. Jones, Anna, Texas; John G. Jones and Wendy D. Jones, McKinney, Texas; and Jennifer Jones Perkins and Michael W. Perkins, Carrollton, Texas, acting in concert, to acquire voting shares of The Community Group, Inc., and thereby indirectly acquire voting shares of United Community Bank, N.A., both of Highland Village, Texas.

B. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. Dorothy Margaret Daly, Oak Brook, Illinois, individually and as executor of the estate of Denis J. Daly, Sr., or trustee of various trusts, to retain voting shares of Trans Pacific Bancorp, Inc., and thereby indirectly retain voting shares of Trans Pacific National Bank, both of San Francisco, California.

Board of Governors of the Federal Reserve System, January 14, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–1086 Filed 1–16–09; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–00XX]

Office of Citizen Services; Information Collection; Online Citizen Survey

AGENCY: Office of Citizen Services (OCS), General Services Administration (GSA).

ACTION: Notice of request for comments regarding a new OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement regarding an Online Citizen Survey.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate and based on valid assumptions and methodology; and ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: March 23, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Trebon, Program Analyst, GSA OCS, 1800 F Street, NW., G 132, Washington, DC 20405, (202) 501–1802, or *Karen.trebon@gsa.gov.* Please cite OMB Control No. 3090–XXXX, Online Citizen Survey.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Regulatory Secretariat (VPR), General Services Administration, Room 4041, 1800 F Street, NW., Washington, DC 20405 and a copy to Ms. Karen Trebon, Program Analyst, GSA OCS, 1800 F Street, NW., G 132, Washington, DC 20405. Please cite OMB Control No. 3090–00XX, Online Citizen Survey, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

GSA's OCS currently provides service to citizens through the Internet at USA.gov, GobiernoUSA.gov and a family of consumer Web sites, through the phone at the National Contact Center 1–800-FED-INFO (1–800–333–4636), and through the distribution of print publications from the distribution center in Pueblo, CO. In addition, OCS communicates with the public through e-mail, an online blog at *http://www.govgab.gov* and online personal assistance.

Additional market research is needed on a continual basis to develop customer service strategies and determine the future directions for our multi-channel efforts at OCS and for those customer service activities in other government agencies. This is especially true in the current Web 2.0 environment where citizens, particularly in Generation X and Y, have different communication and collaboration styles and needs. Since citizens expect their government experience to be on par with those they have with the private sector, it is crucial to determine how best the government can serve citizens in a world with rapidly changing technologies. Surveys will include questions regarding communication channel preferences for how citizens contact government, service level expectations and interests in social media and Web 2.0 applications. OCS will share this information and collaborate with all government agencies that are working to improve citizen engagement and customer service.

OCS will work with a market research vendor that has an established panel of Americans who have agreed to take surveys for various clients. Therefore, OCS will not be collecting or storing any personally identifiable information. The vendor will also provide support in: (a) The development of questions; (b) building, programming and disseminating the online surveys; and (c) analyzing the responses. OCS will work with the contractor to ensure that the citizens recruited and surveyed represent a statistically valid demographic cross section of the American public.

B. Annual Reporting Burden

Respondents: 3,500.
Responses per respondent: .25.
Annual Responses: 14,000.
Hours per response: .33.
Total Burden hours: 4,620.
Obtaining copies of proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 3090–00XX, Online Citizen Survey, in all correspondence.

Dated: January 12, 2009.

Casey Coleman,

Chief Information Officer.

[FR Doc. E9–1060 Filed 1–16–09; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology (ONC), HHS; Notice of Availability: Secretarial Recognition of Certain Healthcare Information Technology Standards Panel (HITSP) Interoperability Specifications and the Standards They Contain as Interoperability Standards for Health Information Technology

AGENCY: Office of the National Coordinator for Health Information Technology (ONC), HHS.

Authority: Executive Order 13335 (''Incentives for the Use of Health Information Technology and Establishing the Position of the National Health Information Technology Coordinator''), Executive Order 13410 (''Promoting Quality and Efficient Health Care in Federal Government Administered or Sponsored Health Care Programs''), Public Law 110–161 (''Consolidated Appropriations Act, 2008''), continued by Public Law 110–329 (''Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009''), 42 U.S.C. 1395nn(b)(4), 42 U.S.C. 1302(a), and 42 CFR 411.357(w).

SUMMARY: By publication of this document, we are informing the public of the Secretary's recognition of certain Healthcare Information Technology Standards Panel (HITSP) ''HITSP Interoperability Specifications'' and the standards they contain as ''Interoperability Standards'' for health information technology. The Secretary accepted these Interoperability Standards in January of 2008, and hereby recognizes them in updated versions one year later, effective January 16, 2009. The lists of recognized Interoperability Standards are provided below and are available at *http://www.hitsp.org;* click on the ''View by Status'' tab.

SUPPLEMENTARY INFORMATION: The American Health Information

Community (the ''Community'') was a Federal advisory committee that was formed in 2005 to advise the Secretary concerning efforts to develop information technology standards and achieve interoperability of health IT, and to serve as a forum for a broad range of stakeholders to provide input on achieving widespread adoption of interoperable health IT. The final meeting of the Community was held on November 12, 2008. A successor to the Community has been established in the private sector, and it held its first Board meeting on November 13, 2008.

The Healthcare Information Technology Standards Panel (HITSP) was created in 2005 to serve as a cooperative partnership between the public and private sectors for the purpose of harmonizing and integrating standards that will meet clinical and business needs for sharing information among organizations and systems. Under a contract with the Department of Health and Human Services, the American National Standards Institute (ANSI) established HITSP following a neutral and inclusive governance model. The HITSP standards harmonization process was built by vendors, standards development organizations (SDOs), consumers, payers, providers, and other sectors of the industry. HITSP is a multi-stakeholder organization involving more than 600 different healthcare industry organizations and technical experts whose activities to date on these HITSP Interoperability Specifications represent more than 23,000 volunteer hours of effort.

The HITSP Interoperability Specifications are developed through a voluntary consensus-based process as a means to advance the national agenda for secure interoperable health information systems. The HITSP Interoperability Specifications are based on priorities previously recommended by the Community to the Secretary, who in turn considered the Community's advice and directed the advancement of Use Cases to further the priorities he adopted. A Use Case provides a description of the activity of persons or things (actors), a sequence of their actions, and technical specifications for systems and technologies involved when the actors engage in responding or participating in a priority area or scenario.

The HITSP Harmonization Framework defines a set of artifacts, known as ''Constructs,'' which specify how to integrate and constrain designated standards to meet the business needs of a Use Case; and determines how best to adopt and use emerging standards and to harmonize overlapping standards. A brief description of the Construct types and the relationships among them follows. Additional information on the HITSP Harmonization Framework may be found at *http://www.hitsp.org.*

HITSP Construct types, in decreasing breadth of scope, include ''Interoperability Specifications,'' ''Transaction Packages,'' ''Transactions,'' and ''Components.'' Interoperability Specifications describe the integration of all other Constructs used to meet the business needs of a Use Case. Transaction Packages contain a logical grouping of Transactions. Transactions provide a logical grouping of actions that use Components and/or composite standards to realize the actions. Components are logical groupings of base standards that work together, such as message and terminology standards. Specific rules exist for each type of Construct, defining what the Construct type can be used for and how the Construct types can be nested. A Construct may contain other Constructs or Construct types that are less inclusive in scope. A Construct may constrain another Construct or standard that it contains; conversely, a Construct may be constrained by a Construct that contains it. Each Construct is a candidate for reuse and repurposing, if a new set of requirements and context can be fulfilled by the Construct without impacting existing uses of the Construct. Each Construct is uniquely identified and version controlled.

Named Standards are major terminologies, technologies, and messaging formats referenced and/or incorporated in the HITSP Interoperability Specifications, and fall into three categories: Selected Standards, Informative Reference Standards, and Federally Adopted Standards. Selected Standards are those Named Standards that HITSP has determined to be necessary for interoperability and to be used to meet information exchange requirements of associated Constructs. They are ''selected'' for use in a Construct within the context of the specific Use Case requirements, and their selection for one particular Construct does not necessarily reflect selection in other contexts. Informative Reference Standards are Named Standards that provide additional background information or guidance, and are not required for interoperability or to implement the referencing Construct. Frequently, Informative Reference Standards simply provide illustrative examples that are intended to assist entities in implementing relevant HITSP Interoperability Specifications. The last category of Named Standards, Federally Adopted Standards, are those standards that HITSP has identified in Constructs, which have been adopted by federal regulation or are otherwise required by federal law. All ''HITSP Interoperability Specifications'' and their components include language that defers to Federally Adopted Standards, wherever they apply.

The term ''HITSP Interoperability Specifications'' is used here both broadly and inclusively to refer to the specific Use-Case-derived Interoperability Specifications, the Constructs, implementation guidance, and the Selected Standards. Informative Reference Standards are intended solely to provide greater clarity and guidance for implementing the HITSP Interoperability Specifications. Similarly, HITSP Technical Notes, which are used to give additional guidance and direction to the HITSP analysis process as well as background information for implementers, are intended solely for guidance.

The HITSP presented to the Community the following: Three updated sets of HITSP Interoperability Specifications and three sets of new HITSP Interoperability Specifications, along with all of the Selected Standards and Constructs associated with each, as approved by the HITSP and described in the following paragraphs. The Community subsequently recommended that the updated and new HITSP Interoperability Specifications, which include Constructs, and Named Standards, initially be accepted by the Secretary as ''Interoperability Standards'' as of January 2008 and then be recognized by the Secretary one year later in January 2009. HITSP indicated that it would, in conjunction with the public and private sectors that will be implementing these standards, be refining the components over the course of this year, and that any refinements would consist solely of changes that are minor and of a technical nature. The Secretary has since considered and adopted the Community's recommendations, and in turn, accepted the HITSP Interoperability Specifications in January 2008 while indicating his intention to recognize them one year later, in January 2009, presuming that any changes would be minimal, reflecting public comment and/or of a minor and technical nature.

The updated HITSP Interoperability Specification recommended for acceptance in January 2008 and recognition in January 2009 is IS03 Consumer Empowerment and Access to Clinical Information via Networks (v3).

The new HITSP Interoperability Specifications recommended for acceptance and recognition include IS04 Emergency Responder Electronic Health Record (v1), IS05 Consumer Empowerment and Access to Clinical Information via Portable Media (v1), and IS06 Quality (v1).

The IS04 Emergency Responder Electronic Health Record (v1) and related standards address the deployment of standardized, widely available and secure solutions for accessing and exchanging current and historical patient-specific health information in both small- and large-scale emergency care incidents. Both of the Consumer Empowerment Interoperability Specifications and related standards address the support of consumer interactions to reconcile identifiers and access, view, and share registration summaries and clinical information with personal health records; they are distinguished by the modes of exchange, via networks (IS03 v3) or portable media (IS05 v1). The IS06 Quality (v1) and related standards enable interoperable, electronic quality monitoring and improvement.

A series of Constructs referenced in the HITSP Security and Privacy Technical Note (TN900) supports existing and developing polices for the security of electronic health information by providing an initial infrastructure of standards and implementation guidance that can be used with a variety of different methodologies and approaches that are currently employed. These data and technical standards do not define policies, but provide an infrastructure that can support policy implementation. The Constructs referenced in TN900 have been integrated into all of the accepted HITSP Interoperability Specifications, as well as into all existing Interoperability Standards, and will continue to be reused for future use cases. The updated Interoperability Standards previously recognized in January 2008 now incorporate the security and privacy constructs from TN900. These include IS01 Electronic Health Records Laboratory Results Reporting (v3) and IS02 Biosurveillance (v3), as well as the previously mentioned IS03 Consumer Empowerment and Access to Clinical Information via Networks (v3).

The Interoperability Standards associated with the HITSP Biosurveillance Interoperability Specification (HITSP v2 2007 IS02), or ''BIO,'' were recognized by the Secretary in December 2007. The Hospital Availability Exchange Standard (HAVE), which was referenced in the HITSP Interoperability Specification, was not ready for secretarial recognition in June 2008 as anticipated, but since its content has been previously included in the accepted HITSP Interoperability Specifications and it has achieved final ballot by the Standards Development Organization, it is being recognized.

Over the course of the year between ''acceptance'' and ''recognition,'' all refinements to the HITSP Interoperability Specifications have been solely of a minor and technical nature. In addition, further mappings of existing policies were conducted to ensure that there were no issues or conflicts.

Inserted below are lists of the HITSP Interoperability Specifications, including the Constructs and Selected Standards referenced by each Construct, which the Secretary is recognizing, effective January 16, 2009. For the newly recognized Interoperability Standards (i.e., IS04, IS05, and IS06), all Constructs and Selected Standards are listed. For the previously recognized Interoperability Standards that have been updated, only the minor, technical changes are listed for clarity and convenience. The full text of the HITSP Interoperability Specifications, Constructs, and references to the Selected Standards, along with the related Use Cases can be found at *http://www.hitsp.org.*

IS01—Electronic Health Records Laboratory Results Reporting V3

Below is a list of the HITSP constructs that have been added as referenced by this HITSP Interoperability Specification since previously recognized.

- HITSP/C19 Entity Identity Assertion Component (V1)
- HITSP/T14 Send Laboratory Result Message Transaction (V2)
- HITSP/T15 Collect and Communicate Security Audit Trail Transaction (V1)
- HITSP/T16 Consistent Time Transaction (V1)
- HITSP/T17 Secured Communication Channel Transaction (V1)
- HITSP/TP20 Access Control Transaction Package (V1)
- HITSP/TP30 Manage Consent Directives Transaction Package (V1)

Below is a list of Selected Standards that have been added for this HITSP Interoperability Specification since previously recognized.

- Health Level Seven (HL7) U.S. Realm—Interoperability Specification: Lab Result Message to EHR (ORU–R01) (HL7 Version 2.5.1) September, 2007
- Health Level Seven (HL7) V3 RBAC, R1–2008, HL7 Version 3 Standard: Role Based Access Control (RBAC) Healthcare Permissions Catalog, Release 1, February 2008
- Health Level Seven (HL7) Version 2.3.1
- Health Level Seven (HL7) Version 2.5.1
- Health Level Seven (HL7) Version 3.0 Privacy Consent related specifications RCMR_RM010001—Data Consent
- Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Volume 2 Supplement 2007–2008 Cross-Enterprise User Assertion (XUA)
- Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Revision 4.0, Audit Trail and Node Authentication (ATNA) Integration Profile
- Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Revision 4.0, Consistent Time (CT) Integration Profile
- Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Revision 4.0, Patient Demographics Query (PDQ) Integration Profile
- Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (TF) Supplement—ITI–25 Notification of Document Availability (NAV) Jun 28, 2005
- Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Revision 4.0, Section 10 Cross-Enterprise Document Sharing (XDS.a)
- Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Volume 2 Supplement 2007–2008 Cross-Enterprise Document Sharing-B (XDS.b)
- Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Supplement 2007–2008 Basic Patient Privacy Consents (BPPC)—Trial Implementation
- Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework Supplement 2008–2009, Pediatric Demographics, Draft for Trial Implementation (August 22, 2008)
- Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Revision 4.0, Patient Identifier Cross-Referencing Integration Profile (PIX)
- Integrating the Healthcare Enterprise (IHE) Laboratory Technical Framework Volume 3 (LAB TF–3) Document-based Transactions, Revision

2.0—For Trial Implementation, August 16, 2007

- Internet Engineering Task Force (IETF) Hypertext Transfer Protocol (HTTP) over Transport Layer Security (TLS) (RFC) # 2818, May 2000
- Internet Engineering Task Force (IETF) Network Time Protocol (Version 3) Specification, Implementation and Analysis, ''Request for Comment'' (RFC) # 1305, March, 1992
- Internet Engineering Task Force (IETF) Simple Network Time Protocol (SNTP) Version 4, ''Request for Comment'' (RFC) # 2030, October, 1996
- Organization for the Advancement of Structured Information Standards (OASIS) Security Assertion Markup Language (SAML) v2.0 OASIS Standard; ITU–T X.1141
- Organization for the Advancement of Structured Information Standards (OASIS) WS-Federation Web Services Federation Language (WS-Federation), Version 1.1, December 2006
- Organization for the Advancement of Structured Information Standards (OASIS) WS-Trust Version 1.3, March 2007
- Organization for the Advancement of Structured Information Standards (OASIS) eXtensible Access Control Markup Language (XACML), ITU–T Recommendation X.1142, February 2005

Below is a list of standards that have been removed, re-categorized, or expanded on for this HITSP Interoperability Specification since previously recognized.

- Clinical Laboratory Improvement Amendments (CLIA) of 1988
  - Designated as Federally Adopted Standards
- Health Insurance Portability and Accountability Act (HIPAA)—Administrative Simplification
  - Designated as Federally Adopted Standards
- Hypertext Transfer Protocol Secure (HTTPS) 443/tcp
  - Removed from Interoperability Specification
- Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Revision 3.0
  - Has been expanded upon to add more detail/clarity
- Health Level Seven (HL7) Version 2.5/2.5.1
  - Has been expanded upon to add more detail/clarity
- Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Revision 4.0
  - Has been expanded upon to add more detail/clarity
- Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (TF) Supplement
  - Has been expanded upon to add more detail/clarity
- Integrating the Healthcare Enterprise (IHE) Laboratory Technical Framework Supplement 2006–2007 Revision 1.0
  - Removed from Interoperability Specification
- International Organization for Standardization (ISO) Electronic business eXtensible Markup Language (ebXML), Technical Specification #15000—Part 4: Registry services specification (ebRS), May, 2004
  - Removed from Interoperability Specification

IS02—Biosurveillance V3

Below is a list of the HITSP constructs that have been added as referenced by this HITSP Interoperability Specification since previously recognized.

- HITSP/C19 Entity Identity Assertion Component (V1)
- HITSP/C26 Nonrepudiation of Origin Component (V1)
- HITSP/T15 Collect and Communicate Security Audit Trail Transaction (V1)
- HITSP/T16 Consistent Time Transaction (V1)
- HITSP/T17 Secured Communication Channel Transaction (V1)
- HITSP/TP20 Access Control Transaction Package (V1)
- HITSP/TP30 Manage Consent Directives Transaction Package (V1)

Below is a list of Selected Standards that have been added for this HITSP Interoperability Specification since previously recognized.

- American Society for Testing and Materials (ASTM) Standard Guide for Electronic Authentication of Health Care Information: # E1762–95(2003)
- European Telecommunications Standards Institute (ETSI) Technical Specification TS 101 903: XML Advanced Electronic Signatures (XadES)
- Health Level Seven (HL7) U.S. Realm—Interoperability Specification: Lab Result Message to EHR (ORU∧R01) (HL7 Version 2.5.1) September, 2007
- Health Level Seven (HL7) V3 RBAC, R1–2008, HL7 Version 3 Standard: Role Based Access Control (RBAC) Healthcare Permissions Catalog, Release 1, February 2008
- Health Level Seven (HL7) Version 2.3.1
- Health Level Seven (HL7) Version 2.5.1
- Health Level Seven (HL7) Version 3.0 Privacy Consent related specifications RCMR_RM010001—Data Consent
- Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Revision 4.0, Audit Trail and Node Authentication (ATNA) Integration Profile
- Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Revision 4.0, Consistent Time (CT) Integration Profile
- Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Revision 4.0, Section 10 Cross-Enterprise Document Sharing (XDS.a)
- Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (TF) Supplement—ITI–25 Notification of Document Availability (NAV) Jun 28, 2005
- Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Volume 2 Supplement 2007–2008 Cross-Enterprise User Assertion (XUA)
- Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Volume 2 Supplement 2007–2008 Cross-Enterprise Document Sharing-B (XDS.b)
- Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Supplement 2007–2008 Basic Patient Privacy Consents (BPPC)—Trial Implementation
- Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (TF) Supplement Volume 3—Document Digital Signature (DSG) Content Profile
- Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (TF) 2007–2008 Supplement, Retrieve Form for Data Capture (RFD)
- Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework Supplement 2008–2009, Pediatric Demographics, Draft for Trial Implementation (August 22, 2008)
- Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Revision 4.0, Patient Identifier Cross-Referencing Integration Profile (PIX)
- Integrating the Healthcare Enterprise (IHE) Laboratory Technical Framework Volume 3 (LAB TF–3) Document-based Transactions, Revision 2.0—For Trial Implementation, August 16, 2007
- Integrating the Healthcare Enterprise (IHE) Patient Care

Coordination (PCC), Revision 3.0, 2007–2008, Cross-Enterprise Sharing of Medical Summaries (XDS-MS) Integration Profile

- Integrating the Healthcare Enterprise (IHE) Radiology Technical Framework Revision 8.0
- Internet Engineering Task Force (IETF) Network Time Protocol (Version 3) Specification, Implementation and Analysis, ''Request for Comment'' (RFC) #1305, March, 1992
- Internet Engineering Task Force (IETF) Simple Network Time Protocol (SNTP) Version 4, ''Request for Comment'' (RFC) #2030, October, 1996
- Organization for the Advancement of Structured Information Standards (OASIS) Security Assertion Markup Language (SAML) v2.0 OASIS Standard; ITU–T X.1141
- Organization for the Advancement of Structured Information Standards (OASIS) WS-Federation Web Services Federation Language (WS-Federation), Version 1.1, December 2006
- Organization for the Advancement of Structured Information Standards (OASIS) WS-Trust Version 1.3, March 2007
- Organization for the Advancement of Structured Information Standards (OASIS) eXtensible Access Control Markup Language (XACML), ITU–T Recommendation X.1142, February 2005

Below is a list of standards that have been removed, re-categorized, or expanded on for this HITSP Interoperability Specification since previously recognized.

- Clinical Care Classification (CCC) Version 2.0 [formerly known as the Home Healthcare Classification (HHCC) System]
  - Removed from Interoperability Specification
- Clinical Laboratory Improvement Amendments (CLIA) of 1988
  - Designated as Federally Adopted Standards
- Digital Imaging and Communications in Medicine (DICOM) Attribute Level Confidentiality Supplement: # 55
  - Removed from Interoperability Specification
- Health Insurance Portability and Accountability Act (HIPAA)—Administrative Simplification
  - Designated as Federally Adopted Standards
- Health Level Seven (HL7) Version 2.5/2.5.1
  - Has been expanded upon to add more detail/clarity
- Health Level Seven (HL7) Version 3.0
  - Has been expanded upon to add more detail/clarity
- Healthcare Common Procedure Coding System (HCPCS) Level II Code Set
  - Removed from Interoperability Specification
- Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (TF) Supplement
  - Has been expanded upon to add more detail/clarity
- Integrating the Healthcare Enterprise (IHE) Laboratory Technical Framework Supplement 2006–2007 Revision 1.0
  - Removed from Interoperability Specification
- Integrating the Healthcare Enterprise (IHE) Patient Care Coordination (PCC) Technical Framework Revision 3.0
  - Has been expanded upon to add more detail/clarity
- Integrating the Healthcare Enterprise (IHE) Radiology Technical Framework Revision 7.0
  - Has been expanded upon to add more detail/clarity
- International Organization for Standardization (ISO) Electronic business eXtensible Markup Language (ebXML), Technical Specification # 15000—Part 4: Registry services specification (ebRS), May 2004
  - Removed from Interoperability Specification
- National Library of Medicine (NLM) Unified Medical Language System (UMLS) RxNorm
  - Removed from Interoperability Specification
- Organization for the Advancement of Structured Information Standards (OASIS) Emergency Data Exchange Language (EDXL) Distribution Element (DE)
  - Removed from Interoperability Specification

IS03—Consumer Empowerment and Access to Clinical Information via Networks V3

Below is a list of the HITSP constructs that have been added as referenced by this HITSP Interoperability Specification since previously recognized.

- HITSP/C19 Entity Identity Assertion Component (V1)
- HITSP/C26 Nonrepudiation of Origin Component (V1)
- HITSP/C35 Lab Result Terminology Component (V2)
- HITSP/C37 Lab Report Document Component (V2)
- HITSP/T15 Collect and Communicate Security Audit Trail Transaction (V1)
- HITSP/T16 Consistent Time Transaction (V1)
- HITSP/T17 Secured Communication Channel Transaction (V1)
- HITSP/TP20 Access Control Transaction Package (V1)
- HITSP/TP30 Manage Consent Directives Transaction Package (V1)

Below is a list of Selected Standards that have been added for this HITSP Interoperability Specification since previously recognized.

- American Society for Testing and Materials (ASTM) Standard Guide for Electronic Authentication of Health Care Information: # E1762–95 (2003)
- European Telecommunications Standards Institute (ETSI) Technical Specification TS 101 903: XML Advanced Electronic Signatures (XadES)
- Health Level Seven (HL7) V3 RBAC, R1–2008, HL7 Version 3 Standard: Role Based Access Control (RBAC) Healthcare Permissions Catalog, Release 1, February 2008
- Health Level Seven (HL7) Version 2.3.1
- Health Level Seven (HL7) Version 2.5.1
- Health Level Seven (HL7) Version 3.0 Privacy Consent related specifications RCMR_RM010001—Data Consent
- Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Revision 4.0, Section 10 Cross-Enterprise Document Sharing (XDS.a)
- Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Volume 2 Supplement 2007–2008 Cross-Enterprise Document Sharing-B (XDS.b)
- Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Revision 4.0, Patient Identifier Cross-Referencing Integration Profile (PIX)
- Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Revision 4.0, Audit Trail and Node Authentication (ATNA) Integration Profile
- Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Revision 4.0, Consistent Time (CT) Integration Profile
- Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Supplement 2007–2008 Basic Patient Privacy Consents (BPPC)—Trial Implementation
- Integrating the Healthcare Enterprise (IHE) IT Infrastructure

Technical Framework (ITI–TF) Volume 2 Supplement 2007–2008 Cross-Enterprise User Assertion (XUA)

- Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (TF) Supplement Volume 3—Document Digital Signature (DSG) Content Profile
- Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework Supplement 2008–2009, Pediatric Demographics, Draft for Trial Implementation (August 22, 2008)
- Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Revision 4.0, Patient Demographics Query (PDQ) Integration Profile
- Integrating the Healthcare Enterprise (IHE) Laboratory Technical Framework Volume 3 (LAB TF–3) Document-based Transactions, Revision 2.0—For Trial Implementation, August 16, 2007
- International Health Terminology Standards Development Organisation (IHTSDO) Systematized Nomenclature of Medicine Clinical Terms (SNOMED CT®)
- Internet Engineering Task Force (IETF) Network Time Protocol (Version 3) Specification, Implementation and Analysis, ''Request for Comment'' (RFC) # 1305, March, 1992
- Internet Engineering Task Force (IETF) Simple Network Time Protocol (SNTP) Version 4, ''Request for Comment'' (RFC) # 2030, October, 1996
- Organization for the Advancement of Structured Information Standards (OASIS) Security Assertion Markup Language (SAML) v2.0 OASIS Standard; ITU–T X.1141
- Organization for the Advancement of Structured Information Standards (OASIS) WS-Federation Web Services Federation Language (WS-Federation), Version 1.1, December 2006
- Organization for the Advancement of Structured Information Standards (OASIS) WS-Trust Version 1.3, March 2007
- Organization for the Advancement of Structured Information Standards (OASIS) eXtensible Access Control Markup Language (XACML), ITU–T Recommendation X.1142, February 2005
- Unified Code for Units of Measure (UCUM)

Below is a list of standards that have been removed, re-categorized, or expanded on for this HITSP Interoperability Specification since previously recognized.

- Accredited Standards Committee (ASC) X12 Insurance Subcommittee (X12N) Implementation Guides Version 004010 plus Addenda 004010A1
  - Removed from Interoperability Specification
- Accredited Standards Committee (ASC) X12 Standards Release 004010
  - Removed from Interoperability Specification
- American Society for Testing and Materials (ASTM) Standard Specification for Coded Values Used in the Electronic Health Record: # E1633–02
  - Removed from Interoperability Specification
- American Society for Testing and Materials (ASTM) Standard Specification for Continuity of Care Record (CCR): # E2369–05
  - Removed from Interoperability Specification
- CDC Race and Ethnicity Code Sets
  - Removed from Interoperability Specification
- Council for Affordable Quality Healthcare (CAQH) Committee on Operating Rules for Information Exchange (CORE) Phase I Operating Rules
  - Designated as Informative Reference
- Federal Medication Terminologies
  - Removed from Interoperability Specification and replaced by specific named terminologies
- Health Level Seven (HL7) HER System Functional Model Draft Standard for Trial use (DSTU)
  - Removed from Interoperability Specification
- Health Level Seven (HL7) Version 2.5/2.5.1
  - Has been expanded upon to add more detail/clarity
- Health Level Seven (HL7) Version 3.0
  - Has been expanded upon to add more detail/clarity and listed as Informative Reference
- U.S. National Uniform Claims Committee Health Care Provider Taxonomy Code Set
  - Removed from Interoperability Specification
- International Organization for Standardization (ISO) Electronic business eXtensible Markup Language (ebXML), Technical Specification # 15000—Part 4: Registry services specification (ebRS), May, 2004
  - Removed from Interoperability Specification
- Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Revision 3.0
  - Removed from Interoperability Specification
- Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Revision 4.0
  - Has been expanded upon to add more detail/clarity and listed as Informative Reference
- Integrating the Healthcare Enterprise (IHE) Patient Care Coordination (PCC) Technical Framework Revision 3.0
  - Removed from Interoperability Specification
- National Council for Prescription Drug Programs (NCPDP) SCRIPT Standard Version 8.1
  - Removed from Interoperability Specification
- Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity
  - Designated as Informative Reference

IS04—Emergency Responder Electronic Health Record V1

Below is a list of the HITSP constructs used by this HITSP Interoperability Specification.

- HITSP/C19 Entity Identity Assertion Component (V1)
- HITSP/C28 Emergency Care Summary Document Using IHE Emergency Department Encounter Summary (EDES) Component (V1)
- HITSP/C32 Summary Documents Using HL7 Continuity of Care Document (CCD) Component (V2)
- HITSP/C39 Encounter Message Component (V2)
- HITSP/C48 Encounter Document Using IHE Medical Summary (XDS–MS) Component (V2)
- HITSP/T15 Collect and Communicate Security Audit Trail Transaction (V1)
- HITSP/T16 Consistent Time Transaction (V1)
- HITSP/T17 Secured Communication Channel Transaction (V1)
- HITSP/T23 Patient Demographics Query Transaction (V2)
- HITSP/TP13 Manage Sharing of Documents Transaction Package (V2)
- HITSP/TP20 Access Control Transaction Package (V1)
- HITSP/TP22 Patient ID Cross-Referencing Transaction Package (V2)
- HITSP/TP30 Manage Consent Directives Transaction Package (V1)

Below is a list of Selected Standards for this HITSP Interoperability Specification.

- Federal Information Processing Standards (FIPS) Codes for the Identification of the States, the District of Columbia and the Outlying Areas of the United States, and Associated Areas Publication # 5–2, May 1987
- Health Level Seven (HL7) Implementation Guide: CDA Release 2—

Continuity of Care Document (CCD), April 01, 2007

• Health Level Seven (HL7) V3 RBAC, R1–2008, HL7 Version 3 Standard: Role Based Access Control (RBAC) Healthcare Permissions Catalog, Release 1, February 2008

• Health Level Seven (HL7) Version 2.3.1

• Health Level Seven (HL7) Version 2.5

• Health Level Seven (HL7) Version 3.0 Clinical Document Architecture (CDA/CDA R2)

• Health Level Seven (HL7) Version 3.0 Privacy Consent related specifications RCMR_RM010001—Data Consent

• Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Revision 4.0, Audit Trail and Node Authentication (ATNA) Integration Profile

• Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Revision 4.0, Consistent Time (CT) Integration Profile

• Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Volume 2 Supplement 2007–2008 Cross-Enterprise User Assertion (XUA)

• Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Revision 4.0, Patient Demographics Query (PDQ) Integration Profile

• Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Revision 4.0, Section 10 Cross-Enterprise Document Sharing (XDS.a)

• Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Volume 2 Supplement 2007–2008 Cross-Enterprise Document Sharing-B (XDS.b)

• Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Revision 4.0—Registry Stored Query Transaction for XDS Profile Supplement [ITI–18]

• Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Revision 4.0 XCA Supplement

• Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Supplement 2007–2008 Basic Patient Privacy Consents (BPPC)—Trial Implementation

• Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework Supplement 2008–2009, Pediatric Demographics, Draft for Trial Implementation (August 22, 2008)

• Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Revision 4.0, Patient Identifier Cross-Referencing Integration Profile (PIX)

• Integrating the Healthcare Enterprise (IHE) Patient Care Coordination (PCC)—Emergency Department Encounter Summary (EDES), Technical Framework Supplement, Volume I, Revision 3.0, 2007–2008.

• Integrating the Healthcare Enterprise (IHE) Patient Care Coordination (PCC), Revision 3.0, 2007–2008, Cross-Enterprise Sharing of Medical Summaries (XDS–MS) Integration Profile

• International Classification of Diseases, 10th Revision, Procedure Coding System (ICD–10–PCS)

• International Classification of Diseases, 10th Revision, Related Health Problems (ICD–10–CM)

• International Classification of Diseases, 9th Revision, Clinical Modifications (ICD–9–CM)

• International Health Terminology Standards Development Organisation (IHTSDO) Systematized Nomenclature of Medicine Clinical Terms (SNOMED CT®)

• Internet Engineering Task Force (IETF) Network Time Protocol (Version 3) Specification, Implementation and Analysis, ''Request for Comment'' (RFC) # 1305, March, 1992

• Internet Engineering Task Force (IETF) Simple Network Time Protocol (SNTP) Version 4, ''Request for Comment'' (RFC) # 2030, October, 1996

• Logical Observation Identifiers Names and Codes (LOINC®)

• National Uniform Billing Committee (NUBC) Uniform Bill Version 1992 (UB–92) Current UB Data Specification Manual Field 22, Patient Discharge Status, Codes

• Organization for the Advancement of Structured Information Standards (OASIS) Security Assertion Markup Language (SAML) v2.0 OASIS Standard; ITU–T X.1141

• Organization for the Advancement of Structured Information Standards (OASIS) WS-Federation Web Services Federation Language (WS-Federation), Version 1.1, December 2006

• Organization for the Advancement of Structured Information Standards (OASIS) WS-Trust Version 1.3, March 2007

• Organization for the Advancement of Structured Information Standards (OASIS) eXtensible Access Control Markup Language (XACML), ITU–T Recommendation X.1142, February 2005

• Unified Code for Units of Measure (UCUM)

IS05—Consumer Empowerment and Access to Clinical Information via Media V1

Below is a list of the HITSP constructs used by this HITSP Interoperability Specification.

• HITSP/C19 Entity Identity Assertion Component (V1)

• HITSP/C32 Summary Documents Using HL7 Continuity of Care Document (CCD) Component (V2)

• HITSP/C35 Lab Result Terminology Component (V2)

• HITSP/C37 Lab Report Document Component (V2)

• HITSP/T15 Collect and Communicate Security Audit Trail Transaction (V1)

• HITSP/T16 Consistent Time Transaction (V1)

• HITSP/T23 Patient Demographics Query Transaction (V2)

• HITSP/T33 Transfer of Documents on Media Transaction (V1)

• HITSP/TP20 Access Control Transaction Package (V1)

• HITSP/TP22 Patient ID Cross-Referencing Transaction Package (V2)

• HITSP/TP30 Manage Consent Directives Transaction Package (V1)

Below is a list of Selected Standards for this HITSP Interoperability Specification.

• Digital Imaging and Communications in Medicine (DICOM) Part 3.12: Media Formats and Physical Media for Media Interchange

• Health Level Seven (HL7) Clinical Document Architecture Release 2 (CDA R2)

• Health Level Seven (HL7) Implementation Guide: CDA Release 2—Continuity of Care Document (CCD), April 01, 2007

• Health Level Seven (HL7) Implementation Guide: CDA Release 2—Continuity of Care Document (CCD), April 01, 2007

• Health Level Seven (HL7) Implementation Guide: CDA Release 2—Continuity of Care Document (CCD), April 01, 2007

• Health Level Seven (HL7) V3 RBAC, R1–2008, HL7 Version 3 Standard: Role Based Access Control (RBAC) Healthcare Permissions Catalog, Release 1, February 2008

• Health Level Seven (HL7) V3 RBAC, R1–2008, HL7 Version 3 Standard: Role Based Access Control (RBAC) Healthcare Permissions Catalog, Release 1, February 2008

• Health Level Seven (HL7) Version 2.3.1

• Health Level Seven (HL7) Version 2.5
• Health Level Seven (HL7) Version 2.5.1
• Health Level Seven (HL7) Version 3.0 Privacy Consent related specifications RCMR_RM010001—Data Consent
• Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Volume 2 Supplement 2007–2008 Cross-Enterprise User Assertion (XUA)
• Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Volume 2 Supplement 2007–2008 Cross-Enterprise User Assertion (XUA)
• Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Revision 4.0, Audit Trail and Node Authentication (ATNA) Integration Profile
• Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Revision 4.0, Consistent Time (CT) Integration Profile
• Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Revision 4.0, Patient Demographics Query (PDQ) Integration Profile
• Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Revision 4.0, Patient Identifier Cross-Referencing Integration Profile (PIX)
• Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Revision 4.0, Section 10 Cross-Enterprise Document Sharing (XDS.a)
• Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Volume 2 Supplement 2007–2008 Cross-Enterprise Document Sharing-B (XDS.b)
• Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Revision 4.0—Registry Stored Query Transaction for XDS Profile Supplement [ITI–18]
• Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Revision 4.0 XCA Supplement
• Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Supplement 2007–2008 Basic Patient Privacy Consents (BPPC)—Trial Implementation
• Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework Supplement 2008–2009, Pediatric Demographics, Draft for Trial Implementation (August 22, 2008)
• Integrating the Healthcare Enterprise (IHE) Laboratory Technical Framework Volume 3 (LAB TF–3) Document-based Transactions, Revision 2.0—For Trial Implementation, August 16, 2007
• International Health Terminology Standards Development Organisation (IHTSDO) Systematized Nomenclature of Medicine Clinical Terms (SNOMED CT®)
• International Organization for Standardization (ISO) Health informatics—9660 Level 1
• Internet Engineering Task Force (IETF) Network Time Protocol (Version 3) Specification, Implementation and Analysis, ''Request for Comment'' (RFC) # 1305, March, 1992
• Internet Engineering Task Force (IETF) Simple Network Time Protocol (SNTP) Version 4, ''Request for Comment'' (RFC) # 2030, October, 1996
• Logical Observation Identifiers Names and Codes (LOINC®)
• Organization for the Advancement of Structured Information Standards (OASIS) Security Assertion Markup Language (SAML) v2.0 OASIS Standard; ITU–T X.1141
• Organization for the Advancement of Structured Information Standards (OASIS) WS–Trust Version 1.3, March 2007
• Organization for the Advancement of Structured Information Standards (OASIS) WS–Federation Web Services Federation Language (WS–Federation), Version 1.1, December 2006
• Organization for the Advancement of Structured Information Standards (OASIS) eXtensible Access Control Markup Language (XACML), ITU–T Recommendation X.1142, February 2005
• Unified Code for Units of Measure (UCUM)
• USB Removable Device Type 2.0 (USB Implementers Forum)
• XDM Supplement to the Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF)

IS06—Quality V1

Below is a list of the HITSP constructs used by this HITSP Interoperability Specification.

• HITSP/C19 Entity Identity Assertion Component (V1)
• HITSP/C25 Anonymize Component (V2)
• HITSP/C26 Nonrepudiation of Origin Component (V1)
• HITSP/C34 Patient Level Quality Data Message Component (V1)
• HITSP/C38 Patient Level Quality Data Document Using IHE Medical Summary (XDS–MS) Component (V1)
• HITSP/T15 Collect and Communicate Security Audit Trail Transaction (V1)
• HITSP/T16 Consistent Time Transaction (V1)
• HITSP/T17 Secured Communication Channel Transaction (V1)
• HITSP/T23 Patient Demographics Query Transaction (V2)
• HITSP/T24 Pseudonymize Transaction (V2)
• HITSP/T29 Notification of Document Availability Transaction (V2)
• HITSP/T31 Document Reliable Interchange Transaction (V1)
• HITSP/TP13 Manage Sharing of Documents Transaction Package (V2)
• HITSP/TP20 Access Control Transaction Package (V1)
• HITSP/TP21 Query for Existing Data Transaction Package (V1)
• HITSP/TP22 Patient ID Cross-Referencing Transaction Package (V2)
• HITSP/TP30 Manage Consent Directives Transaction Package (V1)
• HITSP/TP50 Retrieve Form for Data Capture Transaction Package (V2)

Below is a list of Selected Standards for this HITSP Interoperability Specification.

• American Medical Association (AMA) Current Procedural Terminology (CPT®) Fourth Edition (CPT–4); CPT Evaluation and Management Codes
• American Society for Testing and Materials (ASTM) Standard Guide for Electronic Authentication of Health Care Information: #E1762–95(2003)
• Centers for Medicare and Medicaid Services (CMS) National Provider Identifier (NPI)
• Digital Imaging and Communications in Medicine (DICOM)—Part 16: Content Mapping Resource
• European Telecommunications Standards Institute (ETSI) Technical Specification TS 101 903: XML Advanced Electronic Signatures (XadES)
• Federal Information Processing Standards (FIPS) Codes for the Identification of the States, the District of Columbia and the Outlying Areas of the United States, and Associated Areas Publication #5–2, May, 1987
• Health Level Seven (HL7) Version 2.3.1
• Health Level Seven (HL7) Version 2.5
• Health Level Seven (HL7) Version 3.0
• Health Level Seven (HL7) Version 3.0 Privacy Consent related

specifications RCMR_RM010001—Data Consent

- Health Level Seven (HL7) V3 RBAC, R1–2008, HL7 Version 3 Standard: Role Based Access Control (RBAC) Healthcare Permissions Catalog, Release 1, February 2008
- Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Revision 4.0
- Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Revision 4.0, Section 10 Cross-Enterprise Document Sharing (XDS.a)
- Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Volume 2 Supplement 2007–2008 Cross-Enterprise Document Sharing-B (XDS.b)
- Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Revision 4.0—Registry Stored Query Transaction for XDS Profile Supplement [ITI–18]
- Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Revision 4.0 XCA Supplement
- Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Revision 4.0, Patient Demographics Query (PDQ) Integration Profile
- Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (TF) Supplement—ITI–25 Notification of Document Availability (NAV) Jun 28, 2005
- Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework Supplement 2008–2009, Pediatric Demographics, Draft for Trial Implementation (August 22, 2008)
- Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) 2006–2007 Trial Implementation Supplement Cross-Enterprise Document Reliable Interchange (XDR)
- Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Revision 4.0, Patient Identifier Cross-Referencing Integration Profile (PIX)
- Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Revision 4.0, Audit Trail and Node Authentication (ATNA) Integration Profile
- Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Revision 4.0, Consistent Time (CT) Integration Profile
- Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (ITI–TF) Volume 2 Supplement 2007–2008 Cross-Enterprise User Assertion (XUA)
- Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (TF) Supplement Volume 3—Document Digital Signature (DSG) Content Profile
- Integrating the Healthcare Enterprise (IHE) IT Infrastructure Technical Framework (TF) 2007–2008 Supplement, Retrieve Form for Data Capture (RFD)
- Integrating the Healthcare Enterprise (IHE) Patient Care Coordination (PCC) Technical Framework Volume 1, Revision 3.0 2007–2008
- Integrating the Healthcare Enterprise (IHE) Patient Care Coordination (PCC), Revision 3.0, 2007–2008, Cross-Enterprise Sharing of Medical Summaries (XDS–MS) Integration Profile
- International Classification of Diseases, 10th Revision, Procedure Coding System (ICD–10–PCS)
- International Classification of Diseases, 9th Revision, Clinical Modifications (ICD–9-CM)
- International Health Terminology Standards Development Organisation (IHTSDO) Systematized Nomenclature of Medicine Clinical Terms (SNOMED CT ®)
- International Organization for Standardization (ISO) Health Informatics—Pseudonymisation, Unpublished Technical Specification #25237
- International Organization for Standardization (ISO) Health Informatics—Pseudonymization, Unpublished Technical Specification #25237
- Internet Engineering Task Force (IETF) Network Time Protocol (Version 3) Specification, Implementation and Analysis, ''Request for Comment'' (RFC) #1305, March 1992
- Internet Engineering Task Force (IETF) Simple Network Time Protocol (SNTP) Version 4, ''Request for Comment'' (RFC) #2030, October 1996
- Logical Observation Identifiers Names and Codes (LOINC ®)
- National Library of Medicine (NLM) Unified Medical Language System (UMLS) RxNorm
- National Uniform Billing Committee (NUBC) Uniform Bill Version 2007 (UB–04) Current UB Data Specification Manual Field 22, Patient Discharge Status, Codes
- Organization for the Advancement of Structured Information Standards (OASIS) Simple Object Access Protocol (SOAP) Version 1.1, 1.2
- Organization for the Advancement of Structured Information Standards (OASIS) Security Assertion Markup Language (SAML) v2.0 OASIS Standard; ITU–T X.1141
- Organization for the Advancement of Structured Information Standards (OASIS) WS–Federation Web Services Federation Language (WS-Federation), Version 1.1, December 2006
- Organization for the Advancement of Structured Information Standards (OASIS) WS–Trust Version 1.3, March 2007
- Organization for the Advancement of Structured Information Standards (OASIS) eXtensible Access Control Markup Language (XACML), ITU–T Recommendation X.1142, February 2005
- Unified Code for Units of Measure (UCUM)

Certain legal obligations may flow from the recognition of these Interoperability Standards. First, pursuant to Executive Order 13410 (EO 13410) dated August 22, 2006, recognition of Interoperability Standards would require each Federal agency that administers or sponsors a Federal health care program (as defined in that Executive Order), as it implements, acquires, or upgrades health information technology systems used for the direct exchange of health information between agencies and with non-Federal entities, to utilize, where available and as permitted by applicable law, health information technology systems and products that meet interoperability standards recognized by the Secretary. Therefore, those Federal agencies would be required to appropriately consider health information technology systems and products that comply with these Interoperability Standards, once recognized, when implementing, acquiring, or upgrading such items or systems.

Similarly, the EO 13410 also directs those Federal agencies to contractually require, to the extent permitted by law, certain entities with whom they do business, to use, where available, health information technology systems and products that meet Interoperability Standards recognized by the Secretary.

In addition, the regulations promulgated on August 8, 2006 (see 71 FR 45140 and 71 FR 45110) established exceptions and safe harbors to the physician self-referral law and the anti-kickback statute, respectively, for certain arrangements involving the donation of electronic prescribing and electronic health records (EHR)

technology and services. The EHR exception and safe harbor require that the software be ''interoperable'' as defined in the regulations. The rules also provide that certain software will be deemed to be ''interoperable'' if that software has been certified by a certifying body recognized by the Secretary within 12 months prior to the donation. Under the interim guidance for the recognition of certifying bodies published by the ONC (''Office of the National Coordinator for Health Information Technology (ONC) Interim Guidance Regarding the Recognition of Certification Bodies''), for an organization to be recognized as a recognized certifying body (RCB), the organization must, among other characteristics:

- Have in place a demonstrated process for and experience in certifying products to be in compliance with criteria recognized by the Secretary;
- Have a method by which it can incorporate all applicable standards and certification criteria recognized by the Secretary into its certification processes; and
- Have the ability to adapt its processes to emerging certification criteria recognized by the Secretary.

The RCBs would therefore have to certify such products in conformity with, among other provisions, these Interoperability Standards, once recognized, for the certified products to be deemed interoperable under the physician self-referral exception and anti-kickback safe harbor, respectively, and, thus, eligible for donation to certain health care providers under the physician self-referral law and the anti-kick back statute.

The Department is mindful that the ability of software to be interoperable evolves as technology develops. Consequently, if an enforcement action is initiated for an allegedly improper donation of EHR non-certified software, the Department would review whether the software was interoperable at the time of donation, as defined in the regulations. The Department would consider the prevailing state of technology at the time the items or services were provided to the recipient. As explained in the regulations, the Department understands that parties should have a reasonable basis for determining whether the EHR software is interoperable. We therefore indicated that ''it would be appropriate—and, indeed, advisable—for parties to consult any standards and criteria related to interoperability recognized by the Department.'' Compliance with these standards and criteria, as we explained in the regulations, ''will provide greater certainty to donors and recipients that products meet the interoperability requirement, and may be relevant in an enforcement action.'' (See 71 FR 45156 and 71 FR 45127.)

The Department believes that the one-year period between acceptance in January 2008 and recognition in January 2009 provided both the public and private sectors with adequate time to review, test, and provide input on the identified HITSP Interoperability Specifications prior to their recognition. Based on the above, the Secretary has now recognized these HITSP Interoperability Specifications.

FOR FURTHER INFORMATION CONTACT: Judith Sparrow at (202) 690–7151.

Dated: January 14, 2009.

Marc R. Weisman,

Executive Director, Office of the National Coordinator for Health Information Technology.

[FR Doc. E9–1068 Filed 1–16–09; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Healthcare Infection Control Practices Advisory Committee (HICPAC)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting for the aforementioned committee:

Times and Dates: 9 a.m.–5 p.m., February 12, 2009.

9 a.m.–12 p.m., February 13, 2009.

Place: Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, Atlanta, Georgia 30333, Global Communications Center, Bldg. 19, Auditorium B3.

Status: Open to the public, limited only by the space available.

Purpose: The Committee is charged with providing advice and guidance to the Secretary, the Assistant Secretary for Health, the Director, CDC, and the Director, National Center for Preparedness, Detection, and Control of Infectious Diseases (NCPDCID), regarding (1) The practice of hospital infection control; (2) strategies for surveillance, prevention, and control of infections (e.g., nosocomial infections), antimicrobial resistance, and related events in settings where healthcare is provided; and (3) periodic updating of guidelines and other policy statements regarding prevention of healthcare-associated infections and healthcare-related conditions.

Matters to be Discussed: The agenda will include a follow up discussion of Health and Human Services Healthcare-Associated Infections (HAI) elimination plan, Norovirus Guideline and Healthcare worker vaccination update.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Wendy Vance, HICPAC, Division of Healthcare Quality Promotion, NCPDCID, CDC, l600 Clifton Road, NE., Mailstop D–10, Atlanta, Georgia 30333 Telephone (404) 639–2891.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: January 12, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. E9–1187 Filed 1–16–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Rescission of February 4, 2004, Order and Subsequent Amendments Prohibiting the Importation of Birds and Bird Products From Specified Countries

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS) is announcing its intent to rescind its February 4, 2004 order and subsequent amendments prohibiting the importation of birds and bird products from specified countries based on the threat that imports from such countries increases the risk that highly pathogenic avian influenza H5N1 may be introduced into the United States. After consideration of public comment, CDC will publish a final notice regarding these prohibitions. The U.S. Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) has implemented and continues to enforce regulations to prohibit or restrict the importation of birds, poultry, and unprocessed birds and poultry products from regions that have reported the presence of highly pathogenic avian influenza H5N1 in poultry. *See* 9 CFR 93.101, 93.201, 94.6, & 95.30. While USDA/APHIS actions are based primarily on protecting the U.S.

commercial poultry industry from the introduction of highly pathogenic avian influenza H5N1, these actions have the added benefit of mitigating the risk of human exposure to the virus. Because the USDA/APHIS import restrictions adequately address risks to human health, HHS/CDC is announcing the intent to lift its embargo against imports of birds and unprocessed bird products from those same countries and solicits comments on this proposal. All of the bird embargoes that are currently in force under USDA regulations will remain in force. HHS/CDC will work closely with USDA/APHIS to monitor the international situation regarding HPAI H5N1 outbreaks and will take additional action if it identifies human health risks that are not adequately contained by USDA regulatory actions.

DATES: Written comments must be received on or before February 20, 2009. Comments received after January 21, 2009 will be considered to the extent possible.

ADDRESSES: You may submit written comments to the following address: Division of Global Migration and Quarantine, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, Attn: Rescission Notice, 1600 Clifton Road, NE., MS E–03, Atlanta, Georgia 30333.

You may submit written comments electronically via the Internet at the following Address: *http://regulations.gov*, or via e-mail to *DGMQpubliccomments@cdc.gov*.

FOR FURTHER INFORMATION CONTACT: Stacy M. Howard, Division of Global Migration and Quarantine, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, 1600 Clifton Road, NE., MS E–03, Atlanta, Georgia 30333; telephone 404–498–1600.

SUPPLEMENTARY INFORMATION:

Background

On February 4, 2004, the Centers for Disease Control and Prevention (CDC) within the U.S. Department of Health and Human Services issued an order to ban immediately the import of all birds (Class: *Aves*) from specified countries, subject to limited exemptions for returning pet birds of U.S. origin and certain processed bird-derived products. HHS/CDC took this step because birds from these countries can potentially infect humans with avian influenza (influenza A/[H5N1]). Countries affected by the February 4, 2004, order included Cambodia, Indonesia, Japan, Laos, People's Republic of China (including Hong Kong Special Administrative Region [SAR]), South Korea, Thailand, and Vietnam. This order was further amended on March 10, 2004, to lift the embargo of birds and bird products from the Hong Kong SAR because of the documented control of the outbreak there and the absence of highly pathogenic avian influenza H5N1 cases in Hong Kong's domestic bird populations. Following the documentation of highly pathogenic avian influenza H5N1 in commercial birds in additional countries, HHS/CDC issued amendments to the February 4, 2004, order that added these countries to its embargo: Malaysia on September 28, 2004; Kazakhstan, Romania, Russia, Turkey, and Ukraine on December 29, 2005; Nigeria on February 8, 2006; India on February 22, 2006; Egypt on February 27, 2006; Niger on March 2, 2006; Albania, Azerbaijan, Cameroon, and Burma (Myanmar) on March 15, 2006; Israel on March 20, 2006; Afghanistan on March 21, 2006; Jordan on March 29, 2006; Burkina Faso on April 10, 2006; Pakistan on April 10, 2006; Gaza, the West Bank, and the Ivory Coast (Côte d'Ivoire) on April 28, 2006; Sudan on May 16, 2006; Djibouti on June 2, 2006; and Kuwait on February 28, 2007.

The HHS/CDC February 4, 2004, order and subsequent amendments have complemented simultaneous actions taken by the Animal and Plant Health Inspection Service (APHIS) within the U.S. Department of Agriculture (USDA). USDA/APHIS amended its regulations to prohibit or restrict the importation of birds, poultry, and unprocessed birds and poultry products from regions that have reported the presence of highly pathogenic avian influenza H5N1 in poultry. *See* 9 CFR 93.101, 93.201, 94.6, & 95.30. As the United Nations Food and Agriculture Organization and the World Organization for Animal Health (OIE) have confirmed additional cases of highly pathogenic avian influenza (H5N1) in commercial birds, USDA/APHIS has added additional countries and regions to its ban.

HHS/CDC believes that the actions taken to date by USDA/APHIS adequately mitigate the human health risks associated with birds and unprocessed bird products imported from the countries of concern, and that the HHS/CDC order of February 4, 2004, and subsequent amendments are no longer needed. HHS/CDC announces its intent to lift its embargo of birds and unprocessed bird products from specified countries to ensure a more coordinated federal response to the control of highly pathogenic avian influenza H5N1.

Dated: January 9, 2009.

Julie Louise Gerberding,

Director, Centers for Disease Control and Prevention.

[FR Doc. E9–1029 Filed 1–16–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: ACF–IV–E–1 Foster Care and Adoption Assistance Financial Reporting Form.

OMB No.: 0970–0205.

Description: State agencies administer the Foster Care and Adoption Assistance Programs under Title IV–E of the Social Security Act. The Administration for Children and Families provides Federal funding at the rate of 50 percent for most of the administrative costs and at other rates for other specific categories of costs as detailed in Federal statutes and regulations. This form is submitted quarterly by each State to estimate the funding needs for the upcoming fiscal quarter and to report expenditures for the fiscal quarter just ended. The information collected in this report is used by this agency to calculate quarterly Federal grant awards and to enable oversight of the financial management of the programs.

Part 3 of this form had also been used to collect semiannual budget projections. In response to the publication of the **Federal Register** Notice on October 10, 2008, comments from the ACF budget office indicated that this information is now available from other sources and the information previously collected on Part 3 is no longer needed. We are, therefore, deleting Part 3 of this form.

Respondents: State agencies (including the District of Columbia and Puerto Rico) administering the Foster Care and Adoption Assistance programs under Title IV–E of the Social Security Act.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Form ACF–IV–E–1	52	41	6	3,328

Estimated Total Annual Burden Hours: 3,328.

Additional Information:

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment:

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–6974, Attn: Desk Officer for the Administration for Children and Families.

Dated: January 13, 2009.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. E9–953 Filed 1–16–09; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0007]

Draft Guidance for Industry on Animal Models--Essential Elements to Address Efficacy Under the Animal Rule

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: FDA is announcing the availability of a draft guidance entitled ''Animal Models--Essential Elements to Address Efficacy Under the Animal Rule.'' When human efficacy studies are neither ethical nor feasible, animal efficacy studies may be relied on under the Animal Rule to support approval or licensure of a drug or biological product. This guidance identifies and discusses the critical characteristics of an animal model that should be addressed when developing products for approval under the Animal Rule. The guidance is intended to help sponsors determine whether the model meets the requirements of the Animal Rule.

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 March 23, 2009.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002; or Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. 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:

Rosemary Roberts, Office of Counter-Terrorism and Emergency Coordination, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 3342, Mail Stop 3329, Silver Spring, MD 20993, 301–796–2210 or

Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Animal Models--Essential Elements to Address Efficacy Under the Animal Rule.'' The purpose of this draft guidance is to assist sponsors to identify the critical characteristics of an animal model that should be addressed when efficacy of an investigational product will be established under the ''Animal Rule'' (see 21 CFR 314.600; 21 CFR 601.90). Critical characteristics include, but are not limited to, information regarding the natural history of the condition to be treated in humans and animals, the challenge agent, route of exposure to the challenge agent, and the timing of intervention with the study drug. Data from human experience with the etiologic agent or with the intervention, when available, may support applicability of the animal model. The information described in the draft guidance is relevant for any animal model being considered as a basis for establishing efficacy under the Animal Rule and is intended to help determine whether the model meets the requirements of the Animal Rule.

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 animal models when addressing efficacy under the animal rule. 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. 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: January 12, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–936 Filed 1–16–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0008]

Draft Guidance for Industry on Citizen Petitions and Petitions for Stay of Action Subject to Section 505(q) of the Federal Food, Drug, and Cosmetic Act; 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 ''Citizen Petitions and Petitions for Stay of Action Subject to Section 505(q) of the Federal Food, Drug, and Cosmetic Act.'' The Food and Drug Administration Amendments Act of 2007 (FDAAA) added new provisions to the Federal Food, Drug, and Cosmetic Act (the act) addressing the agency's treatment of certain citizen petitions and petitions for stay of agency action (collectively, petitions), as well as related applications. The draft guidance describes how FDA will determine if the new provisions apply to a particular petition and how FDA will determine if a petition would delay approval of a pending abbreviated new drug application (ANDA) or 505(b)(2) application. The draft guidance also describes how FDA will interpret the requirements that such petitions include a certification and that supplemental information or comments to such petitions include a verification. The draft guidance also addresses the relationship between the review of petitions and pending ANDAs and 505(b)(2) applications for which the agency has not yet made a decision on approvability.

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, including comments regarding the proposed collection of information, by March 23, 2009.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. 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: Nancy Boocker, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6244, Silver Spring, MD 20993–0002, 301–796–3601.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Citizen Petitions and Petitions for Stay of Action Subject to Section 505(q) of the Federal Food, Drug, and Cosmetic Act.'' The draft guidance provides information regarding FDA's current thinking on interpreting section 914 of Title IX of FDAAA (Public Law 110–85). Section 914 of FDAAA added new section 505(q) to the act (21 U.S.C. 355(q)) and governs certain citizen petitions and petitions for stay of agency action that request that FDA take any form of action related to a pending application submitted under section 505(b)(2) or 505(j) of the act. The draft guidance describes FDA's interpretation of section 505(q) of the act regarding how the agency will determine if: (1) The provisions of section 505(q) addressing the treatment of citizen petitions and petitions for stay of agency action (collectively, petitions) apply to a particular petition and (2) a petition would delay approval of a pending ANDA or a 505(b)(2) application. The draft guidance also describes how FDA will interpret the provisions of section 505(q) requiring that: (1) A petition include a certification and (2) supplemental information or comments to a petition include a verification. Finally, the draft guidance addresses the relationship between the review of petitions and pending ANDAs and 505(b)(2) applications for which the agency has not yet made a decision on approvability.

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 citizen petitions and petitions for stay of action that are subject to section 505(q) of the act. 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.

III. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act (44 U.S.C. 3501–3520) (the PRA), 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.

Title: Citizen Petitions and Petitions for Stay of Action Subject to Section 505(q) of the Federal Food, Drug, and Cosmetic Act.

Description of Respondents: Respondents to this collection of information as it is related to citizen petitions are individuals or households, State or local governments, not-for-profit institutions, and businesses or other for-profit institutions or groups. Respondents to this collection of information as it is related to petitions for stay of agency action are persons who choose to file a petition for an administrative stay of action.

Burden Estimate: FDA is requesting public comment on estimates of annual submissions from these respondents, as required by section 505(q) of the act and described in this draft guidance. Section 505(q)(1)(H) of the act requires that citizen petitions and petitions for stay of agency action that are subject to section 505(q) include a certification to be considered for review by FDA. Section 505(q)(1)(I) of the act requires that supplemental information or comments to such citizen petitions and petitions for stay of agency action include a verification to be accepted for review by FDA. The draft guidance describes our current thinking on the interpretation of these requirements. The draft guidance sets forth the criteria the agency will use in determining if the provisions of section 505(q) apply to a particular citizen petition or petition for stay of agency action. One of the criteria for a citizen petition or petition for stay of agency action to be subject to section 505(q) of the act is that a related ANDA or 505(b)(2) application is pending at the time the citizen petition or petition for stay is submitted. Because petitioners or commenters may not be aware of the existence of a pending ANDA or 505(b)(2) application, the draft guidance recommends that all petitioners challenging the approvability of a possible ANDA or 505(b)(2) application include the certification required in section 505(q)(1)(H) of the act and that petitioners and commenters submitting supplements or comments, respectively, to a citizen petition or petition for stay of action challenging the approvability of a possible ANDA or 505(b)(2) application include the verification required in section 505(q)(1)(I) of the act. The draft guidance also recommends that if a petitioner submits a citizen petition or petition for stay of agency action that is missing the required certification but is otherwise within the scope of section 505(q) of the act and the petitioner would like FDA to review the citizen petition or petition for stay of agency action, the petitioner should submit a letter withdrawing the deficient petition and submit a new petition that contains the required certification.

FDA currently has OMB approval for the collection of information entitled, ''General Administrative Procedures: Citizen Petitions; Petition for Reconsideration or Stay of Action; Advisory Opinions'' (OMB Control Number 0910–0183). This collection of information includes, among other things: (1) The format and procedures by which an interested person may submit to FDA, in accordance with § 10.20 (21 CFR 10.20), a citizen petition requesting the Commissioner of Food and Drugs (Commissioner) to issue, amend, or revoke a regulation or order, or to take or refrain from taking any other form of administrative action (§ 10.30(b) (21 CFR 10.30(b))); (2) the submission of written comments on a filed citizen petition (§ 10.30(d)); (3) the submission of a supplement or amendment to or a letter to withdraw a filed citizen petition (§ 10.30(g)); (4) the format and procedures by which an interested person may request, in accordance with § 10.20, the Commissioner to stay the effective date of any administrative action (§ 10.35(b) (21 CFR 10.35(b))); and (5) the submission of written comments on a filed petition for administrative stay of action (§ 10.35(c)). This information collection includes citizen petitions, petitions for administrative stay of action, comments to petitions, supplements to citizen petitions, and letters to withdraw a citizen petition, as described above, that are subject to section 505(q) of the act and described in the draft guidance.

Under section 505(q) of the act and the draft guidance, the following information would be submitted to FDA but is not currently approved by OMB under the PRA:

1. The certification required under section 505(q)(1)(H) of the act for citizen petitions that are subject to section 505(q) and/or that are challenging the approvability of a possible ANDA or 505(b)(2) application. Although the submission of a certification for citizen petitions is approved under OMB Control Number 0910–0183, the certification would be broadened under section 505(q) of the act and the draft guidance.
2. The certification required under section 505(q)(1)(H) of the act for petitions for stay of action that are subject to section 505(q) and/or that are challenging the approvability of a possible ANDA or 505(b)(2) application.
3. The verification required under section 505(q)(1)(I) of the act for comments to citizen petitions.
4. The verification required under section 505(q)(1)(I) of the act for comments to petitions for stay of agency action.
5. The verification required under section 505(q)(1)(I) of the act for supplements to citizen petitions.
6. Supplements to petitions for stay of agency action and the verification required under section 505(q)(1)(I) of the act.
7. The letter submitted by a petitioner withdrawing a deficient petition for stay of agency action that is missing the required certification but is otherwise within the scope of section 505(q) of the act.

Section 505(q)(1)(B) and (C) of the act and the draft guidance state that if FDA determines that a delay in approval of an ANDA or 505(b)(2) application is necessary based on a petition subject to section 505(q) of the act, the applicant may submit to the petition docket clarifications or additional data to allow FDA to review the petition promptly. This information collection is not included in this analysis because it is approved under OMB Control Number 0910–0001 (21 CFR 314.54, 314.94, and 314.102).

Based on FDA's knowledge of citizen petitions and petitions for stay of agency action subject to section 505(q) of the act that have been submitted since September 27, 2007, as well as the agency's familiarity with the time needed to prepare a certification and a

verification, our estimates for this information collection are as follows:

1. The certification currently submitted for a citizen petition would be broadened under section 505(q) of the act and the draft guidance. FDA estimates that it will receive annually approximately 25 certifications under section 505(q)(1)(H) of the act for citizen petitions that are subject to section 505(q) and/or that are challenging the approvability of a possible ANDA or 505(b)(2) application. FDA estimates that approximately 19 respondents will submit these certifications and that each certification will take approximately 30 minutes to prepare.

2. FDA estimates that it will receive annually approximately three certifications under section 505(q)(1)(H) of the act for petitions for stay of action that are subject to section 505(q) and/or that are challenging the approvability of a possible ANDA or 505(b)(2) application. FDA estimates that approximately three respondents will submit these certifications and that each certification will take approximately 30 minutes to prepare.

3. FDA estimates that it will receive annually approximately 12 verifications required under section 505(q)(1)(I) of the act for comments to citizen petitions. FDA estimates that approximately nine respondents will submit these verifications, and that each verification will take approximately 30 minutes to prepare.

4. FDA estimates that it will receive annually approximately two verifications required under section 505(q)(1)(I) of the act for comments to petitions for stay of agency action. FDA estimates that approximately two respondents will submit these verifications and that each verification will take approximately 30 minutes to prepare.

5. FDA estimates that it will receive annually approximately 10 verifications required under section 505(q)(1)(I) of the act for supplements to citizen petitions. FDA estimates that approximately seven respondents will submit these verifications and that each verification will take approximately 30 minutes to prepare.

6. FDA estimates that it will receive annually approximately one supplement to petitions for stay of agency action as described under section 505(q)(1)(I) of the act, that approximately one respondent will submit this supplement, and that each supplement will take approximately 6 hours to prepare. FDA estimates that it will receive annually approximately one verification required under section 505(q)(1)(I) of the act for supplements to petitions for stay of agency action, that approximately one respondent will submit this verification, and that each verification will take approximately 30 minutes to prepare.

7. FDA estimates that it will receive annually approximately one letter from petitioners withdrawing a deficient petition for stay of agency action that is missing the required certification but is otherwise within the scope of section 505(q) of the act. FDA estimates that approximately one respondent will submit this letter and that the letter will take approximately 30 minutes to prepare.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

	Number of Respondents	Annual Frequency per Response	Total annual Responses	Hours per Response	Total Hours
Certification for citizen petitions	19	1.32	25	0.5	12.5
Certification for petitions for stay of agency action	3	1	3	0.5	1.5
Verification for comments to citizen petitions	9	1.33	12	0.5	6.0
Verification for comments to petitions for stay of agency action	2	1	2	0.5	1.0
Verification for supplements to citizen petitions	7	1.43	10	0.5	5.0
Supplements to petitions for stay of agency action and the verification for the supplement	1	1	1	6.5	6.5
Letter withdrawing a petition for stay of agency action	1	1	1	0.5	0.5
Total Hours					33.0

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Therefore, the estimated annual reporting burden for this information collection is 33 hours.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.regulations.gov*.

Dated: January 12, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–937 Filed 1–16–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0224]

Final Guidance for Sponsors, Industry, Researchers, Investigators, and Food and Drug Administration Staff: Certifications To Accompany Drug, Biological Product, and Device Applications/Submissions: Compliance with Section 402(j) of The Public Health Service Act, Added By Title VIII of The Food and Drug Administration Amendments Act of 2007; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or agency) is announcing the availability of a guidance for industry entitled ''Guidance for Sponsors, Industry, Researchers, Investigators, and Food and Drug Administration Staff: Certifications To Accompany Drug, Biological Product, and Device Applications/Submissions: Compliance with Section 402(j) of The Public Health Service Act, Added By Title VIII of The Food and Drug Administration Amendments Act of 2007'' dated January 2009. The guidance provides sponsors, industry, researchers, investigators, and FDA staff with the agency's current thinking regarding the types of applications and submissions that sponsors, industry, researchers, and investigators submit to FDA and accompanying certifications as described in Title VIII of the Food and Drug Administration Amendments Act of 2007 (FDAAA).

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Office of Policy, Office of Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, rm. 4305, Silver Spring, MD 20993–0002, 301–796–4830. Send one self addressed adhesive label to assist that office in processing your requests. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm.1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Jarilyn Dupont, Office of Policy, Office of Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, rm. 4305, Silver Spring, MD 20993–0002, 301–796–4830.

SUPPLEMENTARY INFORMATION:

I. Background

Title VIII of FDAAA, Public Law 110–85, amended the Public Health Service (PHS) Act by adding new section 402(j), 42 U.S.C. 282(j). The new provisions require that additional information be submitted to the clinical trials data bank (*www.ClinicalTrials.gov*) previously established by the National Institutes of Health (NIH)/National Library of Medicine (NLM), including expanded information on clinical trials and information regarding the results of clinical trials.

The purpose of Title VIII is to provide a means for ensuring that the public has access to information about certain clinical trials. Specifically, Title VIII is intended to provide a mechanism for the public to learn about clinical trials that are being conducted, as well as the results of those trials. One provision of Title VIII (section 401(j)(5)(B) of the PHS Act, 42 U.S.C. 282(j)(5)(B)) requires that a certification accompany certain human drug, biological product, and device applications and submissions to FDA.

The certification required under section 402(j)(5)(B) of the PHS Act (42 U.S.C. 282(j)(5)(B)) plays a role in helping to achieve the purposes of Title VIII of FDAAA. One purpose of the certification is to require the submitter to confirm that it has complied with all applicable requirements of Title VIII, including the requirement to register applicable clinical trials. ''Applicable clinical trial'' is defined at section 402(j)(1)(A)(i) of the PHS Act (42 U.S.C. 282(j)(1)(A)(i)). For additional information on this definition and other relevant definitions, visit the NIH Web site at *http://prsinfo.clinicaltrials.gov*.

Failure to submit a certification, knowingly submitting a false certification, failure to submit required clinical trial information, and submission of clinical trial information that is false or misleading are all, as added by Title VIII of FDAAA, prohibited acts under section 301(jj) of the Federal Food, Drug, and Cosmetic Act (the act). Requiring a certification to accompany certain applications and submissions submitted to FDA is, therefore, one way of encouraging compliance with the provisions of the law.

The certification also facilitates FDA's exercise of its responsibilities under the law. The certification requirement is critical to the agency's ability to determine whether the law has been complied with and whether an enforcement action is appropriate under any of the prohibited acts under section 301(jj) of the act. Additionally, section 402(j)(3)(F) of the PHS Act (42 U.S.C. 282(j)(3)(F)) requires FDA to notify the Director of NIH of certain actions taken on applications and reports that were accompanied by a certification. That notification alerts NIH to the fact that the responsible party must submit the results of the trials within a certain period of time, thereby enabling NIH to exercise its responsibilities under Title VIII. The information provided in the certification form also will help FDA assist NIH in ''linking'' information posted on FDA's Web site regarding certain FDA regulatory actions to specific applicable clinical trials included in the registry and results databases. This linking, using the information in the certification form, particularly the NCT (National Clinical Trial) number(s) required in the form, eventually will allow FDA to help the public more easily correlate various reports, medical reviews, advisories, health alerts, advisory committee actions, and other materials with specific applicable clinical trials registered with ClinicalTrials.gov and identified by the NCT number.

The certification requirement went into effect on December 26, 2007. To assist sponsors, industry, researchers, and investigators in complying with the requirement, FDA created a certification form, FDA Form 3674, OMB Control No. 0910–0616, to be used to satisfy the certification requirement. Since the provision went into effect, FDA has received numerous inquiries asking whether various kinds of information and documents that sponsors, industry, researchers, and investigators submit to

the agency must be accompanied by the certification. On April 18, 2008, FDA published a draft guidance on the certification requirement. In the draft guidance FDA provided a list of the types of submissions and applications that typically did *not* need to be accompanied by a certification. We received a number of comments to the docket concerning whether a certification should accompany the types of submissions and applications listed in the draft guidance, as well as other types of documents and information submitted to FDA. We also received a number of comments on this issue during the process for obtaining clearance under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) for the certification form itself. In addition, FDA also has had more experience with the submission of the certification form since the form was implemented.

The comments we received in response to the draft guidance and the development of the certification form, the inquiries to the agency, and our evolving experience caused us to reconsider our initial approach of identifying those documents and information that did not need to be accompanied by a certification. Instead, we concluded that it was more useful to identify those applications and submissions that must be accompanied by a certification. This approach is also consistent with many of the comments, which asked that we provide more specific information than was included in the draft guidance. Thus, we intend to exercise enforcement discretion concerning the submission of a certification with certain categories of applications and submissions to FDA, as noted in the guidance.

This guidance describes FDA's current thinking, for purposes of implementing Title VIII of FDAAA, regarding specific types of applications and submissions submitted to FDA under section 505, 515, 520(m), or 510(k) of the act, or under section 351 of the PHS Act, and accompanying certifications described in section 402(j)(5)(B) of the PHS Act, 42 U.S.C. 282(j)(5)(B). We note that the Agency's discussion of ''applications'' and ''submissions'' in this guidance is not necessarily applicable to any other provision of law. In determining how to interpret the certification requirement, FDA has focused on the plain language of Title VIII of FDAAA, as well as information that Title VIII is intended to capture.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking regarding the certification requirement in section 402(j)(5)(B) of the PHS Act (42 U.S.C. 282(j)(5)(B)). 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 applicable statutes and regulations.

II. Comments

Interested persons may, at any time, submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the guidance. 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. A copy of the guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Paperwork Reduction Act of 1995

This guidance refers to a previously approved collection of information. This collection of information is 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 collection of information has been approved under OMB Control No. 0910–0616.

IV. Electronic Access

Persons with access to the Internet may obtain the guidance document at either*http://www.fda.gov/oc/initiatives/advance/fdaaa.html or http://www.regulations.gov.*

Dated: January 15, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–1183 Filed 1–15–09; 11:15 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0018]

Report of Quantitative Risk and Benefit Assessment of Commercial Fish Consumption, Focusing on Fetal Neurodevelopmental Effects (Measured by Verbal Development in Children) and on Coronary Heart Disease and Stroke in the General Population, and Summary of Published Research on the Beneficial Effects of Fish Consumption and Omega-3 Fatty Acids for Certain Neurodevelopmental and Cardiovascular Endpoints; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of two draft documents. The first is entitled ''Report of Quantitative Risk and Benefit Assessment of Commercial Fish Consumption, Focusing on Fetal Neurodevelopmental Effects (Measured by Verbal Development in Children) and on Coronary Heart Disease and Stroke in the General Population'' (draft risk and benefit assessment report). The draft risk and benefit assessment report describes an analysis done by FDA that results in quantitative estimates of the net effect on fetal neurodevelopment in children of maternal consumption of commercial fish, as measured by verbal development and the net effect of eating commercial fish on coronary heart disease and stroke in the general population. Effects with respect to each of these health endpoints has been associated in the scientific literature with methylmercury exposure (which primarily occurs through fish consumption) and with the consumption of fish and of omega-3 fatty acids, which are found in fish. The second draft document entitled ''Summary of Published Research on the Beneficial Effects of Fish Consumption and Omega-3 Fatty Acids for Certain Neurodevelopmental and Cardiovascular Endpoints'' (draft summary of published research) is a compendium of research prepared by FDA for use in developing its quantitative risk and benefit assessment. When peer and public review are complete, the draft risk and benefit assessment report and the draft summary of published research are intended to add to the growing body of scientific literature investigating the

likelihood, magnitude, and direction of health impacts linked to consumption of commercial fish. FDA is seeking public comment on the draft risk and benefit assessment report and the draft summary of published research.

DATES: Comments on the draft risk and benefit assessment and on the draft summary of published research must be submitted by April 21, 2009.

ADDRESSES: Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Philip Spiller, Center for Food Safety and Applied Nutrition (HFS–002), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–1428, FAX 301–436–2668, e-mail: *Philip.Spiller@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Fish provides protein, is low in saturated fat, and is rich in many micronutrients; it also can be a source of certain omega-3 fatty acids. As the Institute of Medicine of the National Academies of Science (IOM) noted in a recent report, ''[i]n the past several years, research has implicated seafood, particularly its contribution of EPA and DHA [two omega-3 fatty acids], in various health benefits identified for the developing fetus and infants, and also for adults, including those at risk for cardiovascular disease.'' (Institute of Medicine, Committee on Nutrient Relationships in Seafood: Selections to Balance Benefits and Risks. Seafood Choices: Balancing Benefits and Risk. 2006, National Academy of Sciences, at 1). However, as a result of natural processes and human activity, aquatic food sources, including fish, can contain methylmercury, which has been linked to adverse health consequences. Because of the presence of methylmercury in fish, FDA and the U.S. Environmental Protection Agency (EPA) issued an advisory to consumers, ''What You Need to Know About Mercury in Fish and Shellfish'' (*http://www.cfsan.fda.gov/~dms/admehg3.html*). The advisory, which was most recently revised in 2004, recommends that women who may become pregnant, pregnant women, nursing mothers, and young children avoid some types of fish and eat fish and shellfish that are lower in methylmercury, as specified in more detail in the advisory.

Researchers in the United States and elsewhere have attempted in recent years to develop approaches to better evaluate the net health impacts of fish consumption; in other words, to understand the relationship between the risk of not eating fish (and thus losing any health benefits fish may provide) and the risk of eating fish that contains methylmercury at the levels currently found in the commercial fish available to consumers. As the IOM noted in its 2006 report, ''A better way is needed to characterize the risks combined with the benefits analysis.'' (IOM 2006 at 6). The draft summary of published research and the draft risk and benefit assessment report were developed by FDA to provide further scientific information to help address this question for consumers of commercial seafood in the United States (i.e., fish shipped or sold interstate, as opposed to fish caught recreationally or for subsistence).

The draft risk and benefit assessment report reflects an effort by FDA to quantify the impact of eating commercial fish on three human health endpoints: (1) Neurodevelopment, as measured by verbal development in childhood as assessed by the effect of prenatal exposure to methylmercury as passed from the mother to the developing fetus; (2) risk of fatal coronary heart disease; and (3) risk of fatal stroke. Each of these health endpoints has been associated in the scientific literature both with adverse effects of methylmercury exposure (including through fish consumption) and beneficial effects of regular fish consumption. The draft risk and benefit assessment report provides further scientific information about the likelihood and magnitude of either beneficial or adverse net effects on health at current levels of commercial fish consumption and exposure to methylmercury through fish consumption in the United States. The draft risk and benefit assessment report should not be construed as altering the existing fish advisory. Moreover, because this assessment does not distinguish among types of fish in terms of their beneficial constituents, it is not possible to translate the results of this analysis into fish-specific advice to consumers about maximizing benefits.

The methodology used for the quantitative risk and benefit assessment is novel for FDA in that, rather than attempting to quantify the risk resulting from the presence of a particular hazard in a food, it estimates that risk and the benefit from consumption of the food in the same quantitative analysis. For fetal neurodevelopment, the assessment estimates this net effect by separately estimating: (1) The likelihood and size of an adverse contribution from methylmercury to the net effect; (2) the likelihood and size of a beneficial contribution to the net effect from fish; and (3) the likelihood, size, and direction of the net effect. For the methylmercury contribution, the assessment uses data to derive modeling estimates of the association between methylmercury and early age verbal skills (as an indicator of neurodevelopment) and then compares the results against results developed elsewhere on methylmercury's effect on other aspects of neurodevelopment, including intelligence quotient (IQ). For the fish contribution, the assessment uses data to derive modeling estimates of the association between fish consumption during pregnancy and early age verbal skills. For the net effect, the assessment combines the results from the methylmercury and fish contributions. This draft risk and benefit assessment report builds on published work performed previously by FDA scientists on the estimation of a methylmercury effect, as well as recent articles by other investigators that have quantitatively assessed this effect. For fatal coronary heart disease and stroke, the assessment estimates the net effect on risk from fish consumption without separately modeling a methylmercury contribution and a fish contribution. Most data on this subject come from studies that measured an association between fish consumption and these health endpoints without measuring a methylmercury contribution. The modeling builds in part on dose-response functions for these endpoints that have been published in the scientific literature.

The draft risk and benefit assessment report identifies and discusses assumptions made for the scientific models and analyses and sources of uncertainty with respect to each endpoint analyzed. Subject to the limitations and assumptions set forth in the analysis, the risk and benefit assessment estimated the net impact of consumption of different amounts of fish. For example, with respect to fetal neurodevelopment, we modeled various ''what if'' scenarios, in which we estimated what would happen if women of child-bearing age ate more or less fish, or if the amount of methylmercury in the fish they ate were reduced.

The results indicate that consumption of fish species that are low in methylmercury has a significantly greater probability of resulting in a net benefit, as measured by verbal development. The highest net benefit

modeled in our risk and benefit analysis was modest. When we modeled actual baseline consumption for the range of methylmercury concentrations (low to high) the assessment indicated a significant probability of a net adverse effect for 1/10 of 1 percent of children for the central estimate. The highest estimated net adverse effect was also quite modest. For fatal coronary heart disease and stroke, commercial fish baseline consumption is averting a central estimate of over 30,000 deaths per year from coronary heart disease and over 20,000 deaths per year from stroke. The results of our quantitative risk and benefit assessment are generally consistent with research reported in recent years in the scientific literature.

The draft summary of published research identifies primarily secondary analyses of the large body of scientific research on the impact of fish and omega-3 fatty acids on cardiovascular and neurologic endpoints, including research on both prenatal and post-natal exposures. In addition to the IOM report, these secondary analyses include reports by the American Heart Association, the European Food Safety Authority, the International Society for the Study of Fatty Acids and Lipids, the World Health Organization and a previous investigation by FDA. This compendium of research was developed by FDA for use in developing its quantitative risk benefit assessment and provides background for that document. The draft summary of published research identifies and delineates the lines of scientific evidence that indicate the association of fish and omega-3 fatty acid consumption with cardiovascular and neurodevelopmental health outcomes. When available, the compendium of research also identifies reports of quantitative dose-response relationships which may be relevant for risk and benefit assessment modeling. The draft summary of published research describes the context of the overall body of scientific evidence currently available for potential application to the risk and benefit assessment modeling and the draft risk and benefit assessment report.

The agency designated the draft risk and benefit assessment report and the draft summary of published research as a ''highly influential scientific assessment'' under the Office of Management and Budget's (OMB) Final Information Quality Bulletin for Peer Review (the Bulletin) (70 FR 2664, January 14, 2005). In August 2008, FDA submitted a draft of the risk and benefit assessment report (which at the time also incorporated the draft summary of published research) to seven scientific experts outside the Federal Government, from a range of scientific disciplines, for purposes of obtaining each expert's independent, written peer review. The draft risk and benefit assessment report and the draft summary of published research that are being made available for public comment reflect revisions made to date in response to the peer reviewers' comments and suggestions. The Information Quality Act Bulletin for Peer Review requires FDA to post at its Web site a report of the peer review that: (1) Contains the names and credentials of the peer reviewers; (2) sets forth the ''charge,'' i.e., the scientific questions asked of the reviewers; (3) provides the verbatim comments submitted by each reviewer (without attribution); and (4) discusses what FDA has done to the documents in response to the peer reviewers' comments. We have posted at our Web site an interim draft of this report that provides this information at *http://www.cfsan.fda.gov/~dms/mehg109.html*, although we expect and plan to finalize this report after revising our draft risk and benefit assessment report and the draft summary of published research, in response to further expert and peer review comments.

Separately, FDA solicited and received comments from scientists at other Federal agencies, including EPA, the National Institutes of Health, the Centers for Disease Control and Prevention, and the National Oceanic and Atmospheric Administration during a review coordinated by OMB. The draft risk and benefit assessment report and the draft summary of published research being made available for comment have been revised to reflect revisions made in response to the inter-agency reviewers' comments.

At the same time we are making these draft documents available for public comment, we plan to provide a revised draft to the original peer reviewers to enable them to submit any further comments. We will revise the draft risk and benefit assessment report and the draft summary of published research as necessary after considering the public comments and any additional comments from the independent peer reviewers. We also plan to provide the revised version of the documents, a summary of the public comments that address significant scientific issues, and the external peer review report to an FDA scientific advisory committee.

After public and advisory committee review of these documents are complete, appropriate risk management actions will then be considered on the basis of currently available scientific information. The release of these documents for public comment and peer review do not in any way modify the recommendations set forth in the 2004 advisory on fish consumption.

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.

III. Electronic Access

The draft documents described in this notice are available electronically at *http://cfsan.fda.gov/~dms/mehg109.html*.

IV. Access to Related Documents

All references listed in the reports are available in FDA's Division of Dockets Management (see **ADDRESSES**). Computer programs used in the risk and benefit assessment modeling are available from Clark Carrington, Center for Food Safety and Applied Nutrition (HFS–301), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–1947, e-mail: *Clark.Carrington@fda.hhs.gov*.

Dated: January 14, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–1081 Filed 1–15–09; 11:15 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0658]

Risk Assessment of the Public Health Impact From Foodborne *Listeria monocytogenes* in Some Ready-to-Eat Foods Sliced, Prepared, and/or Packaged in Retail Facilities; Request for Comments and for Scientific Data and Information

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments and for scientific data and information.

SUMMARY: The Food and Drug Administration (FDA) is requesting

comments and scientific data and information that would assist the agency in its plans to conduct a risk assessment of the public health impact of foodborne *Listeria monocytogenes* in some ready-to-eat foods sliced, prepared, and/or packaged in retail facilities. The purpose of the risk assessment is to ascertain the impact on public health of current practices and potential interventions that reduce or prevent *L. monocytogenes* contamination in ready-to-eat food.

DATES: Submit comments and scientific data and information by April 21, 2009.

ADDRESSES: Submit written comments and scientific data and information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments, scientific data, and information to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Sherri Dennis, Center for Food Safety and Applied Nutrition (HFS–005), Food and Drug Administration, 5100 Paint Branch Pkwy, College Park, MD 20740, 301–436–2355, e-mail: *sherri.dennis@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Health and Human Services' *Healthy People 2010* is a comprehensive set of disease prevention and health promotion objectives for the Nation to achieve over the first decade of the new century. Created by scientists both inside and outside of government, it identifies a wide range of public health priorities and specific, measurable objectives. One of these objectives calls on Federal food safety agencies to reduce foodborne listeriosis (Ref. 1). In support of this goal, in 2003, FDA and the Food Safety and Inspection Service (FSIS) of the U.S. Department of Agriculture (USDA) issued an assessment of the relative risk to public health from foodborne *Listeria monocytogenes* among selected categories of ready-to-eat (RTE) foods (*Listeria* risk assessment, Ref. 2). The *Listeria* risk assessment formed the basis of the 2003 FDA and Centers for Disease Control and Prevention (CDC) *Listeria* Action Plan (Ref. 3), which identifies prevention and control activities that FDA and CDC will take to reduce the incidence of foodborne listeriosis in the United States.

The 2003 *Listeria* risk assessment provided the first quantitative estimate of the relative risk of listeriosis from consumption of a variety of RTE foods. Among the RTE foods evaluated in the 2003 risk assessment, deli meats (e.g., luncheon meats) were considered to present the highest risk per serving and the highest risk per annum. This rank was the result of a moderate contamination frequency, a high number of servings consumed and high growth rates of *L. monocytogenes*. Additional data obtained in California and Maryland showed that *L. monocytogenes* prevalence and levels in luncheon meats, deli-style salads, and seafood salads were higher for in-store-packaged than for manufacturer-packaged foods (Ref. 4). This observation was confirmed for meat and poultry products in a study by the National Alliance for Food Safety and Security performed in northern California, Georgia, Minnesota, and Tennessee in 2008 (Ref. 5). Using these latter results, it was estimated that most of the listeriosis cases attributed to ready-to-eat meat and poultry deli meats are from products sliced and packaged at retail (FSIS/USDA, unpublished results).

Little is known about how *Listeria* contamination occurs in retail facilities. Retail practices may result in either cross-contamination from one product to another or through contamination from the retail environment. There is thus a need to identify potential sources and practices that may increase *L. monocytogenes* contamination in retail settings and practices or interventions that could reduce or eliminate *L. monocytogenes* contamination of food products (sold to consumers at the retail level) and resulting human illness.

FDA is engaged in a risk assessment that will evaluate the dynamics of *L. monocytogenes* contamination in retail facilities contributing to listeriosis. It will evaluate how specific practices could affect the overall level and frequency of contamination, and the relative effectiveness of various process changes and intervention strategies intended to reduce human illness. The project will address FDA and USDA regulated RTE foods. It will focus on RTE foods that are sliced, prepared, and/or packaged for the consumer in the retail environment and consumed in the home. Cheeses, deli meats, and deli-type salads (as defined in Ref. 2) will be studied as representative examples.

This risk assessment of the public health impact of *L. monocytogenes* in RTE foods sliced, prepared, and/or packaged in retail facilities supports the agency's commitment to fulfilling the *Listeria* Action Plan (Ref. 3).

II. Request for Comments and for Scientific Data and Information

FDA requests comments on the risk assessment goals outlined in this document and the submission of scientific data and information relevant to the risk assessment. Specifically, we request data and information about the following:

1. Characteristics of ready-to-eat food markets in the United States, including:

a. Volumes of cheeses and deli meats sliced by manufacturers and the volumes sliced in retail facilities,

b. Volumes of deli-type salads prepared by manufacturers and the volumes prepared in retail facilities, and

c. Volumes of ready-to-eat food sold in delicatessen departments of major grocery chains (i.e., large supermarket facilities) and the volumes sold in other groceries (i.e., multipurpose independent small or local facilities).

2. Characteristics of deli departments in groceries, including the proportion of separated seafood/meat/dairy deli departments in groceries.

3. Product contamination data, including:

a. *L. monocytogenes* levels and/or frequencies in wholesale products (deli meats (chubs), cheeses, fresh produce, seafood) arriving at retail facilities; and

b. *L. monocytogenes* levels and/or frequencies in cheeses, deli meats, and deli-type salads sold by retail facilities.

4. Factors that influence the growth of *L. monocytogenes* in cheeses, deli meats, and deli-type salads, including:

a. Growth rates of *L. monocytogenes* in cheeses, deli meats, and deli-type salads and the effects of different ingredients in and compositions of those products;

b. Chemical characteristics of cheeses, deli meats, and deli-type salads that could influence *L. monocytogenes*, including pH and water activity;

c. Proportions of deli meats treated with growth inhibitors, the inhibitors used, the level of growth inhibitors, and their efficiency;

d. Data on the temperatures to which cheeses, deli meats, and deli-type salads are exposed at retail, including time and temperature for walk-in coolers or refrigerators, display cabinets, and ambient displays; and

e. Data on the use of advisory ''use-by'' or ''best by'' labels for ready-to-eat food sold by retail facilities.

5. Environmental contamination data, including:

a. Data and information on the prevalence and levels of *L. monocytogenes* in the retail environment including, e.g., drains, countertops, walls, and equipment; and

b. Data on the growth of *L. monocytogenes* on non-food surfaces including environmental biofilm growth.

6. Factors that influence the environmental contamination and the cross-contamination of food by *L. monocytogenes* in retail facilities, including:

a. Data and information on the potential transfer of *L. monocytogenes* to food from the retail environment, e.g., experimental studies on the transfer to food from drains, slicers, food contact surfaces, and non-food contact surfaces; and

b. Data and information on food handlers' activities, e.g., observations of food handlers' practices and monitoring of specific food safety actions in retail facilities (e.g., glove usage, hand hygiene practices, and cleaning practices).

7. Identity and effectiveness of control measures or interventions intended to reduce levels and frequency of *L. monocytogenes* in the retail environment, including:

a. Environmental sanitation procedures including the sanitizers and protocols used, frequency of application, and efficiency; and

b. Worker sanitation procedures including frequencies, protocols, and efficiency.

8. Any other data related to the occurrence, growth, and control of *L. monocytogenes* in retail facilities.

As the project progresses, additional data needs may be identified.

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. References

The following references are on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site addresses, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

1. U.S. Department of Health and Human Services, Healthy People 2010, v. 1. Washington, DC, 2000, *http://healthypeople.gov*.

2. U.S. Department of Health and Human Services and U.S. Department of Agriculture/Food Safety and Inspection Service, ''Quantitative Assessment of Relative Risk to Public Health from Foodborne *Listeria monocytogenes* Among Selected Categories of Ready-to-Eat Foods,'' September 2003, *http://www.foodsafety.gov/~dms/lmr2-toc.html*.

3. U.S. Department of Health and Human Services, Food and Drug Administration/Centers for Disease Control and Prevention, ''Reducing the Risk of *Listeria monocytogenes* FDA/CDC 2003 Update of the Listeria Action Plan,'' November 2003, *http://www.cfsan.fda.gov/~dms/lmr2plan.html*.

4. Gombas, D.E., Chen, Y., Clavero, R.S., and Scott, V.N. (2003). Survey of *Listeria monocytogenes* in ready-to-eat foods. *Journal of Food Protection*, 66(4), 559–569.

5. Draughon, A.F. (2006). A collaborative analysis/risk assessment of *Listeria monocytogenes* in ready-to-eat processed meat and poultry collected in four FoodNet states. Symposium S–16: Contamination of ready-to-eat foods: transfer and risk: *Listeria monocytogenes* and other microorganisms. International Association for Food Protection 93rd Annual Meeting, Calgary, Alberta. August 13–16.

Dated: January 12, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–938 Filed 1–16–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on Migrant Health; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: National Advisory Council on Migrant Health.

Dates and Times: February 9, 2009, 8:30 a.m. to 5 p.m.; February 10, 2009, 8:30 a.m. to 5 p.m.

Place: The Parklawn Building, Twinbrook Room, 3rd Floor, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 594–4303, Fax: (301) 443–0248.

Status: The meeting will be open to the public.

Purpose: The purpose of the meeting is to discuss services and issues related to the health of migrant and seasonal farmworkers and their families and to formulate recommendations for the Secretary of Health and Human Services.

Agenda: The agenda includes an overview of the Council's general business activities. The Council will also hear presentations from experts on farmworker issues, including the status of farmworker health at the local and national levels.

Agenda items are subject to change as priorities indicate.

For Further Information Contact: Gladys Cate, Office of Minority and Special Populations, Bureau of Primary Health Care, Health Resources and Services Administration, 5600 Fishers Lane, Maryland 20857; telephone (301) 594–0367.

Wendy Ponton,

Director, Office of Management.

[FR Doc. E9–1067 Filed 1–16–09; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Mice With a Conditional LoxP-Flanked Glucosylceramide Synthase Allele Controlling Glycosphingolipid Synthesis

Description of Technology: Glycosphingolipids are organizational building blocks of plasma membranes that participate in key cellular

functions, such as signaling and cell-to-cell interactions. Glucosylceramide synthase—encoded by the *Ugcg* gene—controls the first committed step in the major pathway of glycosphingolipid synthesis. Global disruption of the *Ugcg* gene in mice is lethal during gastrulation. The inventors have established a *Ugcg* allele flanked by loxP sites (floxed). When cre recombinase was expressed in the nervous system under control of the *nestin* promoter, the floxed gene underwent recombination, resulting in a substantial reduction of *Ugcg* expression and of glycosphingolipid ganglio-series levels. The mice deficient in *Ugcg* expression in the nervous system show a striking loss of Purkinje cells and abnormal neurologic sphingo-lipid behavior.

The Research Tools available are mice with a floxed *Ugcg* allele that can be deleted in a conditional manner. These mice carrying floxed *Ugcg* alleles will be useful for delineating the functional roles of glycosphingolipid synthesis in the nervous system and in other physiologic systems.

Applications

- Study of the functional roles of glycosphingolipid synthesis in the nervous system and other physiologic systems.
- The floxed *Ugcg* allele will facilitate analysis of the function of glycosphingolipids in development, physiology, and in diseases such as diabetes and cancer.

Development Status: Ready to Use.

Inventors: Richard L. Proia (NIDDK).

Publication: T Yamashita, ML Allende, DN Kalkofen, N Werth, K Sandhoff, RL Proia. Conditional *LoxP*-flanked glucosylceramide synthase allele controlling glycosphingolipid synthesis. Genesis 2005 Dec;43(4):175–180.

Patent Status: HHS Reference No. E–320–2007/0—Research Material. Patent protection is not being pursued for this technology.

Licensing Status: Available for licensing under a Biological Materials license agreement.

Licensing Contact: Suryanarayana (Sury) Vepa, PhD, J.D.; 301–435–5020; *vepas@mail.nih.gov*.

Collaborative Research Opportunity: The NIDDK Genetics of Development and Disease Branch is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize the sphingolipid metabolism in physiology and disease. Please contact Dr. Proia at *proia@nih.gov* for more information.

Mutant Nuclear Orphan Receptor for Drug Metabolism Assays

Description of Technology: The constitutively active nuclear orphan receptor (CAR) activates transcription of genes encoding various drug-metabolizing enzymes, such as cytochrome P450, in response to drug exposure. While the direct activation of CAR in response to various drugs has been observed *in vivo*, CAR is always active in cell-based transfection assays, even in the absence of activating drugs. This constitutive activity of CAR makes it difficult to perform accurate *in vitro* assays to measure drug metabolism.

The NIH has obtained patent protection for modified CAR proteins that can be directly activated by drugs *in vitro*. This technology may potentially be used in the development of more efficient and cost-effective cell-based drug metabolism assays.

Applications: Development of improved *in vitro* assays to measure drug metabolism.

Inventors: Masahiko Negishi *et al.* (NIEHS).

Publications

1. T Sueyoshi, T Kawamoto, I Zelko, P Honkakoski, M Negishi. The repressed nuclear receptor CAR responds to phenobarbital in activating the human CYP2B6 gene. J Biol Chem. 1999 Mar 5;274(10):6043–6046.

2. T Kawamoto, S Kakizaki, K Yoshinari, M Negishi. Estrogen activation of the nuclear orphan receptor CAR (constitutive active receptor) in induction of the mouse Cyp2b10 gene. Mol Endocrinol. 2000 Nov;14(11):1897–1905.

Patent Status: U.S. Patent No. 7,365,160 issued 29 Apr 2008 (HHS Reference No. E–034–2002/0–US–03).

Licensing Status: Available for exclusive and non-exclusive licensing.

Licensing Contact: Tara L. Kirby, PhD; 301–435–4426; *tarak@mail.nih.gov*.

Dated: January 8, 2009.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E9–978 Filed 1–16–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Use of Mono-Amine Oxidase Inhibitors To Prevent Herpes Virus Infections and Reactivation From Latency

Description of Technology: Available for licensing are methods of using Monoamine Oxidase Inhibitors (MAOIs) to prevent alpha-herpesvirus lytic infections, such as those caused by Herpes simplex virus (HSV–1 or HSV–2) and Varicella zoster virus (VZV), and to possibly prevent the periodic reactivation of these viruses from latency. MAOIs have been historically used to treat depression, hypertension, and related diseases. The invention describes how MAOIs can also inhibit LSD1, a histone/protein demethylase that is required for initiation of alpha-herpesvirus lytic infection. After an initial lytic infection, alpha-herpesviruses establish latent infections in sensory neurons and undergo periodic reactivation that results in disease ranging from mild lesions to life threatening encephalitis. Investigators have determined that MAOIs may also block the reactivation process. Due to the nature of the target LSD1 and its role in modulating chromatin modifications, these drugs could also prevent infection by or reactivation of other nuclear viruses.

Alpha-herpesviruses infections are common worldwide, with 57% to 80% of adults being seropositive for HSV. Recurrent labial herpes affects roughly one third of the U.S. population, and these patients typically experience 1 to 6 episodes per year. Genital herpes can result from infection with either HSV type and HSV–1 has become an important cause of genital herpes in

some developed countries. HSV keratitis is the most frequent cause of corneal blindness in the United States, is a leading indication for corneal transplantation, and is the most common cause of infectious blindness in the Western world.

Applications:

• Prevention and treatment of recurrent Herpes simplex virus outbreaks.

• Prevention and treatment of recurrent Varicella zoster infection.

• Treatment of HSV encephalitis.

• Treatment of Herpes keratitis.

Development Status: The investigators intend to do a series of in vivo animal studies on the efficacy of MAOIs in preventing primary infection and/or reactivation of herpes simplex virus in a mouse model system.

Inventors: Thomas M. Kristie et al. (NIAID).

Patent Status:

• U.S. Provisional Application No. 61/083,304 filed 24 Jul 2008 (HHS Reference No. E–275–2008/0–US–01).

• U.S. Provisional Application No. 61/111,019 filed 04 Nov 2008 (HHS Reference No. E–275–2008/1–US–01).

Licensing Status: Available for non-exclusive or exclusive licensing.

Licensing Contact: Christina Thalhammer-Reyero, PhD; 301–435–4507; *thalhamc@mail.nih.gov*

Collaborative Research Opportunity: The National Institute of Allergy and Infectious Diseases' Laboratory of Viral Diseases is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize the use of MAOIs to prevent herpes virus infections and reactivation from latency. Please contact Marguerite J. Miller at 301–435–8619 or *millermarg@niaid.nih.gov* for more information.

Method of Treating Pneumoconiosis With Oligodeoxynucleotides

Description of Technology: The inhalation of dust containing crystalline silica particles causes silicosis, an incurable lung disease that progresses even after dust exposure ceases. The World Health Organization estimates that over a million U.S. workers are exposed to silica dust annually, and that thousands worldwide die each year from silicosis. The pulmonary inflammation caused by silica inhalation is characterized by a cellular infiltrate and the accumulation of chemokines, cytokines (including TNF-alpha, IL–1, and IL–6), and Reactive Oxygen Species (ROS) in bronchoalveolar lavage (BAL) fluid.

Macrophages are the predominant immune cell type present in alveolar spaces where they play an important role in the lung pathology associated with silica inhalation. The uptake of silica particles by macrophages triggers the production of ROS (including hydrogen peroxide) via the oxidative stress pathway, which in turn contributes to pulmonary damage and macrophage death.

One potential strategy for limiting the production of proinflammatory cytokines and ROS after silica exposure involves treatment with ''suppressive'' oligonucleotides (ODN). Suppressive ODN express motifs based on the repetitive TTAGGG hexamers present at high frequency in the telomeric ends of self DNA. Previous studies showed that these motifs (released by injured host cells) block Th1 and proinflammatory cytokine production in vitro and down-modulate over-exuberant/pathologic immune responses in vivo (such as those found in septic shock and autoimmune diseases).

This application claims methods for treating, preventing or reducing the risk of developing occupational lung diseases using. Preclinical in vivo studies show that pretreatment with suppressive (but not control) ODN reduces silica-dependent pulmonary inflammation. Preclinical *in vivo* studies also showed that treatment with suppressive ODN also reduced disease severity and improved the survival of mice exposed to silica.

Application: Development of ODN-based therapeutics for the treatment of pneumoconiosis.

Development Status: ODNs have been synthesized and preclinical studies in the murine model of acute silicosis have been performed.

Inventors: Dennis M. Klinman (NCI), Takashi Sato (NCI), *et al.*

Publication: T Sato *et al.* Suppressive oligodeoxynucleotides inhibit silica-induced pulmonary inflammation. J Immunol. 2008 Jun 1;180(11):7648–7654.

Patent Status: U.S. Provisional Application No. 61/055,102 filed 21 May 2008 (HHS Reference No. E–182–2008/0–US–01)

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Peter A. Soukas, J.D.; 301–435–4646; *soukasp@mail.nih.gov*.

Collaborative Research Opportunity: The National Cancer Institute, Laboratory of Experimental Immunology, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize Method of Treating Pneumoconiosis With Oligodeoxynucleotides. Please contact John D. Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Attenuated Salmonella as a Delivery System for siRNA-Based Tumor Therapy

Description of Technology: The discovery that genes vectored by bacteria can be functionally transferred to mammalian cells has suggested the possible use of bacterial vectors as vehicles for gene therapy. Genetically modified, nonpathogenic bacteria have been used as potential antitumor agents, either to elicit direct tumoricidal effects or to deliver tumoricidal molecules. Bioengineered attenuated strains of *Salmonella enterica* serovar *typhimurium* (*S. typhimurium*) have been shown to accumulate preferentially greater than one-thousand fold in tumors than in normal tissues and to disperse homogeneously in tumor tissues. Preferential replication allows the bacteria to produce and deliver a variety of anticancer therapeutic agents at high concentrations directly within the tumor, while minimizing toxicity to normal tissues. These attenuated bacteria have been found to be safe in mice, pigs, and monkeys when administered intravenously, and certain live attenuated *Salmonella* strains have been shown to be well tolerated after oral administration in human clinical trials. The *S. typhimurium* phoP/phoQ operon is a typical bacterial two-component regulatory system composed of a membrane-associated sensor kinase (PhoQ) and a cytoplasmic transcriptional regulator. phoP/phoQ is required for virulence, and its deletion results in poor survival of this bacterium in macrophages and a marked attenuation in mice and humans. phoP/phoQ deletion strains have been employed as effective vaccine delivery vehicles. More recently, attenuated salmonellae have been used for targeted delivery of tumoricidal proteins.

This technology comprises live, attenuated *Salmonella* strains as a delivery system for small interfering double-stranded RNA (siRNA)-based tumor therapy. The inventors' data provide the first convincing evidence that *Salmonella* can be used for delivering plasmid-based siRNAs into tumors growing in vivo. Claimed in the related patent application are methods of inhibiting the growth or reducing the volume of solid cancer tumors using the si-RNA constructs directed against genes that promote tumor survival and cancer cell growth. The Stat3-siRNAs carried by an attenuated *S. typhimurium*

described in the application exhibit tumor suppressive effects not only on the growth of the primary tumor but also on the development of metastases, suggesting that an appropriate attenuated *S. typhimurium* combined with the RNA interference (RNAi) approach may offer a clinically feasible method for cancer therapy.

Application: Development of live attenuated bacterial cancer vaccines, cancer therapeutics and diagnostics.

Development Status: Vaccines have been prepared and preclinical studies have been performed.

Inventors: Dennis Kopecko (FDA/CBER), DeQi Xu (FDA/CBER), *et al.*

Related Publications:

1. L Zhang *et al.* Intratumoral delivery and suppression of prostate tumor growth by attenuated Salmonella enterica serovar typhimurium carrying plasmid-based small interfering RNAs. Cancer Res. 2007 Jun 15;67(12):5859–5864.

2. L Zhang *et al.* Effects of plasmid-based Stat3-specific short hairpin RNA and GRIM–19 on PC–3M tumor cell growth. Clin Cancer Res. 2008 Jan 15;14(2):559–568.

Patent Status:

• Chinese Patent Application No. 200610017045.5 filed 26 Jul 2006 (HHS Reference No. E–278–2007/0–CN–01).

• PCT Patent Application No. PCT/US2007/074272 filed 24 Jul 2007, which published as WO 2008/091375 on 31 Jul 2008 (HHS Reference No. E–278–2007/0–PCT–02).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Peter A. Soukas, J.D.; 301–435–4646; *soukasp@mail.nih.gov*.

Collaborative Research Opportunity: FDA–CBER Division of Bacterial, Parasitic, and Allergenic Products is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize *Salmonella*-delivered anti-tumor therapies or *Salmonella*-vectored vaccines. Please contact Alice Welch at *Alice.Welch@fda.hhs.gov* for more information.

Dated: January 8, 2009.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E9–979 Filed 1–16–09; 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 sections 552b(c)(4), and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Advisory Board; Ad Hoc Subcommittee on Communications.

Open: February 2, 2009, 6:30 p.m. to 8 p.m.

Agenda: Discussion on cancer communications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, Maryland 20817.

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: February 3, 2009, 8 a.m. to 4 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 6, 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: February 3, 2009, 4 p.m. to 5 p.m.

Agenda: Review of grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 6, 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.

Open: February 4, 2009, 8 a.m.to 12 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 6, 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: *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: January 9, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–996 Filed 1–16–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel, SEPA SEP.
Date: February 10, 2009.
Time: 1 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call)
Contact Person: Lee Warren Slice, PhD, Scientific Review Officer, Office of Review, National Center for Research Resources, Bethesda, MD 20892, 301–435–0965.

Name of Committee: National Center for Research Resources Special Emphasis Panel, CM Supplement.
Date: February 19, 2009.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Marriott Bethesda North Hotel and Conference Ctr., 5701 Marinelli Road, North Bethesda, MD 20852.
Contact Person: Lee Warren Slice, PhD, Scientific Review Officer, Office of Review, National Center for Research Resources, Bethesda, MD 20892, 301–435–0965.

Name of Committee: National Center for Research Resources Special Emphasis Panel, CMRC SEP.
Date: February 25, 2009.
Time: 1 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call)
Contact Person: Martha F. Matocha, PhD, Scientific Review Officer, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Democracy Blvd., 1 Democracy Plaza, Rm. 1070, Bethesda, MD 20892, 301–435–0810, *matocham@mail.nih.gov*.

Name of Committee: National Center for Research Resources Special Emphasis Panel, 2009 NCRR Loan Repayment Review.
Date: April 22, 2009.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892. (Virtual Meeting)
Contact Person: Barbara J. Nelson, PhD, Scientific Review Officer, Office of Review, National Center for Research Resources, NIH, 6701 Democracy Blvd., Room 1080, 1 Democracy Plaza, Bethesda, MD 20892, (301) 435–0806.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure; 93.306, 93.333, National Institutes of Health, HHS)

Dated: January 8, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–1003 Filed 1–16–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 a meeting of the National Advisory Council on Drug Abuse.

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.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Drug Abuse.
Date: February 3–4, 2009.
Open: February 3, 2009, 2 p.m. to 5 p.m.
Agenda: Grant applications and/or proposals.
Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room C and D, Rockville, MD 20852.
Open: February 4, 2009, 8:30 a.m. to 1 p.m.
Agenda: This portion of the meeting will be open to the public for announcements and reports of administrative, legislative and program developments in the drug abuse field.
Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room C and D, Rockville, MD 20852.
Contact Person: Teresa Levitin, PhD, Director, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 443–2755.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation.

Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their 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.

Information is also available on the Institute's/Center's home page *http://www.drugabuse.gov/NACDA/NACDAHome.html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: January 9, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–985 Filed 1–16–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Outstanding New Environmental Scientists' Applications.

Date: February 10–11, 2009.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: The Radisson Governor's Inn, I–40 at Davis Drive, Exit 280, Research Triangle Park, NC 27709.

Contact Person: Janice B. Allen, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Science, P.O. Box 12233, MD EC–30/Room 3170 B, Research Triangle Park, NC 27709, 919/541–7556.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of One Outstanding New Environmental Scientist's Application.

Date: February 10, 2009.

Time: 4 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Radisson Governor's Inn, I–40 at Davis Drive, Exit 280, Research Triangle Park, NC 27709.

Contact Person: Teresa Nesbitt, PhD, DVM, Chief, Scientific Review Branch, Division of Extramural Research and Training, Nat'l Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–7571, *nesbittt@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: January 9, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–997 Filed 1–16–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Ancillary Studies to Major Ongoing NIDDK Clinical Research Studies (R01).

Date: February 5, 2009.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: D.G. Patel, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7682, *pateldg@niddk.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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Diabetes, Endocrinology, and Metabolic Disease Fellowships.

Date: February 8–9, 2009.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Robert Wellner, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 757, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, *rw175w@nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; ZDK1–GRB–N–M3.

Date: February 13, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: D.G. Patel, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7682, *pateldg@niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: January 9, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–998 Filed 12–16–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; 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 a meeting of the National Advisory Mental Health Council.

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.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Mental Health Council.

Date: February 12–13, 2009.

Closed: February 12, 2009, 10 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications and review the activities of the NIMH Intramural Research Programs.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room C/D/E, Rockville, MD 20852.

Open: February 13, 2009, 8:30 a.m. to 12:30 p.m.

Agenda: Presentation of NIMH Director's report and discussion on NIMH program and policy issues.

Place: National Institutes of Health, Building 31, C Wing, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Jane A. Steinberg, PhD, Director, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–5047.

Any member of the public interested in presenting oral comments to the committee

may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nimh.nih.gov/council/advis.cfm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: January 9, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–999 Filed 1–16–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health;

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Initial Review Group; Interventions Committee for Disorders Involving Children and Their Families.

Date: February 4, 2009.

Time: 8:30 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: David I. Sommers, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd, Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–7861, *dsommers@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Initial Review Group, Mental Health Services in Non-Specialty Settings.

Date: February 4, 2009.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Aileen Schulte, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–1225, *aschulte@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Initial Review Group, Interventions Committee for Disorders Related to Schizophrenia, Late Life, or Personality.

Date: February 6, 2009.

Time: 9 a.m. to 4 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: Serena P. Chu, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Rockville, MD 20892–9609, 301–443–0004, *sechu@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Initial Review Group, Interventions Committee for Adult Mood and Anxiety Disorders.

Date: February 10, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: David I. Sommers, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–7861, *dsommers@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Initial Review Group, Mental Health Services in MH Specialty Settings.

Date: February 17, 2009.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Marina Broitman, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892–9608, 301–402–8152, *mbroitman@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: January 9, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–1000 Filed 1–16–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Interagency Autism Coordinating Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below at least 5 business days in advance of the meeting.

Name of Committee: Interagency Autism Coordinating Committee (IACC).

Date: February 4, 2009.

Time: 9 a.m. to 4 p.m.

Agenda: To discuss the Strategic Plan for Autism Spectrum Disorder Research and its annual updating, and to discuss recent autism-related Federal activities.

Place: Ronald Reagan Building and International Trade Center, The Rotunda Room, 1300 Pennsylvania Ave. NW., Washington, DC 20004.

Webinar Registration: https://www1.gotomeeting.com/register/505255260.

Conference Call: USA/Canada Phone Number: 888–455–2920, International Phone Number: 212–287–1838, Access Number: 3857872.

Contact Person: Ms. Lina Perez, Office of Autism Research Coordination, Office of the Director, National Institute of Mental Health, NIH, 6001 Executive Boulevard, Bethesda, MD 20892–9669, (301) 443–6040, *IACCpublicinquiries@mail.nih.gov.*

Any member of the public interested in presenting oral comments to the Committee should notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations should submit a letter of intent, a brief description of the organization represented, and a written copy of the oral presentation in advance of the meeting. Only one representative of an organization will be allowed to present oral comments and presentations will be limited to a maximum of five minutes. Both printed and electronic copies are requested for the record. In addition, 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.

Members of the public who wish to participate using the conference call phone number will be able to listen to the meeting but will not be heard. If you experience any technical problems with the web presentation tool, please contact GoToWebinar at 800–263–6317.

To access the web presentation tool on the Internet, the following computer capabilities are required: (A) Internet Explorer 5.0 or later, Netscape Navigator 6.0 or later or Mozilla Firefox 1.0 or later; (B) Windows ® 2000, XP Home, XP Pro, 2003 Server or Vista; (C) Stable 56k, cable modem, ISDN, DSL or better Internet connection; (D) Minimum of Pentium 400 with 256 MB of RAM (Recommended); (E) Java Virtual Machine enabled (Recommended).

Information about the IACC is available on the Web site: *http://www.iacc.hhs.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: January 13, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–1001 Filed 1–16–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Mental Health Services.

Date: February 4, 2009.

Time: 8 a.m. to 8:30 a.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Aileen Schulte, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd, Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–1225, *aschulte@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Building Translational Research in Integrative Behavioral Science.

Date: February 10, 2009.

Time: 3 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: Rebecca Steiner, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd, Room 6149, MSC 9608, Bethesda, MD 20892–9608, 301–443–4525, *steinerr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: January 13, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–1002 Filed 1–16–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; 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 a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

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.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Arthritis and Musculoskeletal and Skin Diseases Advisory Council

Date: February 3, 2009.

Open: 8:30 a.m. to 12 p.m.

Agenda: To discuss administrative details relating to the Council business and special reports.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892,

Closed: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Susana Serrate-Sztein, MD, Director, Division of Skin and Rheumatic Diseases, NIAMS/NIH, 6701 Democracy Blvd., Suite 800, Bethesda, MD 20892–4872, (301) 594–5032, *szteins@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one

form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: January 8, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–1004 Filed 1–21–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of meeting

Notice is hereby given of a meeting of the Working Group on Clinical Trials of the National Library of Medicine's (NLM) Board of Regents.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The Working Group was established to advise the NLM Board of Regents on issues associated with the expansion of the Clinicaltrials.gov registry and the addition of a results database. It will consider new legislative mandates, in particular Public Law 110–85, and consult as necessary with relevant stakeholders and potential users of the ClinicalTrials.gov system to provide advice on initial implementation issues and longer-term strategies for enhancing the content and operation of the database.

Name of Committee: Working Group on Clinical Trials.

Date: February 9, 2009.

Time: 9 a.m. to 3:30 p.m.

Agenda: To review clinical trials registration and results reporting.

Place: National Library of Medicine, Building 38, Board Room, Floor, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Christine Ireland, Committee Management Officer, National Library of Medicine, 6705 Rockledge Drive, Rockledge 1, Suite 301, Bethesda, MD 20892, 301–594–4929, *irelanc@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The comments should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

This notice is submitted late due to scheduling purposes.

Dated: January 9, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–984 Filed 1–16–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2008–1211]

Lower Mississippi River Waterway Safety Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The Lower Mississippi River Waterway Safety Advisory Committee will meet in New Orleans, LA to discuss various issues relating to navigational safety on the Lower Mississippi River and related waterways. This meeting will be open to the public.

DATES: The Committee will meet on Thursday, February 5th, 2009 from 9 a.m. to 12 p.m. This meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before January 23, 2009. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before January 23, 2009.

ADDRESSES: The Committee will meet at the New Orleans Yacht Club, 403 North Roadway, West End, New Orleans, LA 70124. Send written material and requests to make oral presentations to Sector Commander, Designated Federal Officer (DFO) of Lower Mississippi River Waterway Safety Advisory Committee, USCG Sector New Orleans, ATTN: Waterways Management, 1615 Poydras St., New Orleans, LA 70112.

FOR FURTHER INFORMATION CONTACT: CWO3 David Chapman, Assistant to DFO of Lower Mississippi River Waterway Safety Advisory Committee, telephone 504–565–5103.

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 Meeting

The agenda for the February 5, 2009 Committee meeting is as follows:

(1) Introduction of committee members.

(2) Opening Remarks. Describe the second item on the agenda.

(3) Approval of the September 25, 2008 minutes.

(4) Old Business.

(a) Captain of the Port status report.

(b) VTS update report.

(c) Subcommittee/Working Groups update reports.

(5) New Business.

(6) Adjournment.

Procedural

This meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at a meeting, please notify the DFO no later than January 23, 2009. Written material for distribution at a meeting should reach the Coast Guard no later than January 23, 2009. If you would like a copy of your material distributed to each member of the committee in advance of a meeting, please submit 25 copies to the DFO no later than January 23, 2009.

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 DFO as soon as possible.

Dated: December 29, 2008.

Joel R. Whitehead,

Rear Admiral, U.S. Coast Guard Commander, Eight Coast Guard District.

[FR Doc. E9–1130 Filed 1–16–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

National Park System Advisory Board Reestablishment

AGENCY: National Park Service, Interior.

ACTION: Notice of Reestablishment of the National Park System Advisory Board.

SUMMARY: The Secretary of the Interior intends to administratively reestablish the National Park System Advisory Board. This action is necessary and in the public interest in connection with the performance of statutory duties imposed upon the Department of the Interior and the National Park Service.

FOR FURTHER INFORMATION CONTACT: Bernard Fagan, 202–208–7456, or Shirley Sears Smith, 202–208–7456.

SUPPLEMENTARY INFORMATION: The National Park System Advisory Board was first established by section 3 of the Act of August 21, 1935 (49 Stat. 667; 16 U.S.C. 463). The Board has been

statutorily reauthorized several times since then. However, the Board's statutory authorization expired January 1, 2009. The advice and recommendations provided by the Board and its subcommittees fulfill an important need within the Department of the Interior and the National Park Service, and it therefore is necessary to administratively reestablish the Board to ensure that its work is not disrupted. The Board's 12 members will be balanced to represent a cross-section of disciplines and expertise relevant to the National Park Service mission. The administrative reestablishment of the Board comports with the requirements of the Federal Advisory Committee Act, as amended (5 U.S.C., Appendix), and follows consultation with the General Services Administration. The reestablishment will be effective on the date the charter is filed pursuant to section 9(c) of the Act and 41 CFR 102–3.70.

Certification: I hereby certify that the administrative reestablishment of the National Park System Advisory Board is necessary and in the public interest in connection with the performance of duties imposed on the Department of the Interior by the Act of August 25, 1916, 16 U.S.C. 1 *et seq.*, and other statutes relating to the administration of the National Park System.

Dated: January 12, 2009.

Dirk Kempthorne,

Secretary of the Interior.

[FR Doc. E9–1091 Filed 1–16–09; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park System Concessions Management Advisory Board Reestablishment

AGENCY: National Park Service, Interior.

ACTION: Notice of Reestablishment of the National Park Service Concessions Management Advisory Board.

SUMMARY: The Secretary of the Interior intends to administratively reestablish the National Park Service Concessions Management Advisory Board. This action is necessary and in the public interest in connection with the performance of statutory duties imposed upon the Department of the Interior and the National Park Service.

FOR FURTHER INFORMATION CONTACT: Jo Pendry, Chief, Commercial Services Program on 202–513–7156.

SUPPLEMENTARY INFORMATION: The National Park Service Concessions Management Advisory Board was established by Title IV, Section 409 of Public Law 105–391, the National Park Omnibus Management Act of 1998, November 13, 1998, with a termination date of December 31, 2008. Extension legislation was introduced in September 2008 that would have extended the Board for one year. We anticipate action on this issue during the 111th Congress, but cannot predict if or when that will occur.

The advice and recommendations provided by the Board and its subcommittees fulfill an important need within the Department of the Interior and the National Park Service, and it therefore is necessary to administratively reestablish the Board to ensure that its work is not disrupted. The Board's six members will be balanced to represent a cross-section of disciplines and expertise relevant to the National Park Service mission. The administrative reestablishment of the Board comports with the requirements of the Federal Advisory Committee Act, as amended (5 U.S.C., Appendix), and follows consultation with the General Services Administration. The reestablishment will be effective on the date the charter is filed pursuant to section 9(c) of the Act and 41 CFR 102–3.70.

Certification: I hereby certify that the administrative reestablishment of the National Park Service Concessions Management Advisory Board is necessary and in the public interest in connection with the performance of duties imposed on the Department of the Interior by the Act of August 25, 1916, 16 U.S.C. 1 *et seq.*, and other statutes relating to the administration of the National Park System.

Dated: January 12, 2009.

Dirk Kempthorne,

Secretary of the Interior.

[FR Doc. E9–1082 Filed 1–16–09; 8:45 am]

BILLING CODE 4312–53–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2008–N0315; 40136–1265–0000–S3]

White River National Wildlife Refuge, Desha, Monroe, Arkansas, and Phillips Counties, AR

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a comprehensive conservation plan and environmental assessment; request for comments.

SUMMARY: We, the Fish and Wildlife Service (Service), intend to prepare a comprehensive conservation plan (CCP) and associated National Environmental Policy Act documents for White River National Wildlife Refuge (NWR). We provide this notice in compliance with our CCP policy to advise other agencies, tribes, and the public of our intentions, and to obtain suggestions and information on the scope of issues to consider in the planning process.

DATES: To ensure consideration, we must receive your written comments by March 9, 2009. An open house meeting will be held during the scoping phase of the CCP development process. The date, time, and place for the meeting will be announced in the local media.

ADDRESSES: Comments, questions, and requests for information should be sent to: Mike Dawson, Refuge Planner, Fish and Wildlife Service, 6578 Dogwood View Parkway, Suite B, Jackson, MS 39213.

FOR FURTHER INFORMATION CONTACT: Mike Dawson; *Telephone:* 601/965–4903, ext. 20; Fax: 601/965–4010; *e-mail: mike_dawson@fws.gov*.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we initiate our process for developing a CCP for White River NWR in Desha, Monroe, Arkansas, and Phillips Counties, Arkansas.

This notice complies with our CCP policy to (1) advise other federal and state agencies, tribes, and the public of our intention to conduct detailed planning on this refuge; and (2) obtain suggestions and information on the scope of issues to consider in the environmental document and during development of the CCP.

Background

The CCP Process

The National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee) (Improvement Act), which amended the National Wildlife Refuge System Administration Act of 1966, requires us to develop a CCP for each national wildlife refuge. The purpose in developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing to the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities

available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Improvement Act.

Each unit of the National Wildlife Refuge System is established for specific purposes. We use the purposes as the foundation for developing and prioritizing the management goals and objectives for each refuge within the National Wildlife Refuge System mission, and to determine how the public can use each refuge. The planning process is a way for us and the public to evaluate management goals and objectives for the best possible conservation approach to this important wildlife habitat, while providing for wildlife-dependent recreation opportunities that are compatible with the refuge's establishing purposes and the mission of the National Wildlife Refuge System.

Our CCP process provides participation opportunities for state, tribal, and local governments; agencies; organizations; and the public. At this time we encourage input in the form of issues, concerns, ideas, and suggestions for the future management of White River NWR. Special mailings, newspaper articles, and other media outlets will be used to announce opportunities for input throughout the planning process.

We will conduct the environmental assessment in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*); NEPA regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; and our policies and procedures for compliance with those laws and regulations.

White River NWR was established in 1935 for the protection of migratory birds. The refuge lies in the floodplain of the White River near where it meets the Mississippi River. The refuge has one of the largest remaining bottomland hardwood forests in the Mississippi River Valley. The refuge's fertile forests and 300 lakes are interlaced with streams, sloughs, and bayous. The result is a haven for a myriad of native wildlife and migratory birds.

Approximately two-thirds of the bird species found in Arkansas can be seen at White River NWR. Many of these are neotropical migratory songbirds that use the refuge as a stopping point on their journey to and from Central and South America.

The refuge provides important opportunities for compatible wildlife-dependent recreational activities involving hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. In 2003, White River NWR completed construction of a 10,000-square-foot office and visitor center off Highway 1 in St. Charles, Arkansas. This facility houses an auditorium, environmental education classroom, an exhibit hall, and the Friends of White River Bookstore.

Public Availability of Comments

Before including your address, phone number, e-mail, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: December 5, 2008.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. E9–1030 Filed 1–16–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–910–1310PP–ARAC]

Notice of Public Meeting, BLM-Alaska Resource Advisory Council

AGENCY: Bureau of Land Management, Alaska State Office, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Alaska Resource Advisory Council will meet as indicated below.

DATES: The meeting will be held February 19–20, 2009, at the Campbell Creek Science Center, located at BLM Campbell Tract, 5600 Science Center Drive, Anchorage, Alaska 99507. On February 19 the meeting starts at 1 p.m. On February 20, the meeting begins at 8:30 a.m. and the council will accept public comment from 1–2 p.m.

FOR FURTHER INFORMATION CONTACT: Sharon Wilson, RAC Coordinator, BLM-Alaska State Office, 222 W. 7th Avenue, #13, Anchorage, AK 99513. Telephone (907) 271–4418 or e-mail *Sharon_Wilson@blm.gov*.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Alaska. At this meeting, topics planned for discussion include:

- Election of Chair and Vice-Chair
- District Manager reports
- Invasive plant management program
- Implementation of recently completed resource management plans
- Other topics of interest to the RAC

All meetings are open to the public. Depending on the number of people wishing to comment and time available, the time for individual oral comments may be limited, so be prepared to submit written comments if necessary. 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.

Individuals who plan to attend and need special assistance, such as sign language interpretation, transportation, or other reasonable accommodations, should contact the BLM RAC Coordinator listed above.

Dated: January 13, 2009.

Thomas P. Lonnie,

State Director.

[FR Doc. E9–1025 Filed 1–16–09; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWYD01000–2009–LL13100000–NB0000–LXSI016K0000]

Notice of the 2009 Meeting Schedule for the Pinedale Anticline Working Group

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management

Act (1976) and the Federal Advisory Committee Act (1972), the U.S. Department of the Interior, Bureau of Land Management (BLM) Pinedale Anticline Working Group (PAWG) will meet in Pinedale, Wyoming for business meetings. Meetings are open to the public.

DATES: The PAWG will meet on the following dates beginning at 1 p.m. MST:

February 19, 2009;

March 26, 2009;

May 28, 2009;

July 23, 2009;

September 24, 2009.

ADDRESSES: The meetings of the PAWG will be held at the BLM Pinedale Field Office, 1625 West Pine Street in Pinedale, Wyoming.

FOR FURTHER INFORMATION CONTACT: Mr. David Crowley, PAWG Designated Federal Officer, Bureau of Land Management, Pinedale Field Office, 1625 West Pine Street, PO Box 768, Pinedale, WY 82941; 307–367–5323; *dave_crowley@blm.gov*.

SUPPLEMENTARY INFORMATION: The Pinedale Anticline Working Group (PAWG) was authorized and established with release of the Record of Decision (ROD) for the Final Environmental Impact Statement of the Pinedale Anticline Oil and Gas Exploration and Development Project (PAP) on July 27, 2000 and carried forward with the release of the ROD for the Final Supplemental Environmental Impact Statement (FSEIS) of the PAP on September 12, 2008.

The PAWG advises the BLM on the development and implementation of monitoring plans and adaptive management decisions as development of the Pinedale Anticline Natural Gas Field proceeds through the life of the field. The agendas for these meetings will include discussions concerning the implementation of the PAP FSEIS ROD, the development of the Anticline Project Office, any modifications the PAWG or the task groups may wish to make to their monitoring recommendations, and overall adaptive management implementation as it applies to the PAWG. At a minimum, public comments will be heard prior to adjournment of each meeting.

Dated: January 12, 2009.

William Lanning,

Associate Field Office Manager.

[FR Doc. E9–1031 Filed 1–16–09; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

ID–933–1430–FQ; DK–G08–0002; IDI–15627]

Public Land Order No. 7728; Revocation of the Withdrawal Created by the Executive Order Dated April 4, 1917, as Modified; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes in its entirety a withdrawal created by an Executive Order, as modified, as to 184.10 acres of public lands withdrawn from surface entry for the Bureau of Land Management's Power Site Reserve No. 595. This order also opens those lands not previously conveyed out of Federal ownership to surface entry, subject to other segregations of record.

DATES: *Effective Date:* February 20, 2009.

FOR FURTHER INFORMATION CONTACT: Jackie Simmons, BLM Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho 83709, 208–373–3867.

SUPPLEMENTARY INFORMATION: The lands were withdrawn from settlement, sale location and entry and reserved for the purposes of electrical transmission line development. The transmission lines were never constructed and the powersite reservation is no longer needed. This action will permit the conveyance of public lands for community growth purposes. The State of Idaho has waived its rights of selection in accordance with the provisions of Section 24 of the Federal Power Act of June 10, 1920 (41 Stat. 1015, 16 U.S.C. 818 (2000)), as amended. The Department of the Interior, Office of the Secretary, Assistant Secretary—Fish and Wildlife and Parks has the authority to sign this document pursuant to 43 U.S.C. 1714(a).

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. The withdrawal created by Executive Order dated April 4, 1917, as modified by Executive Order dated June 29, 1917 and Secretarial Order dated April 4, 1921, which reserved lands for the purposes of electrical transmission line development, designated Power Site Reserve No. 595, is hereby revoked in its entirety.

2. At 9 a.m. on February 20, 2009, the lands referenced in Paragraph 1, except those lands previously conveyed out of Federal ownership, will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals or other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on February 20, 2009, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: January 7, 2009.

Lyle Laverty,

Assistant Secretary—Fish and Wildlife and Parks, Department of the Interior.

[FR Doc. E9–927 Filed 1–16–09; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNV060000.L14300000.ES0000; N–84312; 09–08807; TAS: 14X1109]

Classification and Lease for Recreation and Public Purposes Act of Public Lands in Eureka County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The Bureau of Land Management (BLM) has examined and found suitable for classification for lease and subsequent conveyance under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended, approximately 1.25 acres of public land in Eureka County, Nevada. The County proposes to use the land for a fire station.

DATES: Interested parties may submit written comments regarding this proposed classification and lease of public land until March 9, 2009.

ADDRESSES: Mail written comments to the BLM Manager, Mount Lewis Field Office, 50 Bastian Road, Battle Mountain, NV 89820.

FOR FURTHER INFORMATION CONTACT: Chuck Lahr, (775) 635–4000.

SUPPLEMENTARY INFORMATION: In accordance with Section 7 of the Taylor Grazing Act (43 U.S.C. 315f), and Executive Order No. 6910, the following described public land in Eureka County, Nevada, has been examined and found suitable for classification for lease and subsequent conveyance under the provisions of the R&PP Act, as amended, (43 U.S.C. 869 *et seq.*):

Mount Diablo Meridian, Nevada

T. 20 N., R. 53 E., Sec. 16, within Government Lot 1.

Note: This description will be replaced on completion of a resurvey and final approval of the official plat of survey.

In accordance with the R&PP Act, Eureka County filed an application to construct a fire station on approximately 1.25 acres. Additional detailed information pertaining to this application, plan of development, and site plans are in case file N–84312 located in the BLM Battle Mountain District Office.

The land is not needed for any Federal purpose. The lease and subsequent conveyance is consistent with the Shoshone/Eureka Resource Management Plan, dated February 26, 1986, and would be in the public interest. The lease and subsequent conveyance will be subject to the provisions of the R&PP Act, applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945); and

2. All minerals, together with the right to prospect for, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

The lease/conveyance will also be subject to:

Valid existing rights.

On publication of this notice in the **Federal Register** the land described will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease and conveyance under the R&PP Act, leasing under the mineral leasing laws, and disposals under the mineral material disposal laws.

Interested parties may submit comments involving the suitability of the land for a fire station. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision to lease and later convey under the R&PP Act, or any other factor not directly related to the suitability of the land for R&PP use.

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.

Only written comments submitted by postal service or overnight mail to the BLM Manager, Mount Lewis Field Office, will be considered properly filed. Electronic mail, facsimile, or telephone comments will not be considered properly filed. Comments, including names and addresses of respondents, will be available for public review. Before including your address, telephone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Any adverse comments will be reviewed by the BLM Nevada State Director. In the absence of any adverse comments, the classification of the land described in this notice will become effective 60 days after publication of this notice in the **Federal Register**. The lands will not be available for lease and conveyance until after the classification becomes effective.

Authority: 43 CFR 2741.5.

Dated: January 9, 2009.

Douglas W. Furtado,

Field Manager, Mount Lewis Field Office.

[FR Doc. E9–1026 Filed 1–16–09; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Request for Comments on the Draft Proposed 5-Year Outer Continental Shelf (OCS) Oil and Gas Leasing Program for 2010–2015 and Notice of Intent To Prepare an Environmental Impact Statement (EIS) for the Proposed 5-Year Program

AGENCY: Minerals Management Service, Interior.

ACTION: Request for Comments.

SUMMARY: The Minerals Management Service (MMS) requests comments on the Draft Proposed 5-year OCS Oil and Gas Leasing Program for 2010–2015 (DPP). This draft proposal is for a new oil and gas program to succeed the current program that is currently set to expire on June 30, 2012, and forms the basis for conducting the studies and analyses the Secretary will consider in making future decisions on what areas of the OCS to include in the program.

Section 18 of the OCS Lands Act (43 U.S.C. 1344) specifies a multi-step process of consultation and analysis that must be completed before the Secretary of the Interior may approve a new 5-year program. The required steps following this notice include the development of a proposed program, a proposed final program, and Secretarial approval. Pursuant to the National Environmental Policy Act (NEPA), the MMS also will prepare an EIS for the new 5-year program.

DATES: Please submit comments and information to the MMS no later than March 23, 2009.

Public Comment Procedure

The MMS will accept comments in one of two formats: By mail or our Internet commenting system. Please submit your comments using only one of these formats, and include full names and addresses. Comments submitted by other means may not be considered. We will not consider anonymous comments, and we will make available for inspection in their entirety all comments submitted by organizations and businesses or by individuals identifying themselves as representatives of organizations and businesses.

Our practice is to make comments, including the names and home addresses of respondents, available for public review. An individual commenter may ask that we withhold his or her name, home address, or both from the public record, and we will honor such a request to the extent allowable by law. If you submit comments and wish us to withhold such information, you must so state prominently at the beginning of your submission.

ADDRESSES: You may submit comments on the DPP by any of the following methods.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Under the tab ''More Search Options,'' click ''Advanced Docket Search,'' then select ''Minerals Management Service'' from the agency drop-down menu, then click the submit button. In the Docket ID column, select MMS–2008–OMM–0045 to submit public comments and to view related materials available for this Notice. 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. The MMS will post all comments on the DPP.

• Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Leasing Division (LD); 381 Elden Street, MS–4010; Herndon, Virginia 20170–4817. Please reference ''2010–2015 Oil and Gas Leasing in the Outer Continental Shelf,'' in your comments and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Renee Orr, 5-Year Program Manager, at (703) 787–1215.

SUPPLEMENTARY INFORMATION: The MMS requests comments from states, local governments, Native groups, tribes, the oil and gas industry, Federal agencies, environmental and other interest organizations, and all other interested parties to assist in the preparation of a 5-year draft proposed OCS oil and gas leasing program for 2010–2015 and the applicable EIS.

The draft proposed program (DPP) document may be downloaded off the MMS Web site at *http://www.mms.gov.* The document also is available as part of our electronic commenting system noted above. Hard copies will be made available by contacting the 5-Year Program Office at 703–787–1215.

Background

Section 18 of the OCS Lands Act requires the Secretary of the Interior to prepare and maintain a schedule of proposed OCS oil and gas lease sales determined to ''best meet national energy needs for the 5-year period following its approval or reapproval.'' This DPP is the first proposed schedule of OCS lease sales for the 2010–2015 timeframe. The areas identified as proposed program areas in this notice are ones that warrant further study and analysis based on oil and gas resource estimates and comments received in response to the Request for Information published in the **Federal Register** on August 1, 2008 (73 FR 45065). Inclusion of areas in the draft proposed lease sale schedule provides a basis for gathering information and conducting analyses to inform policy makers whether to include these areas for leasing consideration in the new 5-year program. Before the new 5-year program is approved and implemented, the MMS must accept and consider comments on the DPP and issue for public review a proposed program, a draft EIS, a proposed final program, and a final EIS. The MMS will also evaluate prospective alternative energy projects on the OCS during the period of 2010 to 2015. In order to produce the next 5-year planning document (the Proposed Program) MMS will consider the potential interaction between alternative energy projects and potential oil and natural gas leasing activities in the 2010–2015 5-Year Program.

Summary of the Draft Proposed Program

While the DPP includes a schedule of sales, the intent of this document and associated materials are to make clear that the Secretary is not recommending any particular areas be included in or excluded from the eventual final program. Rather, it is designed to gather information, allowing the process to move forward in a way that will allow the next Administration to design the program that best fits their assessment of how to balance energy needs and environmental risks and benefits.

In developing the DPP for 2010–2015, the MMS considered oil and gas leasing in the areas of the OCS that are included in the current 5-year program for 2007–2012 and additional areas off Alaska, Pacific coast, the Gulf of Mexico, and Atlantic coast. Some of these additional areas had been subject to annual congressional moratoria prohibiting oil and gas leasing. However, the moratoria expired on September 30, 2008. The DPP includes lease sales in offshore areas that have the highest oil and gas resource values and highest industry interest, as well as areas that are off the coasts of states that have expressed interest in learning more about potential energy exploration off their coasts. Forty-seven comments from oil and gas companies or associations nominated specific planning areas to be included in the new 5-Year program; some nominated all planning areas. The DPP was determined in the context of these comments, within the broader considerations of offshore energy, including alternative energy.

It is uncertain whether the final decision on the 5-Year Program will include as many areas as are included in DPP. Such decisions on the size, timing and location of sales will rest with the next Administration. This DPP provides the next Administration with the maximum flexibility and the maximum available information to make these important decisions. To that end, the following questions will need to be addressed regarding the areas of the OCS that may be made available for leasing:

• Should there be buffer zones (i.e., areas where certain activities are prohibited or restricted)? If so, how large should they be? What criteria should be used for setting them (e.g., visual impacts, infrastructure, etc.)? Should they be uniform in all new areas or vary by area according to issues of concern and/or technical constraints?

• Are there specific areas/subareas that should be excluded because they are particularly sensitive? Or because oil and gas activities may significantly conflict, in some areas, with other uses for which the area/subarea might be better suited (e.g., alternative energy)?

• This Administration views revenue sharing as a strong feature of state participation in coastal resource development. When the President modified the presidential withdrawal, he called upon Congress to address new legislation to enhance current revenue sharing laws, to allow broader state participation in fiscal planning related to future coastal resource development. Please provide your views on what policies and programs MMS, Congress and the Administration should consider relative to OCS revenue sharing.

• For those areas proposed for leasing consideration in the Southern California Planning Area, in deciding the next steps in the 5-year program preparation, should MMS include a requirement for mandatory unitization to potentially limit the number of structures in one or more of these areas?

The DPP also outlines prospective resources and the forecast for resources revenue. The MMS plans to complete an update of their 2006 National Assessment in early 2010 which should be available prior to publication of the Proposed Final Program. It is important to note that the DPP invites comment from coastal states on how OCS resources are developed off their shores. Despite efforts on the part of the Administration to urge Congress to take up revenue sharing legislation, Congress has not expanded revenue sharing outside of the four Gulf States. Other coastal states could share in revenues from leasing starting at the offshore state/Federal boundary, based upon the inherent revenue sharing built into section 8(g) of the OCS Lands Act. Congress could also establish a broader revenue sharing program. In the August 1, 2008 Request for Information, the governors of all 50 states were specifically asked for their comments, particularly on issues that are unique to each state, such as revenue sharing, in light of the energy situation and the President's July 14, 2008, action to remove the previous Presidential prohibition of certain OCS oil and gas leasing. The 2008 expiration of the congressional moratoria on OCS oil and

gas leasing highlights new issues related to participation in revenue sharing.

Proposed Lease Sales for Consideration

The DPP proposes a total of 31 OCS lease sales in 12 areas (4 areas off Alaska, 3 areas off the Atlantic coast, 2 areas off the Pacific coast, and 3 areas in the Gulf of Mexico). Maps A and B show the areas proposed for leasing (DPP areas). Table A lists the location and timing of the proposed lease sales.

TABLE A—DRAFT PROPOSED PROGRAM FOR 2010–2015—LEASE SALE SCHEDULE

Sale Number	Area	Year
225	Eastern Gulf of Mexico	2010
215	Western Gulf of Mexico	2010
212	Chukchi Sea	2010
216	Central Gulf of Mexico	2011
218	Western Gulf of Mexico	2011
226	Eastern Gulf of Mexico*	2011
227	Central Gulf of Mexico*	2011
214	North Aleutian Basin	2011
219	Cook Inlet	2011
220	Mid-Atlantic	2011
222	Central Gulf of Mexico	2012
221	Chukchi Sea	2012
228	Southern California	2012
229	Western Gulf of Mexico	2012
230	Mid-Atlantic	2012
231	Central Gulf of Mexico	2013
217	Beaufort Sea	2013
232	North Atlantic	2013
233	Western Gulf of Mexico	2013
234	Eastern Gulf of Mexico*	2013
235	Central Gulf of Mexico	2014
236	Northern California	2014
237	Chukchi Sea	2014
238	Western Gulf of Mexico	2014
239	North Aleutian Basin	2014
240	South Atlantic	2014
241	Central Gulf of Mexico	2015
242	Beaufort Sea	2015
243	Southern California	2015
244	Cook Inlet	2015
245	Mid-Atlantic	2015

* Program area for lease sales would be expanded if Congress passes new legislation to lift any or all of the moratorium mandated by GOMESA.

Alaska Region

In the Alaska Region, the DPP schedules multiple lease sales in the Beaufort Sea, Chukchi Sea, and North Aleutian Basin Planning Areas. The multiple sales that are scheduled are consistent with the Governor of Alaska's recommendations and the state's administration of its offshore oil and gas program. The schedule for proposed sales in the Beaufort and Chukchi Seas are staggered by year with each other and timed to allow for possible new data from drilling between sales. The DPP expands the program areas to the entire planning areas for the Beaufort and Chukchi Seas, but the two subsistence deferrals in the Beaufort Sea and the 25-mile no-leasing buffer in the Chukchi Sea are continued from the current 5-year program.

Two proposed sales are scheduled in the North Aleutian Basin, a sale in 2011 in the current 5-year program and a second sale in 2014. The proposed program area is limited to that area included in the current program, commonly called the Sale 92 area.

The Cook Inlet Planning Area is included in the DPP as a special interest sale area. The proposed sales are scheduled for 2011 and 2015, but before MMS proceeds, it will issue a request for nominations and comments and will move forward only after consideration of the comments received in response to annual calls for information. If the comments from a call for information do not support consideration of a sale, the sale will be postponed and a request for nominations and comments will be issued again the following year, and so on through the 5-year schedule, until a sale is held or the schedule expires.

Pacific Region

The Pacific Region consists of 4 planning areas—Washington-Oregon, Northern California, Central California, and Southern California. The DPP schedules one sale in the Northern California Planning Area and two in the Southern California Planning Area. The proposed sales are in areas of known hydrocarbon potential—the Point Arena Basin in Northern California, and the Santa Maria, Santa Barbara/Ventura, and Oceanside/Capistrano Basins in Southern California. For each of these basins, the MMS also requests comments on including in the next steps in the 5-year program a requirement for mandatory unitization to potentially limit the number of structures in one or more of these areas. The proposed program area for the first sale in the Southern California Planning Area includes the Ecological Preserve offshore Santa Barbara for leasing but with access available only by directional drilling from structures outside the Preserve.

Gulf of Mexico Region

The DPP includes sales in all three areas of the Gulf of Mexico Region—Western, Central and Eastern. The Central and Western Gulf of Mexico Planning Areas remain the two areas of highest national resource potential and interest. The DPP would continue the customary practice of annual lease sales in these two areas, offering all the area that is not leased or under restriction. In addition, a second proposed sale is scheduled for 2011 in a small portion of the Central Gulf of Mexico Planning Area. This portion was recently made available with the lifting of restrictions.

Three sales are proposed for the Eastern Gulf of Mexico Planning Area, starting in 2010, offering all the area that is not leased or under restriction. The majority of the planning area is under restriction pursuant to GOMESA. The DPP area encompasses a portion of the planning area in the event that the restriction is lifted or modified during the 2010–2015 timeframe. The DPP includes a 75-mile wide no permanent surface structures zone, with no leasing eastward of that zone. This area has been configured to preliminarily address military multiple use issues. Dialogue with the Department of Defense will continue through the development of this 5-Year Program and throughout the pre-lease process. To the extent that GOMESA restrictions remain in effect during the duration of the program, the program area for these sales would include the area offered in Sale 224 in 2008 as mandated by GOMESA plus a small portion to the south of the Sale 224 area recently made available with the lifting of restrictions.

Atlantic OCS

There are four planning areas in the Atlantic OCS—North Atlantic, Mid-Atlantic, South Atlantic, and Straits of Florida. The DPP proposes one sale each in the North and South Atlantic Planning Areas and three sales in the Mid-Atlantic Planning Area. Sale 220, offshore Virginia is the first of the three sales. In the current program, the Sale 220 program area includes a 50-mile no leasing buffer. However, for the two subsequent sales, the DPP area for the entire Mid-Atlantic planning area contains no buffers at this time. The Department will continue to be responsive to the position of the Commonwealth of Virginia regarding a 50-mile buffer during subsequent steps in the 5-year program process and during the individual lease sale process. No sales are proposed for the Straits of Florida Planning Area.

Assurance of Fair Market Value

Section 18 of the OCS Lands Act requires receipt of fair market value from OCS oil and gas leases. The MMS expects to continue using a two-phase post-sale bid evaluation process that it has used since 1983 to meet the fair market value requirement. Further, the DPP provides that MMS may set minimum bid levels, rental rates, and royalty rates by individual lease sale based on its assessment of market and

resource conditions closer to the date of the sale.

Information Requested for the Draft Proposed Program

We request all interested and affected parties to comment on the size, timing, and location of leasing and the procedures for assuring fair market value that are proposed in the Draft Proposed 5-Year OCS Oil and Gas Leasing Program for 2010–2015. Respondents who submitted information in response to the August 1, 2008 **Federal Register** notice requesting comments on preparing the 5-year program for 2010–2015, may wish to reference that information, as appropriate, rather than repeating it in their comments on the DPP. We also invite comments and suggestions on how to proceed with the section 18 analysis for the next draft of the new program, the proposed program.

Section 18(g) authorizes confidential treatment of privileged or proprietary information that is submitted. In order to protect the confidentiality of such information, respondents should include it as an attachment to other comments submitted and mark it appropriately. On request, the MMS will treat such information as confidential from the time of its receipt until 5 years after approval of the new leasing program, subject to the requirements of the Freedom of Information Act.

The MMS will not treat as confidential any aggregate summaries of such information, the names of respondents, and comments not containing such information.

Environmental Impact Statement (EIS) Preparation

Pursuant to section 102(2)(C) of NEPA, the MMS intends to prepare an EIS for the new 5-year OCS oil and gas leasing program for 2010–2015. This notice starts the formal scoping process for the EIS under 40 CFR 1501.7, and solicits information regarding issues and alternatives that should be evaluated in the EIS. The EIS will analyze the potential impacts of the adoption of the proposed 5-year program.

The comments that MMS has received in response to the August 2008, Request for Comments, and the comments received during scoping for the 2007–2012 5-Year EIS have identified environmental issues and concerns that MMS will consider in the EIS. In summary, these include climate change as an impact factor in cumulative analyses, the effects of the OCS program on climate change, potential impacts from accidental oil spills, potential impacts to tourism and recreation activities, and ecological impacts from potential degradation of marine and coastal habitats. Additionally alternatives will be developed and analyzed during the EIS process based on scoping comments and governmental communications. Alternatives may include increasing or decreasing the number or frequency of sales, coastal buffers, limiting areas available for leasing, and excluding parts of or entire planning areas. Additional issues and alternatives will be addressed as a result of the request for supplemental information from stakeholders asked to respond to the four questions in the Notice above that specifically request comments on buffer zones, including the criteria that should be used to set them and whether they should be uniformly across the nation, and on whether certain areas and subareas should be excluded because of particular environmental sensitivity or because of a preferred alternative use (e.g., alternative energy), broader revenue sharing policies, and potential mandatory unitization in certain areas.

Written Scoping Comments for the EIS

The MMS will consider comments for the purposes of determining the scope of the EIS we plan to prepare. Comments on the relationship between the Oil and Gas Program and the Alternative Energy Program are also welcome. Interested parties may submit their written scoping comments until March 23, 2009 to Mr. J.F. Bennett, Chief, Branch of Environmental Assessment, Minerals Management Service, 381 Elden Street, MS 4042, Herndon, Virginia 20170, or online at *http://www.regulations.gov.* Under the tab ''More Search Options,'' click ''Advanced Docket Search,'' then select ''Minerals Management Service'' from the agency drop-down menu, then click the submit button. In the Docket ID column, select MMS–2008–OMM–0046 to submit public comments and to view related materials available for this Notice. 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.

Our practice is to make comments, including names and addresses of respondents available for public review. Individual commenters may ask that we withhold their name, home address, or both from the public record, and we will try to honor such a request to the extent allowable by law. If you submit comments and wish us to withhold such information, you must state so prominently at the beginning of your submission. We will not consider anonymous comments, and we will make available for inspection in their entirety all comments submitted by organizations or businesses or by individuals identifying themselves as representatives of organizations or businesses.

Scoping Meetings

Meetings will be held between now and March 23, 2009 to receive scoping comments on the EIS. Several meetings will be scheduled to take advantage of existing venues for other MMS meetings. In Alaska the following public hearings on the Beaufort Sea and Chukchi Sea Planning Areas Multisale DEIS are also expected to take scoping comments for the 5-year EIS. We have specifics on three locations as follows:

- Kaktovik, Alaska: Public Hearing from 7–10 p.m., Tuesday, February 3, Kaktovik Community Center;
- Nuiqsut, Alaska: Public Hearing from 7–10 p.m., Wednesday, February 4, Kisik Community Center; and,
- Barrow, Alaska: Public Hearing from 7–10 p.m., Friday, February 6, Inupiat Heritage Center.

Additional public scoping meetings for the 5-year EIS are being planned for, but are not necessarily limited to the following cities:

- Anchorage, Alaska;
- Wainwright, Alaska;
- Point Lay, Alaska;
- Point Hope, Alaska;
- Dillingham, Alaska;
- Naknek/King Salmon, Alaska;
- Sand Point, Alaska;
- Nelson Lagoon, Alaska;
- Cold Bay, Alaska;
- King Cove, Alaska;
- Unalaska/Dutch Harbor, Alaska;
- Seattle, Washington;
- Ft. Bragg/Ukiah, California;
- Oceanside/San Diego, California;
- Santa Maria/Santa Barbara, California;
- Houston, Texas;
- New Orleans, Louisiana;
- Mobile, Alabama;
- Tallahassee, Florida;
- Tampa/St. Petersburg, Florida;
- Savannah, Georgia;
- Wilmington, North Carolina;
- Norfolk, Virginia;
- New York, New York/Atlantic City, New Jersey;
- Boston, Massachusetts; and
- Washington, DC.

Specific times and venues will be posted on the MMS Web site and published in the **Federal Register** per 40 CFR 1506.6.

Cooperating Agency

The Department of the Interior invites other Federal agencies, state, tribal, and

local governments to consider becoming cooperating agencies in the preparation of the EIS. We invite qualified government entities to inquire about cooperating agency status for the EIS for the proposed 5-year program. Using the guidelines from the Council on Environmental Quality (CEQ), qualified agencies and governments are those with ''jurisdiction by law or special expertise.'' Potential cooperating agencies should consider their authority and capacity to assume the responsibilities of a cooperating agency and to remember that an agency's role in the environmental analysis neither enlarges nor diminishes the final decision making authority of any other agency involved in the NEPA process. Agencies should also consider the ''Factors for determining Cooperating Agency Status'' in Attachment 1 to CEQ's January 30, 2002, Memorandum for the Heads of Federal Agencies: Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act. The appropriate pages can be found at: *http://ceq.hss.doe.gov/nepa/regs/cooperating/cooperatingagencies memorandum.html* and *http://ceq.hss.doe.gov/nepa/regs/cooperating/cooperatingagencymemofactors.html.*

The MMS, as the lead agency, will not provide financial assistance to cooperating agencies. Even if an organization is not a cooperating agency, opportunities will exist to provide information and comments to MMS during the normal public input phases of the NEPA/EIS process. MMS will also consult with tribal governments on a government-to-government basis. If further information about cooperating agencies is needed, please contact Mr. James F. Bennett, at (703) 787–1660.

Next Steps in the Process

The MMS plans to issue the proposed program and draft EIS in mid-summer 2009 for a 90-day comment period. We plan to issue the proposed final program and final EIS in spring 2010. The Secretary may approve the new 5-year program 60 days later to go into effect as of July 1, 2010.

Dated: January 8, 2009.

Randall B. Luthi,

Director, Minerals Management Service.

[FR Doc. E9–1062 Filed 1–16–09; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Cape Wind Energy Project

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of Availability (NOA) of final Environmental Impact Statement (EIS) for the proposed Cape Wind Energy Project on the Outer Continental Shelf (OCS) off Massachusetts, in Nantucket Sound; Request for Comment.

SUMMARY: The MMS is announcing the availability of a final EIS for the proposed Cape Wind Energy Project. Cape Wind Associates, LLC (CWA) has requested a lease, easement or right-of-way, pursuant to section 8(p) of the Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1337) as amended, and proposes to construct and operate a wind energy facility on the OCS off Massachusetts, in Nantucket Sound. The final EIS is intended to inform the public of the proposed action and reasonable alternatives, including the ''no action'' alternative; analyze the direct, indirect, and cumulative environmental effects of the proposed action and each of the reasonable alternatives; address public comment received on the draft EIS that was released in January 2008; and provide information to support decision-making.

Authority: This NOA is published pursuant to the National Environmental Policy Act (NEPA) of 1969 as amended (42 U.S.C. 4321 *et seq.* (1988)) and regulations (40 CFR 1506.6) implementing the provisions of NEPA.

SUPPLEMENTARY INFORMATION: The MMS has received a request from CWA for a lease, easement or right-of-way to construct and operate a wind energy project on Horseshoe Shoal on the OCS in Nantucket Sound. The proposed project would consist of 130 offshore wind turbine generators arranged to maximize the project's full potential electric output of approximately 468 megawatts. Each turbine would be approximately 440 feet high. The proposed wind turbine array would occupy approximately 25 square miles, and would be located approximately 5.6 miles from the coast of Cape Cod, Massachusetts, 9 miles from the coast of Martha's Vineyard, and 13.8 miles from the coast of Nantucket Island. The proposed array would be in a grid formation where the distance between each turbine is proposed to be one-third mile from north to south and one-half mile from east to west. The wind-generated electricity from each of the turbines would be transmitted via a 33-kilovolt submarine transmission cable system to a centrally located electric service platform. This platform would transform and transmit electric power via two 115-kilovolt lines extending over 12 miles to the Cape Cod mainland, where it would ultimately connect with the existing power grid.

In November 2001, CWA filed a permit application with the U.S. Army Corps of Engineers (USACE), New England District, under section 10 of the Rivers and Harbors Act of 1899, in anticipation of constructing a wind project located on Horseshoe Shoal in Nantucket Sound. The USACE released a draft EIS concerning issuance of the section 10 permit in November 2004.

Subsequently, Section 388 of the Energy Policy Act of 2005 (EPAct) amended the OCSLA to give the Department of the Interior, in consultation with other relevant federal agencies, authority for issuing leases, easements, or rights-of-way for alternative energy projects on the OCS. Additional information on the MMS Offshore Alternative Energy Program can be found at: *http://www.mms.gov/offshore/alternativeenergy/.*

After reviewing the draft EIS prepared by the USACE, which was completed prior to the EPAct amendment of the OCSLA, the MMS prepared its own draft EIS analyzing the potential impacts of the project under the broader authority granted to it under the OCSLA, as amended. The MMS launched a renewed scoping process by publishing in the **Federal Register** (71 FR 30693) on May 30, 2006, a notice of intent to prepare the EIS. The 1,321 public comments received in response to that notice were considered and taken into account in the draft EIS, as well as the final EIS. The MMS also considered and took into account over 5,000 public comments made during the review period for the USACE draft EIS, as well as those made at USACE public hearings held in Yarmouth, Martha's Vineyard, Cambridge, and Nantucket, Massachusetts.

On January 18, 2008, MMS published a notice in the **Federal Register** stating the availability of the draft EIS. The public comment period lasted 60 days (until March 20, 2008) and then was extended another 30 days to April 21, 2008, to provide the public with additional time to review the draft EIS and provide comment. The MMS received comments through its *Public Connect* Web site, via e-mails, via oral and paper copy comments provided at the four public hearings: (the Mattacheese Middle School in West Yarmouth, Massachusetts; the

Nantucket High School in Nantucket, Massachusetts; the Martha's Vineyard Regional High School in Oak Bluffs, Massachusetts; and at the University of Massachusetts Boston Campus in South Boston, Massachusetts), and via paper copy comments mailed in. In all, more than 42,000 comments were received. All comments received were logged in and responded to as appropriate and are included in the final EIS.

Contents of the Final EIS: The final EIS considers all reasonable alternatives to the proposed action, including several other offshore sites in the New England region, as well as non-geographic alternatives at the proposed Horseshoe Shoal site made up of a smaller project alternative, a condensed configuration, phased development, and the no-action alternative. Seven alternatives: the proposed action, no action, a smaller project, condensed configuration, phased development, and alternative sites at Monomoy Shoals and south of Tuckernuck Island—are subjected to detailed analysis in the final EIS, including an analysis of direct, indirect, and cumulative environmental effects, and identification of the preferred alternative (Horseshoe Shoal). Changes in the document since the draft EIS include the addition of a final avian and bat monitoring plan, a finding of adverse visual effects to 29 properties evaluated as eligible for listing on the National Register of Historic Places, updated mitigation measures, and proposed mitigation measures to ensure navigation safety from the U.S. Coast Guard based on a 2008 report by the Coast Guard analyzing two existing studies regarding the effects of wind turbines upon shipboard radar and navigation. Although this information was an outgrowth of comments received on the draft EIS and has not resulted in significant changes to the analysis of impacts prepared for the draft EIS, MMS is seeking comments related to these issues that will be considered for the Record of Decision.

EIS Availability: To obtain a single CD–ROM copy of the final EIS, you may contact the Minerals Management Service, Environmental Assessment Branch (MS 4042), 381 Elden Street, Herndon, Virginia 20170. An electronic copy of the final EIS is available at the MMS's Internet Web site at: *http://www.mms.gov/offshore/AlternativeEnergy/CapeWind.htm*, as are electronic copies of attachments to the final EIS and reports used in its preparation. For a list of libraries in Massachusetts that were provided copies of the final EIS, visit MMS's Internet Web site at: *http://www.mms.gov/library/* or contact MMS as indicated below under the heading **FOR FURTHER INFORMATION CONTACT**.

Comments: Although this is a final EIS, you may provide comments. No decision on the proposed project will be made until at least 30 days from the publication of this notice. Federal, state, local government agencies, and other interested parties may provide written comments on the final EIS in one of the following ways:

1. Electronically, using MMS's on-line commenting system at: *http://ocsconnect.mms.gov/pcs-public/.*

2. In written form, mailed or delivered to MMS Cape Wind Energy Project, TRC Environmental Corporation, Wannalancit Mills, 650 Suffolk Street, Lowell, Massachusetts 01854.

Public Comment Policy: Be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Bennett, Minerals Management Service, Environmental Assessment Branch, 381 Elden Street, Mail Stop 4042, Herndon, Virginia 20710, or by phone at (703) 787–1656.

Dated: January 5, 2009.

Chris C. Oynes,

Associate Director for Offshore Energy and Minerals Management.

[FR Doc. E9–1065 Filed 1–16–09; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service (MMS)

Geological and Geophysical Exploration (G&G) on the Atlantic Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Intent (NOI) To Prepare a Programmatic Environmental Impact Statement (PEIS) and Call for Interest for Future Industry G&G Activity on the Atlantic OCS.

SUMMARY: Pursuant to the regulations implementing the procedural provisions of the National Environmental Policy Act (NEPA), MMS is announcing its intent to prepare a PEIS to evaluate potential environmental effects of multiple G&G activities on the Atlantic OCS. This NOI initiates the scoping process for this PEIS and also seeks interest from other Federal agencies, and State, tribal, and local governments to consider becoming cooperating agencies in the preparation of the EIS. Through the scoping process, Federal, state, and local government agencies and other interested parties have the opportunity to aid MMS in determining the significant issues and alternatives for analysis in the PEIS. Comments received in response to the NOI will assist MMS in developing the scope of the PEIS. This early planning and consultation step is important to ensure that all interests and concerns are communicated to MMS as it develops this PEIS and ultimately for future decisions regarding G&G operations under MMS regulatory authority.

In order to assist MMS in developing the scope of G&G activities to be covered within the PEIS, we are also using this NOI to solicit information from industry on any potential interest for future G&G activities on the Atlantic OCS, including seismic surveys (high-resolution surveys as well as various types of seismic exploration and development surveys), side-scan sonar surveys, all types of electromagnetic surveys, geological and geochemical sampling, and remote sensing (including gravity and magnetic surveys) and the geographic areas of these activities. The MMS will specifically use this information to develop the scope of the PEIS scenario and its proposed action area. If details on activities, desired geographic locations, or other relevant information are not provided to MMS through this Call for Interest, then this information may not be included in the PEIS scenario and may require additional NEPA analysis if proposed at a later date.

With this NOI, MMS notes that this PEIS is dependent upon availability of funding. MMS welcomes participation from outside sources consistent with appropriate authorities and mechanisms to award a contract to conduct the essential analyses and prepare the PEIS. The MMS would maintain sole oversight over selection and management of contractors and would maintain full authority over the content of the PEIS, protected resources analyses, and final decisions. Outside sources that are considering participating in this PEIS process should submit an expression of interest, along with the requested information on potential activities and geographic scope, to the MMS, Gulf of Mexico OCS Region's Regional Supervisor for Leasing and Environment (see Comments section for contact information).

If a PEIS is funded and started in early 2009, MMS estimates completion of the PEIS by late 2010. Without funding, completion of the PEIS would be uncertain.

SUPPLEMENTARY INFORMATION:

Authority: MMS has the authority under the Outer Continental Shelf Lands Act (OCSLA as amended; 43 U.S.C. 1331–1356, (1994)) and its implementing regulations at 30 CFR Part 251 to issue prelease permits for the collection of G&G data. These regulations discuss and identify both the authority and applicability of this responsibility as well as discussing the types of G&G activities that require a permit, the instructions for filing a permit, and the obligations and rights under a permit. This NOI is published pursuant to the regulations (40 CFR 1501.7) implementing the provisions of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.* (1988)) (NEPA).

Background: This NOI is the initial step in the NEPA process. The MMS plans to fully comply with all pertinent laws, rules, and regulations and will allow the public an adequate opportunity to participate in the NEPA process, including through scoping meetings and public comment periods.

The PEIS will evaluate environmental impacts of multiple G&G activities on the Atlantic OCS, and more specifically the proposed action area developed for the draft PEIS (see description of action area), subject to MMS regulatory authority. These activities include, but are not limited to, seismic surveys, side-scan sonar surveys, electromagnetic surveys, geological and geochemical sampling, and remote sensing. More information on G&G activities can be found on pages 13–15 of MMS's *Leasing Oil and Natural Gas Resources: Outer Continental Shelf* (see *http://www.mms.gov/ld/PDFs/GreenBook-LeasingDocument.pdf*) and MMS's *Geological and Geophysical Exploration for Mineral Resources on the Gulf of Mexico Outer Continental Shelf: Final Programmatic Environmental Assessment* (see *http://www.gomr.mms.gov/PDFs/2004/2004-054.pdf*).

The PEIS will be completed prior to authorizing any new, large-scale G&G activities on the Atlantic OCS. In the interim, MMS may still consider small scale, limited permit requests but only if a NEPA environmental assessment is conducted and finds there is no potential for significant impacts from that specific proposed activity nor that the cumulative nature of a collection of smaller, limited surveys would result in significant impacts under NEPA.

Description of Area: The action area to be evaluated under this PEIS may include the entire Atlantic OCS but will ultimately be determined based on information provided to MMS by industry and public commentors as a result of this NOI and Call for Interest.

Request for Cooperating Agencies: The DOI policy is to invite other Federal agencies, and State, tribal, and local governments to consider becoming cooperating agencies in the preparation of an EIS. Per Council of Environmental Quality (CEQ) regulations, qualified agencies and governments are those with ''jurisdiction by law or special expertise.'' Cooperating agency status neither enlarges nor diminishes the final decisionmaking authority of any agency involved in the NEPA process.

The MMS invites qualified government entities to inquire about cooperating agency status for this EIS. Upon request, the MMS will provide qualified cooperating agencies with a written summary of ground rules for cooperating agencies, including time schedules and critical action dates, milestones, responsibilities, scope and detail of cooperating agencies' contributions, and handling of predecisional information. The MMS anticipates this summary will form the basis for a Memorandum of Understanding between the MMS and each cooperating agency. You should also consider the CEQ's ''Factors for Determining Cooperating Agency Status.'' This document is available on the CEQ Web site at: *http://ceq.eh.doe.gov/nepa/regs/cooperating/cooperatingagencymemofactors.html*. Even if your organization is not a cooperating agency, you will continue to have opportunities to provide information and comments to MMS during the normal public input phases of the NEPA/EIS process.

Notice of Public Scoping Meetings on the PEIS: MMS will hold public scoping meetings on the PEIS. The purpose of these meetings will be to solicit comments on the scope of the PEIS, identify significant issues to be analyzed in the PEIS, and identify possible alternatives to a proposed action. The public scoping meetings will be scheduled at a later date and a **Federal Register** notice will be published announcing the date, time, and location of the meetings and will include a map of the Atlantic OCS.

Comments: In addition to participation in the scoping meetings, Federal, state, and local government agencies and other interested parties are invited to send their written comments on the scope of the PEIS, significant issues that should be addressed, alternatives that should be considered, scenario development, and the types of G&G activities and geographical areas of interest on the Atlantic OCS. In particular, MMS would like to know the interest level and geographic location for seismic exploration activity (2D and 3D), magnetotelluric and controlled source electromagnetic surveys, coring, deep and/or shallow stratigraphic test wells, geochemical surveys, aeromagnetic, and aerogravity surveys.

Comments may be submitted in one of the following two ways:

1. In written form enclosed in an envelope labeled ''Comments on the PEIS Scope'' and mailed (or hand carried) to the Regional Supervisor, Leasing and Environment (MS 5410), Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394.

2. Electronically to the MMS e-mail address: *GGEIS@mms.gov*.

If you would like your name added to the MMS mailing list, please send an e-mail to the MMS e-mail address: *GGEIS@mms.gov* with the subject line ''Atlantic OCS mailing list.'' For further information regarding the Atlantic OCS G&G PEIS please visit our Web site at: *http://www.gomr.mms.gov/homepg/offshore/atlocs/atlocs.html*.

DATES: Comments should be submitted no later than March 23, 2009, at the addresses specified above. If a PEIS is funded and started by early 2009, MMS estimates completion of the PEIS by late 2010.

FOR FURTHER INFORMATION CONTACT: For information on this NOI, please contact Mr. Casey Rowe, Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard (MS 5412), New Orleans, Louisiana 70123–2394, telephone (504) 736–2781. For information on MMS policies associated with this NOI, please contact Mr. Joe Christopher, Regional Supervisor, Leasing and Environment (MS 5410), Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, telephone (504) 736–2759.

Dated: January 9, 2009.

Randall B. Luthi,

Director, Minerals Management Service.

[FR Doc. E9–1063 Filed 1–16–09; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing

or related actions in the National Register were received by the National Park Service before January 2, 2009. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by February 5, 2009.

J. Paul Loether,

Chief National Register of Historic Places/National Historic Landmarks Program.

ALABAMA

Russell County

Hurtsboro Historic District, 308–905 Church St., 508 Daniel St., 303–407 Dickinson St., 302–802 Goolsby St., 402–502 Lloyd St., 242–282 Long St., Hurtsboro, 09000001

ARIZONA

Maricopa County

La Hacienda Historic District, Bounded by N. 3rd St. to the W., N. 7th St. to the E., E. Catalina Dr. to the N., E. Thomas Rd. to the S., Phoenix, 09000002

ARKANSAS

Faulkner County

Mt. Zion Missionary Baptist Church, (Mixed Masonry Buildings of Silas Owens, Sr. MPS) 249 AR 107, Enola, 09000003

Yell County

Dardanelle Commercial Historic District, Roughly bounded by Front, Oak, 2nd and Pine Sts., Dardanelle, 09000004

KENTUCKY

Fayette County

Pepper, James E., Distillery, 1200 Manchester St., Lexington, 09000006

Larue County

Buffalo School, 50 School Loop, Buffalo, 09000005

Logan County

Block Bottom Historic District, Bounded by E. 5th and 7th Sts., Bowling Green Rd. and Morgan St., Russellville, 09000007

McCracken County

Kenmil Place, 4300 Alben Barkley Dr., Paducah, 09000008

MAINE

Androscoggin County

Peck, Bradford, House, 506 Main St., Lewiston, 09000010

Aroostook County

Donovan-Hussey Farms Historic District, 546 and 535 Ludlow Rd., Houlton, 09000012

Duncan, Beecher H., Farm, 26 Shorey Rd., Westfield, 09000011

MAINE

Lincoln County

Brick House Historic District, 478 River Rd., Newcastle, 09000013

Oxford County

Stearns Hill Farm, 90 Stearns Hill Rd., West Paris, 09000014

York County

District No. 5 School, 781 Gore Rd., Alfred, 09000015

MISSOURI

Texas County

Houston High School, 423 W. Pine, Houston, 09000016

UTAH

Cache County

Crockett House, 82 Crockett Ave., Logan, 09000017

Salt Lake County

Utah-Idaho Sugar Factory, 2140 W. Sugar Factory Rd., West Jordan, 09000018

Summit County

Boyden Block, 2 S. Main St., Coalville, 09000019

Spiro Tunnel Mining Complex, 1825 Three Kings Dr., Park City, 09000020

WISCONSIN

St. Croix County

Kriesel, Louis C. and Augusta, Farmstead, 132 State Trunk Hwy 35/64, St. Joseph, 09000021

Thelen, John Nicholas and Hermina, House, 1383 and 1405 Thelen Farm Trail, St. Joseph, 09000022

Request for move has been made for the following resource:

UTAH

Summit County

Beggs, Ellsworth J., House, 703 Park Ave., Park City, 84002240

[FR Doc. E9–1015 Filed 1–16–09; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0059

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collections of information for 30 CFR Part 735—Grants for Program Development and Administration and Enforcement, 30 CFR Part 885—Grants for Certified States and Indian Tribes, and 30 CFR Part 886—State and Tribal Reclamation Grants. This collection request has been forwarded to the Office of Management and Budget (OMB) for review and approval. The information collection request describes the nature of the information collection and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by February 20, 2009, in order to be assured of consideration.

ADDRESSES: Please send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Department of the Interior Desk Officer, via e-mail at *OIRA_Docket@omb.eop.gov*, or by facsimile to (202) 395–6566. Also, please send a copy of your comments to the Information Collection Clearance Officer, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 202–SIB, Washington, DC 20240, or electronically to *jtrelease@osmre.gov*. Please reference 1029–0059 in your correspondence.

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request, contact John Trelease at (202) 208–2783, or electronically at *jtrelease@osmre.gov*.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [*see* 5 CFR 1320.8(d)]. OSM has submitted a request to OMB to renew its approval of the collections of information contained in 30 CFR Part 735—Grants for Program Development and Administration and Enforcement, 30 CFR Part 886—State and Tribal Reclamation Grants, and newly established 30 CFR Part 885 Grants for Certified States and Indian Tribes. OSM is requesting a 3-year term of approval for each information collection activity.

An agency may not conduct or sponsor, and a person is not required to

respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for 30 CFR Parts 735 and 886 that require grant submittals are currently approved under OMB control number 1029–0059. OSM is adding 30 CFR Part 885 to this collection, but it will not change the burden for this collection package since the burden associated with Part 885 is derived from Part 886.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on this collection of information was published on October 9, 2008 (73 FR 59671). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: 30 CFR Parts 735, 885, and 886.

OMB Control Number: 1029–0059.

Summary: State and Tribal reclamation and regulatory authorities are requested to provide specific budget and program information as part of the grant application and reporting processes authorized by the Surface Mining Control and Reclamation Act.

Bureau Form Numbers: OSM–47, OSM–49 and OSM–51.

Frequency of Collection: Semi-annually, annually and on occasion.

Description of Respondents: State and Tribal reclamation and regulatory authorities.

Total Annual Responses: 133.

Total Annual Burden Hours: 957 hours.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the addresses listed under **ADDRESSES**. Please refer to OMB control number 1029–0059 in your correspondence.

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: January 8, 2009.

John R Craynon,

Chief Division of Regulatory Support.

[FR Doc. E9–951 Filed 1–21–09; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on January 12, 2009, a proposed Consent Decree (''Consent Decree'') in the case of *United States, et al.* v. *Chemtrade Logistics (US), Inc., et al.,* Civil Action No. 3:09–cv–00067, was lodged with the United States District Court for the Northern District of Ohio.

In a complaint that was filed simultaneously with the Consent Decree, the United States, the State of Louisiana, the State of Ohio, and the Oklahoma Department of Environmental Quality (''ODEQ'') sought injunctive relief and civil penalties against Chemtrade Logistics (US), Inc., Chemtrade Refinery Services Inc., and Marsulex Inc. (collectively ''Defendants''), pursuant to Sections 113(b) and 304(a) of the Clean Air Act (''CAA''), 42 U.S.C. 7413(b), 7604(a), for alleged violations of the standards of performance for new stationary sources, 42 U.S.C. 7411, also known as New Source Performance Standards (''NSPS''); preconstruction requirements, 42 U.S.C. 7470–92, 7501–7509a, also known as Prevention of Significant Deterioration (''PSD'') and Nonattainment New Source Review (''Nonattainment NSR'') requirements; and permit requirements, 42 U.S.C. 7503, also known as Title V requirements. The claims relate to six sulfuric acid manufacturing facilities located in Cairo, Ohio; Oregon, Ohio; Beaumont, Texas; Shreveport, Louisiana; Tulsa, Oklahoma; and Riverton, Wyoming.

The Consent Decree requires the Defendants to pay a civil penalty of $700,000 of which $460,000 (66 percent) will be paid to the United States and the rest will be divided among the State of Louisiana, the State of Ohio, and the ODEQ. The Consent Decree further requires Defendants, at all six facilities, to meet certain emission limits (for sulfur dioxide and acid mist) and to comply with applicable NSPS requirements (including performance testing and monitoring). The Northern Arapaho Tribe also joined the Consent Decree because the Riverton, Wyoming facility is located on tribal land.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States, et al.* v. *Chemtrade Logistics, et al.,* D.J. Ref. No. 90–5–2–1–06944/1.

The Consent Decree may be examined at the Office of the United States Attorney, 801 West Superior Ave., Suite 400, Cleveland, OH 44113, and at U.S. EPA Region 5, 77 W. Jackson St., Chicago, IL 60604. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax number (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $ 34.75 (25 cents per page reproduction cost) payable to the U.S. Treasury, or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

William D. Brighton,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–967 Filed 1–16–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Amendment to Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on January 9, 2009, a proposed amendment to the consent decree (''Second Consent Decree Amendment'') in *United States* v. *American Cyanamid, et al.*, Civil Action No. 2:93–0654 was lodged with the United States District Court for the Southern District of West Virginia.

The original consent decree, entered on February 19, 1997, resolved claims that the United States filed under Sections 106 and 107 of CERCLA, 42

U.S.C. 9606 and 9607, for implementation of response actions to remediate contamination and for past response costs incurred at the Fike/Artel Chemical Company Superfund Site (''Site''), located near Nitro, West Virginia. The original consent decree was amended on July 10, 1997 to include the final two parties in this matter.

Pursuant to the original consent decree, and as amended July 10, 1997, Settling Work Defendants agreed to undertake future response actions at the Site. On September 28, 2001, EPA issued a ROD for the groundwater and soil remediation component of the Site clean-up. After further investigation and data collection, EPA amended this ROD in December 2006 by selecting *in situ* biosparging rather than extraction and treatment as the preferred remedy to address groundwater contamination at the Site. The proposed Second Consent Decree Amendment incorporates the Work required by the amended ROD for groundwater remediation at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Second Consent Decree Amendment. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *American Cyanamid*, *et al.*, D.J. Ref. 90–11–3–706.

The Second Consent Decree Amendment may be examined at the Office of the United States Attorney, 300 Virginia Street, East, Charleston, WV, 25301, and at U.S. EPA Region 3, 1650 Arch Street, Philadelphia, PA 19103. During the public comment period, the Second Consent Decree Amendment may also be examined on the following Department of Justice Web site, to *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the Second Consent Decree Amendment may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $5.50 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–1046 Filed 1–16–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

U.S. Antitrust Division

Federal Register Notice; United States v. Cemex, S.A.B. de C.V. and Rinker Group Limited; Proposed Modification of the Modified Final Judgment

Take notice that a Joint Motion to Establish Notice and Comment Procedures and to Modify the Modified Final Judgment, a Memorandum of Plaintiff United States in Support of Joint Motion to Establish Notice and Comment Procedures and to Modify the Modified Final Judgment have been filed, and a proposed Order to Establish Notice and Comment Procedures for the Modification of the Modified Final Judgment has been entered, in the United States District Court for the District of Columbia in *United States* v. *Cemex, S.A.B. de C.V. and Rinker Group Limited*, Civil No. 1:07-cv-00640. On April 4, 2007, the United States filed a Complaint (and an Amended Complaint on May 2, 2007) alleging that Cemex, S.A.B. de C.V.'s (''Cemex'') proposed acquisition of Rinker Group Limited (''Rinker'') would violate Section 7 of the Clayton Act, 15 U.S.C. 18, by substantially lessening competition in the production and distribution of ready mix concrete in the metropolitan areas of Fort Walton Beach/Panama City/Pensacola, Jacksonville, Orlando, Tampa/St. Petersburg, Fort Myers/Naples, Florida, and the metropolitan areas of Flagstaff and Tucson, Arizona. In addition, the acquisition would have substantially lessened competition in the production and distribution of concrete block in metropolitan Tampa/St. Petersburg and Fort Myers/Naples, Florida. Finally, the acquisition would have substantially lessened competition in the production and distribution of aggregate in metropolitan Tucson, Arizona.

The Modified Final Judgment, entered on November 28, 2007, required Cemex to divest 39 ready mix concrete, concrete block, and aggregate plants that served metropolitan areas in Florida and Arizona, including the Orlando, Florida area. On November 30, 2007, Cemex divested these assets to CRH plc (''CRH''). The current proposed modification would allow Cemex to reacquire Rinker's Kennedy ready mix concrete plant, located at 1406 Atlanta Avenue, Orlando, Florida 32806, which was one of the plants divested to CRH. Cemex's reacquisition of the Kennedy plant is conditioned on CRH's acquisition of Cemex's own plant in Orlando, which is located only one-half mile away from the Kennedy plant.

Copies of the Joint Motion to Establish Notice and Comment Procedures and to Modify the Modified Final Judgment, the Memorandum of Plaintiff United States in Support of Joint Motion to Establish Notice and Comment Procedures and to Modify the Modified Final Judgment, and the proposed Order to Establish Notice and Comment Procedures for the Modification of the Modified Final Judgment, and all other papers filed with the Court in connection with the motion are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street, NW., Suite 1010, Washington, DC 20530 (202–514–2481), on the Department of Justice Web site (*http://www.usdoj.gov/atr*), and at the Office of the Clerk of the United States District Court for the District of Columbia.

Interested persons may address comments to Maribeth Petrizzi, Chief, Litigation II, Antitrust Division, U.S. Department of Justice, City Center Building, 1401 H Street, NW., Suite 3000, Washington, DC 20530 (202–307–0924), within 30 days of the date of this notice.

Patricia Brink,

Deputy Director of Operations.

[FR Doc. E9–1042 Filed 1–16–09; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—DVD Copy Control Association

Notice is hereby given that, on December 5, 2008, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), DVD CCA (''DVD CCA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages

under specified circumstances. Specifically, Sound Technology (S.Z.) Co. Ltd., Shenzhen, PEOPLE'S REPUBLIC OF CHINA; Vulcan Inc., Seattle, WA; Yusan Industries, Ltd., Hong Kong, HONG KONG-CHINA; and Zentek Technology Japan, Inc., Tokyo, JAPAN have been added as parties to this venture.

Also, AWIND, Inc., Taipei, TAIWAN; Bestguide Group Limited, Kowloon, HONG KONG-CHINA; Clevo Co., Taipei, TAIWAN; Coretronic Corporation, Miao-Li, TAIWAN; Cosmic Digital Technology, Ltd., Hong Kong, HONG KONG-CHINA; Daewoo Electronics Corporation, Seoul, REPUBLIC OF KOREA; Dahaam E-Tec Co., Seoul, REPUBLIC OF KOREA; Disctronics Texas, Inc. dba DiscUSA, Plano, TX; Ever Best Industrial (H.K.) Limited, Kowloon, HONG KONG-CHINA; Giant Video Electronics Co., Ltd., Yueh Long, HONG KONG-CHINA; Hansong (Nanjing) Electronic Ltd., Nanjing, PEOPLE'S REPUBLIC OF CHINA; Hing Lung Technology (HK) Company Limited, Hong Kong, HONG KONG-CHINA; KRCD India PVT Ltd., Mumbai, INDIA; Leadtek Research, Inc., Taipei, TAIWAN; Link Concept Technology Ltd., Kowloon, HONG KONG-CHINA; Linpus Technologies, Inc., Taipei, TAIWAN; Major Digital Technology Co., Ltd., Jiangxi, PEOPLE'S REPUBLIC OF CHINA; ODS Optical Disc Service GmbH, Dassow, GERMANY; Premium Disc Corp., Mississauga, Ontario, CANADA; Princeton Technology Corp., Taipei, TAIWAN; Prof ilo Telra Elektronic San. Ve Tic. A.S., Istanbul, TURKEY; SKC Co. Ltd., Seoul, REPUBLIC OF KOREA; Zhongshan Dingcai AV Technology Ltd., Zhongshan, PEOPLE'S REPUBLIC OF CHINA; and Ziova Corporation Pty Ltd., Lonsdale, South Australia, AUSTRALIA have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DVD CCA intends to file additional written notifications disclosing all changes in membership.

On April 11, 2001, DVD CCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 3, 2001 (66 FR 40727).

The last notification was filed with the Department on September 10, 2008. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 21, 2008 (73 FR 62541)

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E9–757 Filed 1–16–09; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Wireless Industrial Technology Konsortium Inc.

Notice is hereby given that, on December 2, 2008, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act'') Wireless Industrial Technology Konsortium Inc. (''WITK'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Softing AG, Haar, GERMANY; and Cooper Industries, Houston, TX have been added as parties to this venture. Also, Airsprite Technologies, Inc., Marlborough, MA has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and WITK intends to file additional written notifications disclosing all changes in membership.

On August 8, 2008, WITK filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 18, 2008 (73 FR 54170).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E9–758 Filed 1–16–09; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a regulation under 21 U.S.C. 952(a)(2) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Title 21 Code of Federal Regulations (CFR), 1301.34(a), this is notice that on November 26, 2008, Kenco VPI, Division of Kenco Group, Inc., 350 Corporate Place, Chattanooga, Tennessee 37419, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Nabilone (7379), a basic class of controlled substance listed in schedule II.

The company plans to import the listed controlled substance for distribution to its customers.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic class of controlled substance may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43, and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than February 20, 2009.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR § 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975 (40 FR 43745), all applicants for registration to import a basic class of any controlled substance in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: January 9, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–1051 Filed 1–16–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a regulation under 21 U.S.C. 952(a)(2) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Title 21 Code of Federal Regulations § 1301.34(a), this is notice that on October 23, 2008, Noramco Inc., 1440 Olympic Drive, Athens, Georgia 30601, has made letter to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic class Thebaine (9333), a controlled substance listed in schedule II.

The company plans to import analytical reference standards for distribution to its customers for research purposes.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic class of controlled substance may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43, and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than February 20, 2009.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR § 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import the basic class of any controlled substances in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: January 9, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–1052 Filed 1–16–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a regulation under 21 U.S.C. 952(a)(2) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Title 21 Code of Federal Regulations (CFR), 1301.34(a), this is notice that on September 4, 2008, Medical Isotopes Inc., 100 Bridge Street, Pelham, New Hampshire 03076, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Etorphine HCL (9059)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Methadone (9250)	II
Morphine (9300)	II
Thebaine (9333)	II
Opium, powdered (9639)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Fentanyl (9801)	II

The company plans to import small quantities of the listed controlled substances as reference standards for distribution for research and analytical purposes only.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43, and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than February 20, 2009.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import the basic class of any controlled substances in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: January 9, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–1055 Filed 1–16–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on November 5, 2008, Johnson Matthey Inc., Custom Pharmaceuticals Department, 2003

Nolte Drive, West Deptford, New Jersey 08066–1742, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Dihydromorphine (9145)	I
Difenoxin (9168)	I
Propiram (9649)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Lisdexamfetamine (1205)	II
Methylphenidate (1724)	II
Nabilone (7379)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Ecgonine (9180)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Morphine (9300)	II
Thebaine (9333)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Alfentanil (9737)	II
Remifentanil (9739)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for sale to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such a controlled substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than March 23, 2009.

Dated: January 9, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–1049 Filed 1–16–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on December 4, 2008, Organix Inc., 240 Salem Street, Woburn, Massachusetts 01801, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedule I and II:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Cocaine (9041)	II

The company plans to manufacture the listed controlled substances in bulk for sale to its customers for research purposes.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than March 23, 2009.

Dated: January 9, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–1053 Filed 1–16–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on November 18, 2008, Mallinckrodt Inc., 3600 North Second Street, St. Louis, Missouri 63147, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedule I and II:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Codeine-N-oxide (9053)	I
Dihydromorphine (9145)	I
Difenoxin (9168)	I
Morphine-N-oxide (9307)	I
Normorphine (9313)	I
Norlevorphanol (9634)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Nabilone (7379)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Etorphine HCL (9059)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Ecgonine (9180)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Metopon (9260)	II
Dextropropoxyphene, bulk (9273)	II
Morphine (9300)	II
Oripavine (9330)	II
Thebaine (9333)	II
Opium extracts (9610)	II
Opium fluid extract (9620)	II
Opium tincture (9630)	II
Opium, powdered (9639)	II
Opium, granulated (9640)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Alfentanil (9737)	II
Remifentanil (9739)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The firm plans to manufacture the listed controlled substances for internal use and for sale to other companies.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than March 23, 2009.

Dated: January 9, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–1054 Filed 1–16–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Parole Commission

Public Announcement; Pursuant to the Government in the Sunshine Act

(Pub. L. 94–409) [5 U.S.C. Section 552b]

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

TIME AND DATE: 10 a.m., Thursday, January 22, 2009.

PLACE: 5550 Friendship Blvd., Fourth Floor, Chevy Chase, MD 20815.

STATUS: Open.

Matters To Be Considered

The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of Minutes of December 2008 Quarterly Business Meeting.
2. Reports from the Chairman, Commissioners, Chief of Staff, and Section Administrators. Agency Contact; Thomas W. Hutchison, Chief of Staff, United States Parole Commission, (301) 492–5990.

Dated: January 12, 2009.

Rockne J. Chickinell,

General Counsel, U.S. Parole Commission.

[FR Doc. E9–1050 Filed 1–16–09; 8:45 am]

BILLING CODE 4410–31–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Prohibited Transaction Exemptions and Grant of Individual Exemptions Involving: Calpine Corporation, D–11458 (2009–01); Starrett Corporation Pension Plan (the Plan), D–11473 (2009–02); and General Motors Corporation and Its Wholly Owned Subsidiaries (together, GM) (2009–03)

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Calpine Corporation, Located in Houston, TX

[Prohibited Transaction Exemption 2009–01; Exemption Application No. D–11459]

Exemption

Effective January 31, 2008, the restrictions of sections 406(a), 406(b)(1) and (b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) the past acquisition by the Calpine Corporation Retirement Savings Plan (the Plan) of warrants (the Warrants) issued by the Calpine Corporation (the Applicant) that would have permitted, under certain conditions, the purchase of shares of newly issued Calpine Common Stock (the New Stock) pursuant to certain bankruptcy proceedings; (2) the holding of the Warrants by the Plan; and (3) the disposition of the Warrants. This exemption is subject to adherence to the following conditions:

(a) The acquisition and holding of the Warrants by the Plan occurred in connection with the Applicant's bankruptcy proceedings pursuant to which all holders of Calpine Common Stock prior to January 31, 2008 (the Old Stock) were treated in the same manner;

(b) The Plan had little, if any, ability to affect the negotiation of the Applicant's Plan of Reorganization pursuant to Chapter 11 of the United States Bankruptcy Code;

(c) The Plan acquired the Warrants automatically and without any action on the part of the Plan;

(d) The Plan did not pay any fees or commissions in connection with the acquisition and holding of the Warrants;

(e) All decisions regarding the holding and disposition of the Warrants by the Plan were made in accordance with Plan provisions for individually directed investment of participant accounts by the individual participants whose accounts in the Plan received the Warrants; and

(f) The Plan received the same proportionate number of Warrants as other owners of Old Stock.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 3, 2008 at 73 FR 51524.

FOR FURTHER INFORMATION CONTACT: Mr. Anh-Viet Ly, Department of Labor, telephone number (202) 693–8648. (This is not a toll-free number.)

Starrett Corporation Pension Plan (the Plan), Located in New York, NY

[Prohibited Transaction Exemption 2009–02; Application Number: D–11473]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), through (E) of the Code, shall not apply to the cash sale (the Sale) by the Plan to the Starrett Corporation (the Applicant), a party in interest with respect to the Plan, of a $25,000 face amount 7.797% secured senior note (the Security) issued by the Osprey Trust (the Trust), an Enron related entity, provided that the following conditions were satisfied:

(a) The Sale is a one-time transaction for cash;

(b) The Plan pays no commissions, fees or other expenses in connection with the Sale;

(c) The terms and conditions of the Sale are at least as favorable as those obtainable in an arm's length transaction with an unrelated third party;

(d) The value of the Security is determined by Interactive Data Systems, a qualified, unrelated entity; and

(e) The Plan is a defined benefit plan which has been terminated and all benefits have been paid out to Plan participants and beneficiaries.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on November 20, 2008 at 73 FR 70377.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Buyniski of the Department, telephone (202) 693–8545. (This is not a toll-free number.)

General Motors Corporation and Its Wholly-Owned Subsidiaries (together, GM), Located in Detroit, MI

[Prohibited Transaction Exemption 2009–03; Exemption Application No. L–11407]

Exemption

Section I. Covered Transactions

The restrictions of sections 406(a)(1)(B), 406(a)(1)(D), and 406(b)(1) and (b)(2) of the Act [1] shall not apply, effective December 16, 2005, to: (1) Monthly cash advances to GM by the DC VEBA to reimburse GM for the estimated mitigation of certain health care expenses (the Mitigation) and for the payment of dental expenses incurred by participants in the DC VEBA; and (2) an annual ''true up'' of the Mitigation payments and dental expenses against the actual expenses incurred, with the result that (a) if GM has been underpaid by the DC VEBA, GM receives the balance outstanding from the DC VEBA with interest, or (b) if the DC VEBA has overpaid GM, GM reimburses the DC VEBA for the amount overpaid, with interest.

Section II. Conditions

This exemption is conditioned upon adherence to the material facts and representations described herein and upon satisfaction of the following conditions:

(a) A committee (the Committee), acting as a fiduciary independent of GM, has represented and will continue to represent the DC VEBA and its participants and beneficiaries for all purposes with respect to the Mitigation process.

(b) The Committee for the DC VEBA has discharged and will continue to discharge its duties consistent with the terms of the DC VEBA and the DC VEBA Settlement Agreement.

(c) The Committee and actuaries retained by the Committee have reviewed and approved and will continue to review and approve the estimation process involved in the Mitigation, which results in the monthly Mitigation amount paid to GM.

(d) Outside auditors retained by the Committee, along with an administrative company that is partly owned by the DC VEBA, will audit the calculation of the true up to determine whether there are any differences between the estimated Mitigation and actual Mitigation amounts and make such information available to GM.

(e) GM has provided and will continue to provide various reports and records to the Committee concerning the Mitigation and dental care reimbursements, which are and will continue to be subject to review and audit by the Committee.

(f) The terms of the transactions are no less favorable and will continue to be no less favorable to the DC VEBA than the terms negotiated at arm's length under similar circumstances between unrelated third parties.

(g) The interest rate applied to any true up payments is a reasonable rate, as set forth in the DC VEBA Settlement Agreement, and will continue to be a reasonable rate that runs from the beginning of the year being trued up and does and will continue to not present a windfall or detriment to either party.

(h) The DC VEBA has not incurred and will continue not to incur any fees, costs or other charges (other than those described in the DC VEBA and the DC VEBA Settlement Agreement) as a result of the covered transactions described herein.

(i) GM and the Committee have maintained and will continue to maintain for a period of six years from the date of any of the covered transactions, any and all records necessary to enable the persons described in paragraph (j) below to determine whether conditions of this exemption have been and will continue to be met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of GM or the Committee, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than GM or the Committee shall be subject to the civil penalty that may be assessed under section 502(i) of the Act if the records are not maintained, or are not available for examination as required by paragraph (j) below.

(j)(1) Except as provided in section (2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (i) above have been or will be unconditionally available at their customary location during normal business hours to:

(A) Any duly authorized employee representative of the Department;

(B) The UAW or any duly authorized representative of the UAW;

(C) GM or any duly authorized representative of GM; and

(D) Any participant or beneficiary of the DC VEBA, or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described above in subparagraphs (1)(B) or (D) of this paragraph (j) is authorized to examine the trade secrets of GM, or commercial or financial information that is privileged or confidential.

Section III. Definitions

For purposes of this exemption, the term—

(a) ''GM'' means General Motors Corporation and its wholly owned subsidiaries.

(b) ''Affiliate'' means:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, or partner, employee or relative (as defined in section 3(15) of the Act) of such other person; or

(3) Any corporation, partnership or other entity of which such other person is an officer, director or partner. (For purposes of this definition, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(c) ''Class Members'' mean all persons other than active employees who, as of the ratification date of the GM–UAW Memorandum of Understanding, November 11, 2005 (the Ratification Date) were (1) GM/UAW hourly employees who had retired from GM with eligibility for the General Motors Health Care Program for Hourly Employees (the Original Plan) as in effect prior to the Ratification Date or (2) the spouses, surviving spouses and dependents of GM/UAW hourly employees, who, as of the Ratification Date, were eligible for post-retirement or

[1] Because the Independent Health Care Trust for UAW Retirees of General Motors Corporation (the DC VEBA) is not qualified under section 401 of the Code, there is no jurisdiction under Title II of the Act pursuant to section 4975 of the Code. However, there is jurisdiction under Title I of the Act.

surviving spouse health care coverage under the Original Plan as a consequence of a GM/UAW hourly employee's retirement from GM or death prior to retirement.

(d) ''Committee'' means the seven individuals, consisting of two classes: (1) the United Auto Workers Class (UAW) with three members, and (2) the Public Class with four members, who act as the named fiduciary and administrator of the DC VEBA.

(e) ''Court'' or ''Michigan District Court'' means the United States District Court for the Eastern District of Michigan.

(f) ''DC VEBA'' means the Independent Health Care Trust for UAW Retirees of General Motors Corporation.

(g) ''DC VEBA Settlement Agreement'' means the agreement, dated December 16, 2005, which was entered into between GM, the UAW, and Class Representatives, on behalf of a Class of plaintiffs in the *Henry* case (2006 WL 891151 (E.D. Mi. March 31, 2006)), aff'd 2007 WL 2239208 (6th Cir. August 7, 2007).

(h) ''Mitigation'' means the reduction of retirees' monthly contributions, annual deductibles, and other retirees' out-of-pocket costs to the extent payments from the DC VEBA are made, as directed by the Committee, to GM and/or to providers, insurance carriers and other agreed-upon entities.

(i) ''OPEB'' means Other Post-Employment Benefits. The OPEB Valuation is an actuarially developed annual valuation of a company's post employment benefit obligations, other than for pension and other retirement income plans. The OPEB Valuation is based on a set of uniform financial reporting standards promulgated by the Financial Accounting Standards Board and embodied in Financial Accounting Standard 106, as revised from time to time. The types of benefits addressed in an OPEB Valuation typically are retiree healthcare (medical, dental, vision, hearing) life insurance, tuition assistance, day care, legal services, and the like.

(j) ''Shares'' or ''Stock'' refers to shares of common stock of reorganized GM, par value $.01 per share.

(k) ''UAW'' means the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America or the United Auto Workers, if shortened.

(l) ''VEBA'' means a voluntary employees' beneficiary association.

DATES: *Effective Date:* This exemption is effective as of December 16, 2005.

Written Comments

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption within 30 days of the publication of such notice in the **Federal Register** on July 23, 2008. All comments were due by September 22, 2008.

During the comment period, the Department received 159 telephone calls, 20 letters, and 24 E-mail messages from participants or beneficiaries of various GM-sponsored welfare plans. The Department also received four requests for a public hearing, all of which were withdrawn. GM submitted no comments or hearing requests with respect to the proposed exemption.

A majority of the comments concerned the commenter's inability to understand the notice of proposed exemption or the effect of the exemption on the commenter's health care benefits. Of the written comments received, seven commenters said they were in favor of the Department's granting the exemption while five commenters objected to the exemption for reasons that were not germane to the subject matter of the proposal. In this regard, the commenters' objections ranged from general confusion over the subject exemption involving the DC VEBA and another exemption GM will be seeking in the future for a ''new VEBA,''to unhappiness over GM's decision not to renew the contract of a service provider for one of its health care plans.

Accordingly, after giving full consideration to the entire record, including the written comments, the Department has determined to grant the exemption. For further information regarding the comments and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. L–11407) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 23, 2008 at 73 FR 42828.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady at telephone number (202) 693–8556. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 13th day of January, 2009.

Ivan Strasfeld,

Director of Exemption Determinations. Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. E9–963 Filed 1–16–09; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application Nos. and Proposed Exemptions; D–11477, D–11478, and D–11479, Respectively, UBS AG (UBS) and Its Affiliates UBS Financial Services Inc. (UBS Financial), and UBS Financial Services Inc. of Puerto Rico (PR Financial) (Collectively, the Applicants); and D–11488, Robert W. Baird & Co. Incorporated, et al.]

Notice of Proposed Exemptions

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. ____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *''moffitt.betty@dol.gov''*, or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

UBS AG (UBS), and Its Affiliates UBS Financial Services Inc. (UBS Financial), and UBS Financial Services Inc. of Puerto Rico (PR Financial) (Collectively, the Applicants), Located in Zurich, Switzerland; New York, New York; and San Juan, Puerto Rico, Respectively

[Exemption Application Numbers D–11477, D–11478, and D–11479, Respectively]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986 (the Code) and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the proposed exemption is granted, the restrictions of sections 406(a), 406(b)(1), 406(b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) The acquisition by the UBS Savings and Investment Plan, the UBS Financial Services Inc. 401(k) Plus Plan, and the UBS Financial Services Inc. of Puerto Rico Savings Plus Plan (collectively, the Plans) of certain entitlements (each, an Entitlement) and certain subscription rights (each, a Right) issued by UBS, a party in interest with respect to the Plans; (2) the holding of the Entitlements by the Plans between April 28, 2008 and May 9, 2008, inclusive, pending the automatic conversion of the Entitlements into shares of UBS common stock; and (3) the holding of the Rights by the Plans between May 27, 2008 and June 9, 2008, inclusive, provided that the following conditions were satisfied:

(a) All decisions regarding the acquisition and holding of the Rights and Entitlements by the Plans were made by U.S. Trust, Bank of America Private Wealth Management (U.S. Trust), a qualified, independent fiduciary;

(b) The Plans' acquisition of the Rights and Entitlements resulted from an independent act of UBS as a corporate entity, and without any participation on the part of the Plans;

(c) The acquisition and holding of the Rights and Entitlements by the Plans occurred in connection with a capital improvement plan approved by the board of directors of UBS, in which all holders of UBS common stock, including the Plans, were treated exactly the same;

(d) All holders of UBS common stock, including the Plans, were issued the same proportionate number of Rights based on the number of shares of UBS common stock held by such Plans;

(e) All holders of UBS common stock, including the Plans, were issued the same proportionate number of Entitlements based on the number of shares of UBS common stock held by such Plans;

(f) The acquisition of the Rights and Entitlements by the Plans occurred on the same terms made available to other holders of UBS common stock;

(g) The acquisition of the Rights and Entitlements by the Plans was made pursuant to provisions of each such Plan for the individually-directed investment of participant accounts; and

(h) The Plans did not pay any fees or commissions in connection with the

acquisition or holding of the Rights or Entitlements.

Summary of Facts and Representations

1. UBS is one of the world's largest financial firms and is a global wealth manager, an investment banking and securities firm, and a global asset manager. UBS is headquartered in Zurich, Switzerland and currently operates in over fifty countries and throughout the United States, including Puerto Rico and the Virgin Islands. Among the wholly-owned subsidiaries of UBS are UBS Financial and PR Financial. UBS Financial is headquartered in New York, New York, and PR Financial is headquartered in San Juan, Puerto Rico.

2. UBS sponsors the UBS Savings and Investment Plan (the Savings Plan), a defined contribution, profit-sharing plan with a Code section 401(k) feature. The Savings Plan provides for participant-directed individual accounts that are intended to comply with the provisions of section 404(c) of the Act and the corresponding regulations located at 29 CFR 2550.404c–1. The Applicants represent that the trustee of the Savings Plan is State Street Bank and Trust Company of Boston, Massachusetts. The Applicants further represent that UBS is a party in interest with respect to the Savings Plan because, under section 3(14)(C) of the Act, it constitutes an employer whose employees are covered under the Savings Plan. As of December 31, 2007, the Applicants represent that the Savings Plan had approximately 14,719 participants and total assets of $1,416,402,131. The Applicants state that the Savings Plan allows participants to direct investments into various investment funds, including the UBS Common Stock Fund (the Fund). The Applicants represent that the Fund is not diversified, and consists primarily of UBS common stock (each whole share of the Fund comprising one UBS Share) plus cash for liquidity purposes. According to the Applicants, the UBS Shares held by the Savings Plan were valued at $87,773,382 as of December 31, 2007, and comprised approximately 6.2% of the total assets in the Savings Plan.

3. UBS Financial sponsors the UBS Financial Services Inc. 401(k) Plus Plan (the Plus Plan), a defined contribution, profit-sharing plan with a Code section 401(k) feature. The Plus Plan provides for participant-directed individual accounts that are intended to comply with the provisions of section 404(c) of the Act and the corresponding regulations located at 29 CFR 2550.404c–1. The Applicants represent that the trustee of the Plus Plan is the Northern Trust Company of Chicago, Illinois. The Applicants further represent that UBS is a party in interest with respect to the Plus Plan under section 3(14)(H) of the Act because it owns, directly or indirectly, 100% of UBS Financial. The Applicants state that, as of December 31, 2007, the Plus Plan had approximately 23,471 participants and total assets of $2,531,642,183. Like the Savings Plan, the Plus Plan allows participants to direct investments into the Fund, along with other investments. The Applicants represent that the UBS Shares held by the Plus Plan were valued at $547,605,850 as of December 31, 2007, and comprised approximately 21.6% of the total assets in the Plus Plan.

4. PR Financial sponsors the UBS Financial Services Inc. of Puerto Rico Savings Plus Plan (the PR Plan), which provides for participant-directed individual accounts that are intended to comply with the provisions of section 404(c) of the Act and the corresponding regulations located at 29 CFR 2550.404c–1. The Applicants represent that the trustee of the PR Plan is the Northern Trust Company of Chicago, Illinois. The Applicants state that the PR Plan utilizes the same trust as the Plus Plan, and allows participants to direct investments into the Fund, along with other investments. The Applicants also represent that UBS is a party in interest with respect to the PR Plan under section 3(14)(H) of the Act because it owns, directly or indirectly, 100% of PR Financial. The Applicants state that, as of December 31, 2007, the PR Plan had approximately 368 participants and total assets of $39,050,978. The Applicants also represent that the UBS Shares held by the PR Plan were valued at $14,197,762 as of December 31, 2007, and comprised approximately 36.4% of the total assets in the PR Plan.

5. The Applicants represent that the trustees of each of the Plans have the authority to invest and reinvest all amounts in each participant's account, as elected by the participant. Generally, in the absence of any such election, the trustee shall invest the amounts as specified by the appropriate investment committee of each of the Plans. The Applicants further represent that the Savings Plan's trust agreement provides that its trustee has the authority to exercise the voting rights of any stocks; to exercise any conversion privileges, subscription rights, or other options; to consent to or otherwise participate in changes affecting corporate securities; and generally to exercise any of the powers of an owner with respect to stocks, bonds, or other property held in the commingled fund or in the trust. The Applicants also represent that the Plus Plan's and the PR Plan's trust agreement provides that rights, options, or warrants offered to purchase UBS Shares shall be exercised by its trustee to the extent that there is cash available.

The Applicants state that the Savings Plan's trust agreement provides that cash dividends and earnings attributable to UBS Shares in the Fund shall be reinvested in the Fund and allocated in whole shares and fractions thereof to the account of each participant with respect to whom directed investments in the Fund are maintained on the date such allocation is made. The Applicants represent that cash dividends and earnings received by the Plus Plan and the PR Plan's trust are reinvested by purchasing additional UBS Shares.

The Entitlements

6. On February 27, 2008, as part of UBS's capital improvement program, the Applicants represent that the UBS board of directors proposed, and its shareholders approved, a change to the capital structure of the company that permitted the replacement of the UBS 2007 cash dividend with an award to existing shareholders (including participants in the Plans who were invested in UBS Shares) of the Entitlements. The Applicants represent that, with respect to the awarding of the Entitlements by UBS, the Plans were treated exactly the same as the other holders of UBS Shares.

On April 28, 2008, UBS awarded a total of 14,440,531 Entitlements to existing UBS shareholders on the date of record. According to the Applicants, the award stipulated that, at any time from April 28, 2008 to May 9, 2008, inclusive (the Entitlements Trading Period), shareholders in general were permitted to buy or sell the Entitlements on SWX Europe Limited (SWX), a securities exchange based in London, England.[1] The Applicants state that at the end of the Entitlements Trading Period, any Entitlements held by a shareholder were to be aggregated and automatically converted into an appropriate whole number of UBS Shares. In this regard, the Applicants represent that under the terms of the award, no fewer than twenty (20) Entitlements enabled a

[1] The Applicants represent that SWX Europe Limited is a wholly-owned subsidiary of SWX Swiss Exchange, the securities exchange of Switzerland, and provides cross-border trading of primarily Swiss blue-chip securities. The Applicants also state that SWX Europe Limited (formerly known as virt-x Exchange Limited) has been in operation since 2001 and is a recognized investment exchange that is supervised by the United Kingdom's Financial Services Authority. The Applicants represent that UBS holds no interest in any of the foregoing financial exchanges.

shareholder the right to receive one UBS Share. For example, if an individual held 23 Entitlements at the conclusion of the Entitlements Trading Period, he or she would have received a single UBS Share, and the remaining three Entitlements would have lapsed without any right of compensation from UBS.

The Rights

7. The Applicants represent that, under the foregoing capital improvement program, UBS decided to effect an ordinary capital increase by allotting subscription rights (the Rights Offering) to existing holders of UBS common stock (including participants in the Plans who were invested in UBS Shares). At its annual general meeting on April 23, 2008, the UBS board of directors proposed, and UBS shareholders approved, a change to the UBS's capital structure to accommodate the Rights Offering. The Applicants represent that the Rights Offering provided for a public offering of approximately 760 million additional UBS Shares, which would result in approximately $15.5 billion in additional capital for UBS. The Applicants further represent that the right to vote on whether to permit the Rights Offering was passed through under the plans to those participants who held UBS Shares. The Applicants also represent that, with respect to the awarding of the Rights by UBS, the Plans were treated exactly the same as the other holders of UBS Shares. On May 21, 2008, the UBS board of directors determined the final terms of the Rights Offering, setting the subscription price at 21.00 Swiss Francs (CHF) per UBS Share (or $20.16 per UBS Share).

On May 27, 2008, UBS awarded one Right for each UBS Share on the date of record. According to the Applicants, the award stipulated that, upon receiving the Rights, shareholders in general were permitted to (i) Exercise their Rights, which entitled them to purchase additional UBS Shares; (ii) purchase more Rights on the SWX or the New York Stock Exchange (NYSE); or (iii) sell their Rights on the SWX or the NYSE. The exercise of twenty (20) Rights allowed the holder to purchase seven (7) UBS Shares at a price of $20.16 per share. The Applicant states that the trading period for the Rights ran from May 27, 2008 through June 9, 2008, inclusive (the Rights Trading Period). According to the Applicant, any Rights that remained unexercised at the end of the Rights Trading Period lapsed without any right of compensation from UBS.

8. The Applicants represent that neither the Rights nor the Entitlements constitute qualifying employer securities as defined in section 407(d)(5) of the Act. Accordingly, in connection with the awarding of the Rights and Entitlements by UBS, the applicable investment provisions of each of the Plans and of the Plans' respective trust agreements were amended effective April 1, 2008 to expressly permit the acquisition of the Rights and Entitlements by the Plans pending the submission of an application for an administrative exemption with the Department. The Plans and the Plans' respective trust agreements were further amended as of April 1, 2008 to provide for the appointment of a designated independent fiduciary possessing discretionary authority with respect to the holding, exercise, conversion, sale, or other disposition of the Rights and Entitlements. In this connection, the provisions of the Plans and of the Plans' respective trust agreements concerning participant investment elections were also amended as of April 1, 2008 to permit the designated independent fiduciary, rather than participants in the Plans, to direct the disposition of the Rights and Entitlements.

9. On April 28, 2008, each of the Plans contracted with U.S. Trust to serve both as an investment manager (within the meaning of section 3(38) of the Act) for the Plans and as the designated independent fiduciary of the Plans with respect to transactions involving the Rights and Entitlements. The Applicants represent that U.S. Trust is an experienced and qualified fiduciary with extensive trust and management capabilities such as discretionary asset management, asset allocation and diversification, investment advice, securities trading, and the performance of independent fiduciary assignments for plans covered by the Act.

At the time of its engagement, U.S. Trust determined that it was in the interests of the Plans to accept the Rights and Entitlements. In addition, the Plans' April 28, 2008 engagement agreement with U.S. Trust specifically charged the independent fiduciary with responsibility for conducting a due diligence review of the Rights and Entitlements, as well as developing a prudent strategy for the disposition of the Rights and Entitlements on behalf of the Plans. In this connection, the Applicants further represent that they, and not the Plans, have borne the cost of any fees payable to U.S. Trust for its investment management and independent fiduciary services.

10. Under the terms of the relevant master trust agreements, the assets held by each of the trusts in the employer's stock fund must be invested in UBS Shares. For example, section 3(h) of the master trust for the Savings Plan states that ''the UBS Stock Fund shall be invested primarily in UBS Shares,'' and that it ''may be invested in short-term liquid investments pending investment in UBS Shares.'' In addition, article 7.5(d) of the UBS Financial Services Inc. Master Investment Trust Agreement for the Plus Plan and the PR Plan provides that, ''except for short-term investment of cash, [UBS] has limited the investment power of the Trustee in the Company Stock Investment Fund to the purchase of [UBS] Stock.'' Accordingly, U.S. Trust decided that each of the Plans should hold the Entitlements until their automatic conversion into UBS Shares, rather than permitting the Plans to sell the Entitlements during the Entitlements Trading Period. U.S. Trust determined that, absent short-term cash needs, the trustees for the Plans must invest assets in the Fund in UBS common stock. U.S. Trust further determined that the Plans would receive substantially the same value (be it in UBS Shares or in cash) whether the Entitlements were sold or converted into UBS Shares. In addition, U.S. Trust represents that selling the Entitlements would have exposed the Plans to market risk (during the time required to sell the Entitlements and reinvest the proceeds in UBS common stock), foreign exchange risk (in that the cash proceeds generated from the sale of the Entitlements on the SWX would have necessitated a currency conversion to U.S. dollars prior to reinvestment into UBS common stock), and trading costs associated with the foregoing transactions.

11. Following the acquisition of the Rights by the Plans, U.S. Trust determined that the Plans lacked sufficient funds in allocated accounts to exercise the Rights, and U.S. Trust had no authority to utilize other assets of the Plans for this purpose. Accordingly, U.S. Trust decided on behalf of the Plans to sell the Rights on either the SWX or the NYSE, and also determined the appropriate time during the Rights Trading Period that each of the Plans should sell the Rights on one of the exchanges. The Applicants further represent that U.S. Trust has confirmed that, prior to June 9, 2008 (the expiration of the Rights Trading Period), all of the Rights held by each of the Plans were sold in arm's length transactions with third parties on the SWX or the NYSE.

The Applicants represent that U.S. Trust's in-house trade executing group executed the sales with brokers Cantor Fitzgerald, Knight Trading, Merrill Lynch, and JP Morgan, based on the group's independent evaluation of relevant factors such as price, trading volume, trade flow, and best execution. The Applicants represent that none of the foregoing brokers were affiliates of either U.S. Trust or of UBS at the time that the Rights were sold. The Applicants state that the trades involving the Rights took place at brokerage commission rates ranging from $0.01 per Right to $0.015 per Right; collectively, the commissions represented less than 1% of the total sales proceeds from the Plans' sales of the Rights. The Applicants represent that all trading commissions were paid to the respective brokers, and that neither U.S. Trust nor UBS (nor any affiliates of U.S. Trust or UBS) received any trading commissions in connection with the sale of the Rights.

12. The Applicants represent that an administrative exemption providing relief for the acquisition and holding of both the Rights and Entitlements by the Plans would be administratively feasible because an independent fiduciary was appointed by the Plans to approve the acquisition, holding, and disposition of the Rights and Entitlements. In this connection, U.S. Trust subsequently provided, in writing, a comprehensive, reasoned rationale concerning its determinations with respect to the Rights and Entitlements. Accordingly, the Applicants represent, there is no need for monitoring by the Department of the transactions that are the subject of this exemption request.

The Applicants represent that, with respect to the Entitlements, an exemption would be in the interests of the Plans and of their participants and beneficiaries because it would allow the Plans to acquire additional UBS Shares, which the independent fiduciary believed to be beneficial to the Plans. The Applicants represent that, with respect to the Entitlements, an exemption would be protective of the rights of participants and beneficiaries because it would ensure that such participants have the same opportunity as other holders of UBS Shares to receive additional UBS Shares.

With respect to the Rights, the Applicants represent that an exemption would be in the interests of the Plans, and protective of the Plans and of their participants and beneficiaries, because it would ensure that such individuals have the same opportunity as other holders of UBS Shares to sell the Rights on an exchange and receive the proceeds from any such sale.

13. In summary, the Applicants represent that the past transactions for which exemptive relief is sought meet the statutory criteria of section 408(a) of the Act because: (a) All decisions regarding the acquisition and holding of the Rights and Entitlements by the Plans were made by U.S. Trust, Bank of America Private Wealth Management (U.S. Trust), a qualified, independent fiduciary; (b) the Plans' acquisition of the Rights and Entitlements resulted from an independent act of UBS as a corporate entity, and without any participation on the part of the Plans; (c) the acquisition and holding of the Rights and Entitlements by the Plans occurred in connection with a capital improvement plan approved by the board of directors of UBS, in which all holders of UBS common stock, including the Plans, were treated exactly the same; (d) all holders of UBS common stock, including the Plans, were issued the same proportionate number of Rights based on the number of shares of UBS common stock held by such Plans; (e) all holders of UBS common stock, including the Plans, were issued the same proportionate number of Entitlements based on the number of shares of UBS common stock held by such Plans; (f) the acquisition of the Rights and Entitlements by the Plans occurred on the same terms made available to other holders of UBS common stock; (g) the acquisition of the Rights and Entitlements by the Plans was made pursuant to provisions of each such Plan for individually-directed investment of participant accounts; and (h) the Plans did not pay any fees or commissions in connection with the acquisition or holding of the Rights or Entitlements.

Notice to Interested Persons: Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by the Applicants and the Department within 15 days of the date of publication in the **Federal Register**. Comments and requests for a hearing are due forty-five (45) days after publication of the notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Judge of the Department, telephone (202) 693–8339. (This is not a toll-free number).

Robert W. Baird & Co. Incorporated, Located in Milwaukee, Wisconsin.

Exemption Application Number D–11488

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[2]

Section I. Loans Involving Auction Rate Securities

If the proposed exemption is granted, the restrictions of section 406(a)(1)(A) through (D) and section 406(b)(1) and (2) of ERISA, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective February 1, 2008, to the lending of Auction Rate Securities (as defined in section III(b)) by a Plan (as defined in section III(e)) to Robert W. Baird & Co. Incorporated or any of its affiliates (Baird), provided that the conditions set forth in section II have been met.

Section II. Conditions

(a) The last auction for the loaned Auction Rate Security was unsuccessful;

(b) The Plan does not waive any rights or claims in connection with the Auction Rate Security as a condition of engaging in the loan (the Loan);

(c) The transaction is not part of an arrangement, agreement or understanding designed to benefit a party in interest;

(d) Baird is and remains a broker-dealer registered under the Securities Exchange Act of 1934 (the Exchange Act) or is exempt from registration under section 15(a)(1) of the Exchange Act as a dealer in exempted government securities (as defined in section 3(a)(12) of the Exchange Act);

(e) The decision to enter into a Loan is made by a Plan fiduciary who is Independent (as defined in section III(d)) of Baird. Notwithstanding the foregoing, an employee of Baird who is the Beneficial Owner (as defined in section III(c)) of a Title II Only Plan (as defined in section III(f)) may direct the Title II Only Plan to engage in a Loan if all of the other applicable conditions of this exemption, if granted, have been met;

(f) Prior to any Loan, Baird shall have furnished the Plan fiduciary described in paragraph (e) with:

(1) The most recently available audited statement of Baird's financial condition, as audited by a United States certified public accounting firm;

[2] For purposes of this proposed exemption, references to section 406 of ERISA should be read to refer as well to the corresponding provisions of section 4975 of the Code.

(2) The most recently available unaudited statement of Baird's financial condition (if the unaudited statement is more recent than the audited statement described above); and

(3) A representation that, at the time the Loan is negotiated, there has been no material adverse change in its financial condition since the date of the most recent financial statement furnished to the Plan. Such representations may be made by Baird's agreement that each Loan shall constitute a representation by Baird that there has been no such material adverse change. Notwithstanding the foregoing, an employee of Baird who is the Beneficial Owner of a Title II Only Plan may receive the information described in this paragraph (f) if all of the other applicable conditions of this exemption, if granted, have been met;

(g) The Loan is made pursuant to a written loan agreement (the Lending Agreement), the terms of which are at least as favorable to the Plan as an arm's-length transaction with an unrelated party would be. The Lending Agreement must contain all of the material terms of the Loan and cover only the lending of Auction Rate Securities by the Plan to Baird. Such Lending Agreement may be in the form of a master agreement covering a series of Loans;

(h) With respect to any Loan, Baird credits the lending Plan's account with Baird (the Account) with an amount of cash equal to 100 percent of the total par value of the loaned Auction Rate Securities. Baird must credit the Account by the close of business on the day on which Baird receives the Auction Rate Securities from the Plan;

(i) The Plan has the opportunity to derive compensation through the investment of the cash collateral described in paragraph (h);

(j) The Plan pays Baird a rebate fee negotiated in advance of the Loan that does not exceed the interest and/or dividends the Plan receives in connection with its ownership of the loaned Auction Rate Securities;

(k) The Plan may terminate the Loan at any time and for any reason;

(l) Baird may terminate the Loan if:

(1) The Plan closes its Account or reduces the balance thereof to less than 100 percent of the total par value of the Auction Rate Securities that are the subject of the Loan;

(2) The Plan is an individual retirement account described in section 4975(e)(1)(B)–(F) of the Code (an IRA) and the Beneficial Owner of the IRA dies or divides the IRA pursuant to a divorce, annulment or marital settlement;

(3) The Auction Rate Security associated with the Loan is redeemed by its issuer or may be sold at auction for its par value, or;

(4) Baird identifies a secondary market for the Auction Rate Security which Baird has a reasonable basis to believe will permit the lending Plan to receive no less than 90% of the Security's par value if the Auction Rate Security is promptly offered for sale on such market;

(m) Following any Loan termination as set forth in (k) or (l), Baird shall deliver Auction Rate Securities to the Plan which are identical (or the equivalent thereof (in the event of a reorganization, recapitalization or merger of the issuer of the Auction Rate Securities)) to the Auction Rate Securities borrowed by Baird within the lesser of:

(1) The customary delivery period for such securities;

(2) Five business days; or

(3) The time negotiated for such delivery by the Plan and Baird;

(n) Following any Loan termination as set forth in (k) or (l), if Baird fails to return all the borrowed Auction Rate Securities (or the equivalent thereof (in the event of a reorganization, recapitalization or merger of the issuer of the Auction Rate Securities)) within the timeframe set forth in paragraph (m), the Plan may keep the full amount of cash collateral provided by Baird in connection with the Loan;

(o) Following any Loan termination as set forth in (k) or (l), if the Plan fails to return the full amount of cash collateral:

(1) Baird may liquidate the borrowed Auction Rate Securities, in which case the Plan's obligation to return the cash collateral shall terminate. If the amount received by Baird from the liquidation (after deducting brokerage commissions and other transaction costs) exceeds the amount of cash collateral provided by Baird in connection with the Loan, then Baird shall pay such excess to the Plan. If the amount received by Baird from the liquidation (after deducting brokerage commissions and other transaction costs) is less than the amount of cash collateral provided by Baird in connection with the Loan, then the Plan shall pay such deficiency to Baird; or

(2) If Baird is unable to liquidate the ARS, Baird will retain the ARS and reserve its right to sue the Plan;

(p)(1) Where the Plan, as lender, does not return the full amount of cash collateral in connection with a Loan termination, Baird, as borrower, can seek interest at the prime rate on the amount of cash collateral owed by the Plan;

(2) Where Baird, as borrower, does not return the excess described in (o)(1), if any, the Plan, as lender, can seek interest at the prime rate on the amount of excess owed by Baird; and

(q) If Baird fails to comply with any provision of a loan agreement which requires compliance with this exemption, if granted, the Plan fiduciary who caused the Plan to engage in such transaction shall not be deemed to have caused the Plan to engage in a transaction prohibited by section 406(a)(1)(A) through (D) of ERISA solely by reason of Baird's failure to comply with the conditions of the exemption.

Section III. Definitions

(a) The term ''affiliate'' means any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(b) The term ''Auction Rate Security'' or ''ARS'' means a security:

(1) that is either a debt instrument (generally with a long-term nominal maturity) or preferred stock; and

(2) with an interest rate or dividend that is reset at specific intervals through a Dutch auction process;

(c) The term ''Beneficial Owner'' means: The individual for whose benefit a Title II Only Plan is established and includes a relative or family trust with respect to such individual;

(d) The term ''Independent'' means a person who is: (1) Not Baird or an affiliate; and (2) not a relative (as defined in ERISA section 3(15)) of the party engaging in the transaction;

(e) The term ''Plan'' means: Any plan described in section 3(3) of the Act and/or section 4975(e)(1)(B)–(F) of the Code; and

(f) The term ''Title II Only Plan'' means: Any plan described in section 4975(e)(1) of the Code which is not an employee benefit plan covered by Title I of ERISA.

Summary of Facts and Representations

1. The applicant is Baird (hereinafter, either the Applicant or Baird), an employee-owned wealth management, capital markets, asset management and private equity firm headquartered in Milwaukee, Wisconsin. Baird is a registered broker-dealer and a member of the Financial Industry Regulatory Authority. Baird is also a registered investment advisor, providing investment advice and asset management services to clients that include the Plans, which are plans described in section 3(3) of the Act and/or section 4975(e)(1) of the Code.

2. The Applicant describes Auction Rate Securities (ARS), and the

arrangement by which ARS are bought and sold, as follows. Auction Rate Securities are securities (issued as debt or preferred stock) with an interest rate or dividend that is reset at periodic intervals pursuant to a process called a Dutch Auction. Investors submit orders to buy, hold, or sell a specific ARS to a broker-dealer selected by the entity that issued the ARS. The broker-dealers, in turn, submit all of these orders to an auction agent. The auction agent's functions include collecting orders from all participating broker-dealers by the auction deadline, determining the amount of securities available for sale, and organizing the bids to determine the winning bid. If there are any buy orders placed into the auction at a specific rate, the auction agent accepts bids with the lowest rate above any applicable minimum rate and then successively higher rates up to the maximum applicable rate, until all sell orders and orders that are treated as sell orders are filled. Bids below any applicable minimum rate or above the applicable maximum rate are rejected. After determining the clearing rate for all of the securities at auction, the auction agent allocates the ARS available for sale to the participating broker-dealers based on the orders they submitted. If there are multiple bids at the clearing rate, the auction agent will allocate securities among the bidders at such rate on a pro-rata basis.

3. The Applicant states that Baird is permitted, but not obligated, to submit orders in auctions for its own account either as a bidder or a seller and routinely does so in the auction rate securities market in its sole discretion. In this regard, Baird may routinely place one or more bids in an auction for its own account to acquire ARS for its inventory, to prevent: (1) A failed auction (i.e., an event where there are insufficient clearing bids which would result in the auction rate being set at a specified rate); or (2) an auction from clearing at a rate that Baird believes does not reflect the market for the particular ARS being auctioned.

4. The Applicant states that for many ARS, Baird has been appointed by the issuer of the securities to serve as a dealer in the auction and is paid by the issuer for its services. Baird is typically appointed to serve as a dealer in the auctions pursuant to an agreement between the issuer and Baird. That agreement provides that Baird will receive from the issuer auction dealer fees based on the principal amount of the securities placed through Baird.

5. The Applicant states further that Baird may share a portion of the auction rate dealer fees it receives from the issuer with other broker-dealers that submit orders through Baird, for those orders that Baird successfully places in the auctions. Similarly, with respect to ARS for which broker-dealers other than Baird act as dealer, such other broker-dealers may share auction dealer fees with Baird for orders submitted by Baird.

6. According to the Applicant, since February 2008, a minority of auctions have cleared, particularly involving municipalities. The Applicant represents that, in certain instances, when an auction fails, the affected Auction Rate Security may pay little or no interest and/or dividends to the holder of the Security. The Applicant states that, when this happens, the owner of the Auction Rate Security may benefit from lending such low-paying Security as part of a securities lending transaction that: (1) Is collateralized with cash; and (2) limits the loan rebate fee (described below) to the interest and/or dividends attributable to the loaned Auction Rate Security. The Applicant describes the loan rebate fee as the fee paid by the lender of the Auction Rate Security (*i.e.*, a Plan) to the borrower of the Auction Rate Security (*i.e.*, Baird). Under the methodology described above, if, for example, a Plan lends an Auction Rate Security paying a one percent rate of interest to Baird, the Plan would pay Baird a loan rebate fee of one percent, leaving the Plan free to invest and receive interest on the cash collateral. The Applicant notes that a Plan receiving cash collateral for its loaned Auction Rate Securities benefits to the extent it is able to derive a greater rate of return (through the investment of such cash collateral) than the Plan would otherwise have received, as interest and/or dividends, from the issuer of the Auction Rate Security. However, the Applicant points out that lending Auction Rate Securities pursuant to this methodology may not always be advisable.[3] In this regard, the Applicant represents that, in certain instances, when an auction fails, the affected Auction Rate Security may default to a high rate of interest or dividends. To the extent a Plan lends an Auction Rate Security bearing a high rate of interest, and, under the terms of the loan agreement, the Plan is required to pay a loan rebate fee equal to the interest or dividends attributable to the loaned Security, the Plan may be foregoing a greater rate of return than the Plan is likely to receive from its investment of the cash collateral. The Applicant explains this detrimental result with the following example: (1) A Plan earning 10% on an Auction Rate Security would be paying that 10% to Baird in the form of a loan rebate fee; (2) the Plan is not likely to receive more than 10% on the investment of the cash collateral provided by Baird in connection with the loan.

7. The Applicant states that several Plans holding Auction Rate Securities with failed auctions previously expressed an interest in lending such Auction Rate Securities to Baird and, in response, Baird sent the Lending Agreement to such Plans. Each Lending Agreement required, among other things as described in further detail below: (1) That Baird, as borrower, pay cash collateral to the Plan lending the Auction Rate Securities; and (2) the Plan, as lender, to pay Baird a rebate fee equal to the interest or dividends the Plan would otherwise have received in connection with its ownership of the Auction Rate Security. The Applicant states that certain of these loans have already occurred. In this regard, the Applicant represents that, as of December 23, 2008, 6 Plans have lent a total (par value) of $1,175,000 in Auction Rate Securities to Baird: The first Loan was entered into on August 22, 2008, and the most recent Loan was entered into on November 24, 2008.

8. In connection with the above Loans, and to permit additional future Loans, the Applicant is requesting this proposed exemption. According to the Applicant, all Loans covered by the exemption, if granted, have been (and will be) structured in a manner that is protective of lending Plans. In this regard, the Applicant represents that, prior to entering into a Loan, a Plan fiduciary who is independent of Baird (with very narrow exceptions) will receive a written Lending Agreement. Among other things, the Agreement will alert such fiduciary that lending Auction Rate Securities paying an above-market rate of interest may not be advisable. The Plan fiduciary will further receive timely audited information from Baird regarding the financial condition of Baird; and must

[3] The Department notes that the Act's general standards of fiduciary conduct applies to the transactions described herein. In this regard, section 404 requires, among other things, that a fiduciary discharge his duties respecting a plan solely in the interest of the plan's participants and beneficiaries and in a prudent manner. Accordingly, a fiduciary with respect to a Plan must act prudently with respect to, among other things, the decision to lend Auction Rate Securities to Baird. The Department further emphasizes that it expects Plan fiduciaries, prior to entering into any transaction proposed herein, to fully understand the risks associated with this type of transaction following disclosure by Baird of all relevant information. Plan fiduciaries are cautioned to carefully consider their particular facts and circumstances before determining whether a Loan transaction with Baird would satisfy section 404 of ERISA.

approve the Plan's participation in the Loan. Upon such approval, Baird will credit the lending Plan's Account with an amount of cash equal to 100 percent of the par value of loaned Auction Rate Securities. This crediting must be accomplished by the close of business on the day on which Baird receives the Auction Rate Securities from the Plan, and the lending Plan will thereafter have the opportunity to derive compensation through the investment of the cash collateral. The Applicant states any rebate fee paid by a lending Plan to Baird pursuant to a Loan has not (and will not) exceed the interest and/or dividends the Plan receives in connection with its ownership of the loaned Auction Rate Securities. The Applicant states also that each Loan will involve only Auction Rate Securities for which the last auction was unsuccessful, and that lending Plans will not waive any rights or claims in connection with the Auction Rate Security as a condition of engaging in the Loan. The Applicant represents further that the Loans will not be part of an arrangement, agreement or understanding designed to benefit a party in interest.

9. That Applicant represents also that a Plan may terminate a Loan at any time and for any reason. Baird, however, may terminate a Loan only in certain limited and specified instances. In this latter regard, pursuant to the terms of each Lending Agreement, Baird may only terminate a Loan if: (1) The Plan closes its Account or reduces the balance thereof to less than 100 percent of the par value of the loaned Auction Rate Securities; (2) the Plan is an IRA and the Beneficial Owner of the IRA dies or divides the IRA pursuant to a divorce, annulment or marital settlement; (3) the Auction Rate Security associated with the Loan is redeemed by its issuer or may be sold at auction for its par value; or (4) Baird identifies a secondary market for the Auction Rate Security which Baird has a reasonable basis to believe will permit the lending Plan to receive no less than 90% of the Security's par value if the Auction Rate Security is promptly offered for sale on such market.

10. The Applicant states that each Lending Agreement contains several provisions designed to ensure that any Loan termination, as described above, will be carried out in a manner that is fair and equitable to lending Plans. In this regard, the Applicant represents that if a Loan is properly terminated and Baird fails to return all the borrowed Auction Rate Securities within the timeframe specified in the Lending Agreement, the Plan may keep the full amount of cash collateral provided by Baird in connection with the Loan. If the Plan fails to return the full amount of cash collateral, Baird may liquidate the borrowed Auction Rate Securities. In this last regard, if the net amount received by Baird from the liquidation: (1) exceeds the amount of cash collateral provided by Baird in connection with the Loan, then Baird shall pay such excess to the Plan; (2) is less than the amount of cash collateral provided by Baird in connection with the Loan, then the Plan shall pay such deficiency to Baird. The Applicant notes that, if Baird is unable to liquidate the Auction Rate Securities, Baird will retain the ARS and reserve its right to sue the Plan. The Applicant notes also that, under the Lending Agreement, if one party to the Loan does not return the full amount due its counterparty (*e.g.*, if Baird does not return all the borrowed Auction Rate Securities to a Plan), the Loan counterparty will be entitled to interest equal to the prime rate.

10. In summary, the Applicant represents that the transactions described herein satisfy the statutory criteria set forth in section 408(a) of the Act and section 4975(c)(2) of the Code because, among other things:

(a) Lending Plans will not waive any rights or claims in connection with the Auction Rate Security as a condition of engaging in the Loan;

(b) Prior to any Loan, Baird shall have furnished a Plan fiduciary with, at a minimum, the most recently available audited statement of Baird's financial condition, as audited by a United States certified public accounting firm;

(c) Each Loan will be made pursuant to a written Lending Agreement, the terms of which will be at least as favorable to the Plan as an arm's-length transaction with an unrelated party would be;

(d) With respect to any Loan, Baird will credit the lending Plan's Account with an amount of cash equal to 100 percent of the par value of loaned Auction Rate Securities, and such crediting will occur by the close of business on the day on which Baird receives the Auction Rate Securities from the Plan;

(e) The Plan will have the opportunity to derive compensation through the investment of the cash collateral;

(f) The Plan will pay Baird a rebate fee negotiated in advance of the Loan that does not exceed the interest or dividends the Plan receives in connection with its ownership of the loaned Auction Rate Securities;

(g) The Plan may terminate the Loan at any time and for any reason;

(h) Baird may terminate the Loan in narrow circumstances described in the Lending Agreement; and

(i) Any termination of the Loan will be fair and equitable to the lending Plan.

Notice to Interested Persons

The Applicant represents that the potentially interested participants and beneficiaries cannot all be identified and therefore the only practical means of notifying such participants and beneficiaries of this proposed exemption is by the publication of this notice in the **Federal Register**. However, written notice will be provided to a representative of each Plan that has engaged in a Loan as of the date this notice is published in the **Federal Register**. The notice shall contain a copy of the proposed exemption as published in the **Federal Register** and an explanation of the rights of interested parties to comment regarding the proposed exemption. Such notice will be provided by personal or express delivery within 15 days of the issuance of the proposed exemption. Comments and requests for a hearing must be received by the Department not later than 45 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chris Motta of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible,

in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 13th day of January 2009.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. E9–962 Filed 1–16–09; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

Request for Extension of Previously Approved Information Collection: ATAA Activities Report, Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of the Alternative Trade Adjustment Assistance Activities Report (ATAAAR). A copy of the proposed collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice by accessing: *http://www.doleta.gov/OMBCN/OMBControlNumber.cfm*.

DATES: Written comments must be submitted to the office listed below on or before March 23, 2009.

ADDRESSES: Submit written comments to Susan Worden, U.S. Department of Labor, Employment and Training Administration, Room C–5325, 200 Constitution Avenue, *Phone:* 202–693–3708 (this is not a toll-free number), Fax: 202.693.3517, E-mail *worden.susan@dol.gov*.

SUPPLEMENTARY INFORMATION:

I. Section 246 of Title II, Chapter 2 of the Trade Act of 1974, as amended by the Trade Act of 2002, establishes ATAA as an alternative assistance program for older workers certified eligible to apply for Trade Adjustment Assistance. This program is effective for petitions filed on or after August 6, 2003. ATAA is designed to allow eligible older workers for whom retraining may not be appropriate to quickly find reemployment and receive a wage subsidy to help bridge the salary gap between their old and new employment. To receive the ATAA benefits, workers must be TAA and ATAA certified.

Key workload data on ATAA is needed to measure program activities and to allocate program and administrative funds to the State Agencies administering the Trade programs for the Secretary. States will provide this information on the ATAA Activities Report (ATAAAR).

Regulations published at 617.61 give the Secretary authority to require the States to report the data described in this directive; therefore the respondents' obligation to fulfill these requirements is mandatory.

II. Review Focus:

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions:

Type of Review: Extension without change.

Agency: Employment and Training Administration.

Title: Alternative Trade Adjustment Assistance Activities Report (ATAAAR), ETA.

OMB Number: 1205–0459.

Recordkeeping: Respondent is expected to maintain records which support the requested data for three years.

Affected Public: State, Local or Tribal Government.

Burden (annual): 50 Responses × .43 Hours × 4 quarters = 86 hours.

Total Respondents: 50.

Frequency: Quarterly.

Total Responses: 200 annually.

Average Time per Response: .43 Hours.

Estimated Total Burden Hours: 86 Hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

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

Dated: January 12, 2009.

Erin FitzGerald,

Director, Division of Trade Adjustment Assistance, Office of National Response, Employment and Training Administration.

[FR Doc. E9–1027 Filed 1–16–09; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; *Arts Advisory Panel*

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that six meetings of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506 as follows (ending times are approximate):

Music (application review): February 2–3, 2009 in Room 714. A portion of this meeting, from 1:45 p.m. to 3 p.m. on February 3rd, will be open to the public for policy discussion. The remainder of the meeting, from 9 a.m. to 5:30 p.m. on February 2nd and from 9 a.m. to 1:45 p.m. and 3 p.m. to 3:30 p.m. on February 3rd, will be closed.

Music (application review): February 4, 2009, in room 714. This meeting, from 9:00 p.m. to 4:15 p.m., will be closed.

Dance (application review): February 4–6, 2009 in Room 716. This meeting, from 9 a.m. to 6 p.m. on February 4th and 5th, and from 9 a.m. to 4 p.m. on February 6th, will be closed.

Opera (review of nominations): February 5, 2009, by teleconference. This meeting, from 2 p.m. to 2:45 p.m., will be closed.

Opera (review of nominations): February 9, 2009, by teleconference. This meeting, from 2 p.m. to 2:45 p.m., will be closed.

Presenting (application review): February 10–11, 2009 in Room 716. This meeting, from 9 a.m. to 5:30 p.m. on February 10th and from 9 a.m. to 3:15 p.m. on February 11th, will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 28, 2008, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: January 14, 2009.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. E9–1085 Filed 1–16–09; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Wednesday, January 28, 2009.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: The two items are open to the public.

MATTERS TO BE CONSIDERED:

8077 *Aviation Accident Report*—Midair Collision of Electronic News Gathering (ENG) Helicopters, KTVK–TV, Eurocopter AS350B2, N613TV, and U.S. Helicopters, Inc., Eurocopter AS350B2, N215TV, Phoenix, Arizona, July 27, 2007.

7943A *Aircraft Accident (Summary) Report*—In-flight Fire, Emergency Descent and Crash in a Residential Area, Cessna 310R, N501N, Sanford, Florida, July 10, 2007.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

Individuals requesting specific accommodations should contact Rochelle Hall at (202) 314–6305 by Friday, January 23, 2008.

The public may view the meeting via a live or archived Webcast by accessing a link under ''News & Events'' on the NTSB home page at *http://www.ntsb.gov.*

FOR FURTHER INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: Monday, January 12, 2009.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. E9–1205 Filed 1–15–09; 4:15 pm]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–528, 50–529, 50–530; NRC–2009–0012]

Arizona Public Service Company Notice of Receipt and Availability of Application for Renewal of Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Facility Operating Licenses Nos. NPF–41, NPF–51, NPF–74, for an Additional 20-Year Period

The U.S. Nuclear Regulatory Commission (NRC) has received an application, dated December 11, 2008, from Arizona Public Service Company, filed pursuant to section 103, of the Atomic Energy Act of 1954, as amended, and Title 10 of the *Code of Federal Regulations* Part 54 (10 CFR Part 54), to renew the operating licenses for the Palo Verde Nuclear Generating Station (PVNGS), Units 1, 2, and 3. Renewal of the licenses would authorize the applicant to operate each facility for an additional 20-year period beyond the period specified in the respective current operating licenses. The current operating licenses for PVNGS, Unit 1 (NPF–41), Unit 2 (NPF–51), and Unit 3 (NPF–74) expire on June 1, 2025, April 24, 2026, and November 25, 2027, respectively. Each unit is a Combustion Engineering pressurized water reactor. The station is located in Maricopa County, Arizona. The acceptability of the tendered application for docketing, and other matters including an opportunity to request a hearing, will be the subject of subsequent **Federal Register** notices.

Copies of the application are available to the public at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852 or through the internet from the NRC's Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room under Accession Number ML083510627. The ADAMS Public Electronic Reading Room is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html.* In addition, the application is available at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html.* Persons who do not have access to the internet or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR reference staff at 1–800–397–4209, extension 4737, or by e-mail to *pdr@nrc.gov.*

A copy of the license renewal application for the PVNGS, Units 1, 2, and 3, is also available to local residents near the site at the Litchfield Park Branch Library, 101 West Wigwam Blvd., Litchfield Park, Arizona 85340.

Dated at Rockville, Maryland, this 12th day of January 2009.

For the Nuclear Regulatory Commission.

Brian E. Holian,

Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. E9–1138 Filed 1–16–09; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

2008 and 2009 List of Designated Federal Entities and Federal Entities

AGENCY: Office of Management and Budget.

ACTION: Notice.

SUMMARY: As required by the Inspector General Act of 1978 (IG Act), as amended, this notice provides the 2008 and 2009 list of Designated Federal Entities and Federal Entities.

FOR FURTHER INFORMATION CONTACT: Deanna DeMott, Office of Management and Budget, Office of Federal Financial Management, New Executive Office Building, Washington, DC 20503, (202) 395–7791.

SUPPLEMENTARY INFORMATION: This notice provides the 2008 and 2009 List of Designated Federal Entities and Federal Entities which, under the IG Act, the Office of Management and Budget (OMB) is required to publish. The 2007 List of Designated Federal Entities and Federal Entities was published in the **Federal Register** on December 3, 2007 (72 FR 67,985). This list is also posted on the OMB Web site at *http://www.whitehouse.gov/omb.* The list of Designated Federal Entities has been updated to reflect the: (1) deletion of the Federal Housing Finance Board (Pub. L. 110–289, sec. 1311); and (2) replacement of the ''Chairperson'' with the ''Board'' as head of the National Credit Union Administration (12 U.S.C. 1752). The list of Federal Entities has been updated to reflect the: (1) Deletion of the National Commission on Library and Information Science (Pub. L. 110–161, 121 Stat. 2204, Division G, Title V, Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2008); (2) addition of the National Veterans Business Development Corporation; and entity head: Chairperson (Pub. L. 110–161, 121 Stat. 1924, Division B, Title IV, Commerce, Justice, Science, and Related Agencies Appropriations Act, 2008); and (3) addition of the Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects; and entity head: Federal Coordinator (15 U.S.C. 720d).

The list is divided into two groups: Designated Federal Entities and Federal Entities. Designated Federal Entities are listed in the IG Act, except for those agencies that have ceased to exist or that have been deleted from the list. The Designated Federal Entities are required to establish and maintain Offices of Inspector General to: (1) Conduct and supervise audits and investigations relating to programs and operations; (2) promote economy, efficiency, and effectiveness of, and to prevent and detect fraud and abuse in such programs and operations; and (3) provide a means of keeping the entity head and the Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for, and progress of, corrective actions.

Section 8G(a)(1) of the IG Act defines a ''Federal entity'' as: Any Government corporation (within the meaning of section 103(1) of title 5, United States Code), any Government controlled corporation (within the meaning of section 103(2) of such title), or any other entity in the Executive Branch of the Government, or any independent regulatory agency, but does not include:

(1) An establishment (as defined in section 11(2) of this Act) or part of an establishment;

(2) A designated Federal entity [as defined in section 8G(a)(2) of the Act] or part of a designated Federal entity;

(3) The Executive Office of the President;

(4) The Central Intelligence Agency;

(5) The Government Accountability Office; or

(6) Any entity in the judicial or legislative branches of the Government, including the Administrative Office of the United States Courts and the Architect of the Capitol and any activities under the direction of the Architect of the Capitol.

Pursuant to section 8G(h)(2) of the IG Act, Federal Entities are required to report annually to each House of the Congress and OMB on audit and investigative activities in their organizations.

Danny Werfel,

Deputy Controller, Office of Federal Financial Management.

Herein follows the text of the 2008 List of Designated Federal Entities and Federal Entities.

2008 List of Designated Federal Entities and Federal Entities

Section 8 of the IG Act, as amended, requires OMB to publish a list of designated Federal entities and Federal entities and the head of such entities. Designated Federal entities are required to establish Offices of Inspector General and Federal entities are required to report upon annual audit and investigative activities to each House of Congress and the Director of the Office of Management and Budget.

Designated Federal Entities and Entity Heads

1. Amtrak (National Railroad Passenger Corporation)—Chairperson.
2. Appalachian Regional Commission—Federal Co-Chairperson.
3. The Board of Governors, Federal Reserve System—Chairperson.
4. Broadcasting Board of Governors—Chairperson.
5. Commodity Futures Trading Commission—Chairperson.
6. Consumer Product Safety Commission—Chairperson.
7. Corporation for Public Broadcasting—Board of Directors.
8. Denali Commission—Federal Co-chairperson.
9. Election Assistance Commission—Chairperson.
10. Equal Employment Opportunity Commission—Chairperson.
11. Farm Credit Administration—Chairperson.
12. Federal Communications Commission—Chairperson.
13. Federal Election Commission—Chairperson.
14. Federal Labor Relations Authority—Chairperson.
15. Federal Maritime Commission—Chairperson.
16. Federal Trade Commission—Chairperson.
17. Legal Services Corporation—Board of Directors.
18. National Archives and Records Administration—Archivist of the United States.
19. National Credit Union Administration—Board.
20. National Endowment for the Arts—Chairperson.
21. National Endowment for the Humanities—Chairperson.
22. National Labor Relations Board—Chairperson.
23. National Science Foundation—National Science Board.
24. Peace Corps—Director.
25. Pension Benefit Guaranty Corporation—Chairperson.
26. Postal Regulatory Commission—Chairperson.
27. Securities and Exchange Commission—Chairperson.
28. Smithsonian Institution—Board of Regents.
29. United States International Trade Commission—Chairperson.
30. United States Postal Service—Governors of the Postal Service.

Federal Entities and Entity Heads

1. Advisory Council on Historic Preservation—Chairperson.
2. African Development Foundation—Chairperson.

3. American Battle Monuments Commission—Chairperson.
4. Architectural and Transportation Barriers Compliance Board—Chairperson.
5. Armed Forces Retirement Home—Chief Operating Officer.
6. Barry Goldwater Scholarship and Excellence in Education Foundation—Chairperson.
7. Chemical Safety and Hazard Investigation Board—Chairperson.
8. Christopher Columbus Fellowship Foundation—Chairperson.
9. Commission for the Preservation of America's Heritage Abroad—Chairperson.
10. Commission of Fine Arts—Chairperson.
11. Commission on Civil Rights—Chairperson.
12. Committee for Purchase from People Who Are Blind or Severely Disabled—Chairperson.
13. Court of Appeals for Veterans Claims—Chief Judge.
14. Court Services and Offender Supervision Agency for DC—Director.
15. Defense Nuclear Facilities Safety Board—Chairperson.
16. Delta Regional Authority—Federal Co-Chairperson.
17. Farm Credit System Insurance Corporation—Chairperson.
18. Federal Financial Institutions Examination Council—Chairperson
19. Federal Mediation and Conciliation Service—Director.
20. Federal Mine Safety and Health Review Commission—Chairperson.
21. Federal Retirement Thrift Investment Board—Executive Director.
22. Harry S. Truman Scholarship Foundation—Chairperson.
23. Institute of American Indian and Alaska Native Culture and Arts Development—Chairperson.
24. Institute of Museum and Library Services—Director.
25. Inter-American Foundation—Chairperson.
26. James Madison Memorial Fellowship Foundation—Chairperson.
27. Japan-U.S. Friendship Commission—Chairperson.
28. Marine Mammal Commission—Chairperson.
29. Merit Systems Protection Board—Chairperson.
30. Millennium Challenge Corporation—Chief Executive Officer.
31. Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation—Chairperson.
32. National Capital Planning Commission—Chairperson.
33. National Council on Disability—Chairperson.
34. National Mediation Board—Chairperson.
35. National Transportation Safety Board—Chairperson.
36. National Veterans Business Development Corporation—Chairperson.
37. Neighborhood Reinvestment Corporation—Chairperson.
38. Nuclear Waste Technical Review Board—Chairperson.
39. Occupational Safety and Health Review Commission—Chairperson.
40. Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects—Federal Coordinator.
41. Office of Government Ethics—Director.
42. Office of Navajo and Hopi Indian Relocation—Chairperson.
43. Office of Special Counsel—Special Counsel.
44. Overseas Private Investment Corporation—Board of Directors.
45. Presidio Trust—Chairperson.
46. Selective Service System—Director.
47. Smithsonian Institution/John F. Kennedy Center for the Performing Arts—Chairperson.
48. Smithsonian Institution/National Gallery of Art—President.
49. Smithsonian Institution/Woodrow Wilson International Center for Scholars—Director.
50. Trade and Development Agency—Director.
51. U.S. Holocaust Memorial Museum—Chairperson.
52. U.S. Interagency Council on Homelessness—Chairperson.
53. U.S. Institute of Peace—Chairperson.
54. Vietnam Education Foundation—Chairperson.
55. White House Commission on the National Moment of Remembrance—Chairperson.

[FR Doc. E9–1080 Filed 1–16–09; 8:45 am]

BILLING CODE 3110–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP): Notice Regarding the Acceptance of Competitive Need Limitation Waiver and Further Review of Country Practice Petitions for the 2008 Annual Review

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) received petitions in connection with the 2008 GSP Annual Review to waive the competitive need limitations (CNLs) on imports of certain products that are eligible for duty-free treatment under the GSP program. This notice announces CNL waiver petitions that are accepted for further review and country practice petitions that continue to be under evaluation for acceptance in the 2008 GSP Annual Review. This notice also sets forth the schedule for comment and public hearings on the CNL waiver petitions, requesting participation in the hearings, submitting pre-hearing and post-hearing briefs, and commenting on the U.S. International Trade Commission (USITC) report on probable economic effects. The list of accepted petitions to waive CNLs and the list of country practice petitions that continue to be under review for acceptance in the 2008 GSP Annual Review are available at: *http://www.ustr.gov/Trade_Development/Preference_Programs/GSP/GSP_2008_Annual_Review/Section_Index.html.*

FOR FURTHER INFORMATION CONTACT: Tameka Cooper, GSP Program, Office of the United States Trade Representative, 1724 F Street, NW., Room F–214, Washington, DC 20508. The telephone number is (202) 395–6971, the fax number is (202) 395–2961, and the e-mail address is *Tameka_Cooper@ustr.eop.gov*.

DATES: The GSP regulations (15 CFR Part 2007) provide the schedule of dates for conducting an annual review unless otherwise specified in a **Federal Register** notice. The current schedule with respect to the review of CNL waiver petitions is set forth below. Notification of any other changes will be given in the **Federal Register**.

February 13, 2009 Pre-hearing briefs and comments, requests to testify at the GSP Subcommittee Public Hearing, and hearing statements must be submitted by 5 p.m.

February 26, 2009 GSP Subcommittee Public Hearing on all CNL waiver petitions accepted for the 2008 GSP Annual Review in Rooms 1 and 2, 1724 F St., NW., Washington, DC 20508, beginning at 9 a.m.

March 12, 2009 Post-hearing briefs and comments must be submitted by 5 p.m.

May 2009 USITC scheduled to publish report on products for which CNL waivers have been requested in the 2008 GSP Annual Review (cases 2008–14 to 2008–19). Comments on the USITC report on these products are due 10 calendar days after USITC date of publication.

June 30, 2009 Modifications to the list of articles eligible for duty-free treatment under the GSP resulting

from the 2008 Annual Review will be announced on or about June 30, 2009, in the **Federal Register**, and any changes will be effective as announced.

SUPPLEMENTARY INFORMATION: The GSP program provides for the duty-free importation of eligible articles when imported from designated beneficiary developing countries. The GSP program is authorized by Title V of the Trade Act of 1974 (19 U.S.C. 2461, *et seq.*), as amended (the ''1974 Act''), and is implemented in accordance with Executive Order 11888 of November 24, 1975, as modified by subsequent Executive Orders and Presidential Proclamations.

In **Federal Register** notices dated May 15, 2008, and October 16, 2008, USTR announced that the deadline for the filing of product petitions requesting waivers of ''competitive need limitations'' (CNLs) for the 2008 GSP Annual Review was November 13, 2008 (73 FR 28174 and 73 FR 61444). The interagency GSP Subcommittee of the Trade Policy Staff Committee (TPSC) has reviewed the CNL waiver petitions, and the TPSC has decided to accept for review the following petitions:

(1) Amino-naphthols and amino-phenol, their ethers, esters, except those with more than one kind of oxygen function; and salts thereof, nesoi from Brazil (HTS 2922.41.00);

(2) Polyethylene terephthalate in primary forms (PET resin) from Indonesia (HTS 3907.60.00);

(3) Full grain unsplit bovine (not buffalo) & equine leather, not whole, w/o hair on, nesoi from Argentina (HTS 4107.91.80);

(4) Ferrochromium containing by weight more than 4 percent of carbon from India (HTS 7202.41.00);

(5) Calcium silicon ferroalloys from Argentina (HTS 7202.99.20); and

(6) Copper, stranded wire, not electrically insulated, not fitted with fittings and not made up into articles from Turkey (HTS 7413.00.10).

Additional information regarding these petitions is provided in the ''List of CNL Waiver Petitions Accepted in the 2008 GSP Annual Review'' posted on the USTR Web site. Included in the list regarding each petition that has been accepted for review are: The case number; the Harmonized Tariff Schedule of the United States (HTSUS) subheading number; a brief description of the product (see the HTSUS for an authoritative description available on the USITC Web site (*http://www.usitc.gov/tata/hts/*)); and the petitioner. Acceptance of a petition for review does not indicate any opinion with respect to the disposition on the merits of the petition. Acceptance indicates only that the listed petitions have been found eligible for review by the TPSC and that such review will take place.

Notice of Public Hearing

The GSP Subcommittee of the TPSC will hold a hearing on February 26, 2009, for CNL waiver product petitions accepted for the 2008 GSP Annual Review, beginning at 9 a.m. at the Office of the U.S. Trade Representative, Rooms 1 and 2, 1724 F Street, NW., Washington, DC 20508. The hearing will be open to the public, and a transcript of the hearing will be available for public inspection or can be purchased from the reporting company. No electronic media coverage will be allowed.

Submission of Requests To Testify at the Public Hearing and Hearing Statements

All interested parties wishing to testify at the hearing must submit, by 5 p.m., February 13, 2009, a ''Notice of Intent to Testify'' and ''Hearing Statement'' to *http://www.regulations.gov* (following the procedures indicated in ''Requirements for Submissions''), the witness'' or witnesses' name, address, telephone number, fax number, e-mail address, pertinent Case Number and eight-digit HTSUS subheading number. Oral testimony before the GSP Subcommittee will be limited to one, five-minute presentation in English. If those testifying intend to submit a longer ''Hearing Statement'' for the record, it must be in English and accompany the ''Notice of Intent to Testify'' to be submitted by 5 p.m. on February 13, 2009.

Opportunities for Public Comment and Inspection of Comments

In addition to holding a public hearing, the GSP Subcommittee of the TPSC invites briefs and comments in support of or in opposition to any CNL waiver petition that has been accepted for the 2008 GSP Annual Review. Parties not wishing to appear at the public hearing but wishing to submit pre-hearing briefs or statements, in English, must do so by 5 p.m., February 13, 2009. Post-hearing briefs or statements will be accepted if they conform with the ''Requirements for Submissions'' cited above and are submitted, in English, by 5 p.m., March 12, 2009.

In accordance with sections 503(d)(1)(A) of the 1974 Act and the authority delegated by the President, pursuant to section 332(g) of the Tariff Act of 1930, the U.S. Trade Representative has requested that the USITC provide its advice on the probable economic effect on U.S. industries producing like or directly competitive articles and on consumers of the waiver of the CNL for the specified GSP beneficiary countries, with respect to the articles that are specified in the ''List of CNL Waiver Submissions Accepted in the 2008 GSP Annual Review.'' Comments by interested persons on the USITC Report prepared as part of the product review should be submitted by 5 p.m., 10 calendar days after the date of USITC publication of its report. These submissions are to be submitted using *http://www.regulations.gov* in accordance with ''Requirements for Submissions.''

Submissions should comply with 15 CFR Part 2007, except as modified below. All submissions should identify the subject article(s) in terms of the case number and eight digit HTSUS subheading number, if applicable, as shown in the ''List of CNL Waiver Petitions Accepted in the 2008 GSP Annual Review'' available at: *http://www.ustr.gov/Trade_Development/Preference_Programs/GSP/GSP_2008_Annual_Review/Section_Index.html*.

[2008 GSP Review, List of CNL Waiver Petitions Accepted in the 2008 GSP Annual Review]

Requirements for Submissions

Submissions of pre-hearing and post-hearing briefs and comments provided in response to this notice, with the exception of business confidential submissions, must be submitted electronically using *http://www.regulations.gov,* docket number USTR–2008–0045. Hand-delivered submissions will not be accepted. Submissions must be submitted in English by the applicable deadlines set forth in this notice.

For additional information on using the *www.regulations.gov* Web site or for any technical assistance relating to a submission, please consult the resources provided on the Web site by clicking on ''How to Use This Site'' on the left side of the home page. Each submitter will receive a submission tracking number upon completion of the submissions procedure at *http://www.regulations.gov.* The tracking number will be the submitter's confirmation that the submission was received into *http://www.regulations.gov.* The confirmation should be kept for the submitter's records. USTR is not responsible for any

delays in a submission due to technical difficulties, nor is it able to provide any technical assistance for the Web site.

To make a submission using *http://www.regulations.gov,* enter docket number USTR–2008–0045 on the home page and click ''go.'' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting ''Notice'' under ''Document Type'' on the left side of the search-results page, and click on the link entitled ''Send a Comment or Submission.'' The *http://www.regulations.gov* Web site offers the option of providing comments by filling in a ''General Comments'' field or by attaching a document. Given the detailed nature of the information sought by the GSP Subcommittee, it is expected that most comments and submissions will be provided in an attached document. If a document is attached, (1) type the eight-digit HTSUS subheading number; as appropriate; (2) indicate whether the attachment is ''Written Comments,'' ''Notice of Intent to Testify,'' ''Pre-hearing brief,'' ''Post-hearing brief,'' or ''Comments on USITC Advice; and (3) type in ''See attached'' in the ''General Comments'' field. Submissions must be in English, with the total submission not to exceed 30 single-spaced standard letter-size pages in 12-point type, including attachments. Any data attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Submissions must include, on the first page (if an attachment) or at the beginning of the submission, the following text (in bold and underlined): (1) 2008 GSP Annual Review; (2) the Case Number; (3) the eight-digit HTSUS subheading number; and (4) as appropriate, ''Written Comments,'' ''Notice of Intent to Testify,'' ''Pre-hearing brief,'' ''Post-hearing brief,'' or ''Comments on USITC Advice''. The case number and eight-digit HTSUS subheading number (for example, Case 2008–19, 7413.00.10) are found on the ''List of CNL Waiver Petitions Accepted in the 2008 GSP Annual Review'' on the USTR Web site.

Submissions will be placed in the docket and open to public inspection pursuant to 15 CFR § 2007.6. Submissions may be viewed on the *http://www.regulations.gov* Web site by entering the docket number USTR–2008–0045 in the search field at: *http://www.regulations.gov.*

Business Confidential Submissions

Persons wishing to submit business confidential information must submit that information by electronic mail to *FR0807@ustr.eop.gov.* Business confidential submissions will not be accepted at *http://www.regulations.gov; however, public or non-confidential submissions that accompany business confidential submissions should be submitted at http://www.regulations.gov.* For any document containing business confidential information submitted as a file attached to an e-mail transmission, the file name of the business confidential version should begin with the characters ''BC.'' The ''BC'' should be followed by the name of the party (government, company, union, association, etc.) that is making the submission.

Persons wishing to submit business confidential submissions must also follow each of these steps: (1) Provide a written explanation of why the information should be protected in accordance with 15 CFR 2007.7(b), which must be submitted along with the business confidential version of the submission; (2) clearly mark the business confidential submission ''BUSINESS CONFIDENTIAL'' at the top and bottom of each page of the submission; (3) indicate using brackets what information in the document is confidential; and (4) submit a non-confidential version of the submission, marked ''Public'' at the top and bottom of each page, that also indicates, using asterisks, where business confidential information was redacted or deleted from the applicable sentences to *http://www.regulations.gov.* Business confidential submissions that are submitted without the required markings or are not accompanied by a properly marked non-confidential version, as set forth above, might not be accepted or may be considered public documents. The non-confidential summary will be placed in the docket and open to public inspection.

Public versions of all documents relating to this review will be made available for public viewing at *http://www.regulations.gov* upon completion of processing and no later than approximately two weeks after the relevant due date.

Petitions for Review Regarding Country Practices

Pursuant to 15 CFR 2007.0(b), the GSP Subcommittee of the TPSC has continued the evaluation of the country practice petitions for Iraq and Sri Lanka that were submitted for inclusion in the 2008 GSP Annual Review (*see* ''List of Petitions Accepted in the 2008 GSP Annual Review'' posted on the USTR Web site). This decision was announced in a **Federal Register** notice dated September 12, 2008, 73 FR 53054, and indicated that the decision on whether to accept the new country practice petitions for Iraq and Sri Lanka for review in the 2008 GSP Annual Review was planned for January 2009. The decision regarding whether to accept these new country practice petitions in December 2008, including a petition submitted in December 2008 requesting a country practices review with respect to the Republic of the Philippines, is now expected to be announced no later than March 15, 2009. A **Federal Register** notice will be published announcing the decision on whether to accept the petitions.

Marideth Sandler,

Executive Director, Generalized System of Preferences (GSP) Program, Office of the U.S. Trade Representative.

[FR Doc. E9–1149 Filed 1–16–09; 8:45 am]

BILLING CODE 3190–W9–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59230; File No. SR–CTA/CQ–2008–05]

Consolidated Tape Association; Notice of Filing of the Thirteenth Substantive Amendment to the Second Restatement of the Consolidated Tape Association Plan and Ninth Substantive Amendment to the Restated Consolidated Quotation Plan

January 12, 2009.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 608 thereunder,[2] notice is hereby given that on December 15, 2008, the Consolidated Tape Association (''CTA'') Plan and Consolidated Quotation (''CQ'') Plan participants (''Participants'')[3] filed with the Securities and Exchange Commission (''Commission'') a proposal to amend the CTA and CQ Plans (collectively, the ''Plans'').[4] The

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] Each Participant executed the proposed amendment. The Participants are the American Stock Exchange LLC (n/k/a NYSE Alternext US LLC); Boston Stock Exchange, Inc. (n/k/a NASDAQ OMX BX, Inc.); Chicago Board Options Exchange, Incorporated; Chicago Stock Exchange, Inc.; Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC; The NASDAQ Stock Market LLC; National Stock Exchange, Inc.; New York Stock Exchange LLC (''NYSE''); NYSE Arca, Inc.; and Philadelphia Stock Exchange, Inc. (n/k/a NASDAQ OMX PHLX, Inc.).

[4] *See* Securities Exchange Act Release Nos. 10787 (May 10, 1974), 39 FR 17799 (order approving CTA Plan); 15009 (July 28, 1978), 43 FR 34851 (August 7, 1978) (order temporarily approving CQ Plan); and

Continued

proposals represent the thirteenth substantive amendment made to the Second Restatement of the CTA Plan (''Thirteenth Amendment to the CTA Plan'') and the ninth substantive amendment to the Restated CQ Plan (''Ninth Amendment to the CQ Plan''), and reflect changes unanimously adopted by the participants. The Thirteenth Amendment to the CTA Plan and the Ninth Amendment to the CQ Plan (''Amendments'') would amend the Plans to provide that the Participants will pay the Network A Administrator a fixed annual fee in exchange for its performance of Network A administrator functions under the Plans. The Commission is publishing this notice to solicit comments from interested persons on the proposed Amendments.

I. Rule 608(a)

A. Description and Purpose of the Amendment

Network Administrator Fees under the Plans. Section XII (''Financial Matters'') of the CTA Plan and Section IX (''Financial Matters'') of the CQ Plan each provides that a network's Operating Expenses are to be deducted from the network's Gross Income in determining the amounts that the network's administrator distributes to the Participants. Both Section XII(c)(i) (''Determination of Operating Expenses'') of the CTA Plan and Section IX(c)(i) (''Determination of Operating Expenses'') of the CQ Plan currently provide that a network's Operating Expenses include all costs and expenses that the network's administrator incurs in ''collecting, processing and making available Network A market data.''

Proposed Revision. The Network A Administrator has informed the Participants that accounting for operating costs is administratively burdensome, especially the allocation of organization overhead costs to the Network A Administrator function. As a result, the Network A Participants have determined that paying the Network A Administrator a fixed fee in exchange for its Network A administrative services would be more efficient.

Therefore, the Participants propose to replace their payment to the Network A Administrator of Operating Costs with payment to the Network A Administrator of a fixed fee. (The Participants understand that Nasdaq similarly receives a fixed fee for its performance of administrative functions under the ''Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on Unlisted Trading Privileges Basis.'')

For calendar year 2008, the Network A Participants propose to set the fixed fee at $6,000,000. This amount will compensate the Network A Administrator for its Network A administrative services during 2008 under both the CTA and CQ Plans.

Determination of Operating Expenses. In the case of NYSE as the CTA and CQ Network A Administrator, the Participants deem ''Operating Expenses'' for any calendar year to equal: (1) The ''Annual Fixed Payment'' for that year; plus (2) ''Extraordinary Expenses.''

Annual Increases. For each subsequent calendar year the Annual Fixed Payment shall increase (but not decrease) by the percentage increase (if any) in the annual cost-of-living adjustment (''COLA'') that the U.S. Social Security Administration applies to the Supplemental Security Income for the calendar year preceding that subsequent year, subject to a maximum annual increase of five percent. For example, if the Social Security Administration's COLA is three percent for calendar year 2008, then the Annual Fixed Payment for calendar year 2009 would increase by three percent to $6,180,000.

Biannual Review. Every two years the Network A Administrator will provide a report highlighting any significant changes to the CTA Network A and CQ Network A administrative expenses during the preceding two years, and the Participants will review the Annual Fixed Payment and determine by majority vote whether to continue it at its then current level.

Payment of the Fee. On a quarterly basis, NYSE shall deduct one-quarter of each calendar year's Annual Fixed Payment from the aggregate of CTA Network A Gross Income and CQ Network A Gross Income under the CQ Plan, before determining that quarter's distributable Net Income under the Plans. If a Participant's share of Net Income for CTA Network A and CQ Network A for any calendar year is less than its pro rata share of the Annual Fixed Payment for that calendar year, the Participant shall be responsible for the difference.

Extraordinary Expenses. Extraordinary Expenses include that portion of legal and audit expenses and marketing and consulting fees that are outside of the ordinary and customary functions that a network administrator performs. For instance, Extraordinary Expenses would include such things as legal fees related to prosecution of a legal proceeding against a vendor that fails to pay applicable charges and fees relating to a marketing campaign that Participants determine to undertake to popularize stock trading.[5]

The text of the proposed Amendments is available on the CTA's Web site (*http://www.nysedata.com/cta*), at the principal office of the CTA, and at the Commission's Public Reference Room.

B. Additional Information Required by Rule 608(a)

1. Governing or Constituent Documents

Not applicable.

2. Implementation of the Amendment

Upon Commission approval of the Amendment, the Participants intend to implement the fixed fee immediately in order to make it applicable for the 2008 calendar year. That is, for all of 2008, the Network A Participants would pay the Network A Administrator the fixed fee rather than operating costs.

3. Development and Implementation Phases

See Item I(B)(2) above.

4. Analysis of Impact on Competition

The Amendments will impose no burden on competition.

5. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

The Participants have no written understandings or agreements relating to interpretation of the Plans as a result of the Amendments.

6. Approval by Sponsors in Accordance With Plan

Under Section IV(b) of the CTA Plan and Section IV(c) of the CQ Plan, each Plan Participant must execute a written amendment to the CTA Plan before the

16518 (January 22, 1980), 45 FR 6521 (order permanently approving CQ Plan). The most recent restatement of both Plans was in 1995. The CTA Plan, pursuant to which markets collect and disseminate last sale price information for non-NASDAQ listed securities, is a ''transaction reporting plan'' under Rule 601 under the Act, 17 CFR 242.601, and a ''national market system plan'' under Rule 608 under the Act, 17 CFR 242.608. The CQ Plan, pursuant to which markets collect and disseminate bid/ask quotation information for listed securities, is also a ''national market system plan'' under Rule 608 under the Act, 17 CFR 242.608.

[5] The Commission notes that the Transmittal Letter accompanying the proposed Amendments included language not voted on by the Participants and thus not included in the proposed Amendments: ''Network A Administrator will not incur any extraordinary expense on behalf of the Network A Participants unless the Network A Participants determine by majority vote to approve the incurrence of that extraordinary expense.'' This language is not part of the proposed Amendments.

amendment can become effective. The Amendments are so executed.

7. Description of Operation of Facility Contemplated by the Proposed Amendment

a. *Terms and Conditions of Access:* Not applicable.

b. *Method of Determination and Imposition, and Amount of, Fees and Charges:* Not applicable.

c. *Method of Frequency of Processor Evaluation:* Not applicable.

d. *Dispute Resolution:* Not applicable.

II. Rule 601(a)

A. Equity Securities for Which Transaction Reports Shall be Required by the Plan.

Not applicable.

B. Reporting Requirements

Not applicable.

C. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information

Not applicable.

D. Manner of Consolidation

Not applicable.

E. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports

Not applicable.

F. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination

Not applicable.

G. Terms of Access to Transaction Reports

Not applicable.

H. Identification of Marketplace Execution

Not applicable.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Thirteenth Substantive Amendment to the CTA Plan and the Ninth Amendment to the CQ Plan are 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–CTA–2008–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CTA–2008–05. 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 Plan amendment that are filed with the Commission, and all written communications relating to the Plan amendment change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of the Amendments also will be available for inspection and copying at the principal office of the CTA. 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–CTA–2008–05 and should be submitted on or before February 11, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–1021 Filed 1–16–09; 8:45 am]

BILLING CODE 8011–01–P

[6] 17 CFR 200.30–3(a)(27).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59238; File No. SR–NSCC–2006–17]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change To Reorganize Membership Rules and Procedures

January 13, 2009.

I. Introduction

On December 13, 2006, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') and on January 31, 2008, amended proposed rule change SR–NSCC–2006–17 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on July 10, 2008.[2] On August 4, 2008, NSCC again amended the proposed rule change.[3] The Commission received no comment letters. For the reasons discussed below, the Commission is approving the proposed rule change, as amended.

II. Description

NSCC is reorganizing its Rules and Procedures (''Rules'') related to membership standards and membership requirements to conform them to its current practices and to harmonize them with similar rules of NSCC's affiliate, the Fixed Income Clearing Corporation (''FICC'').[4]

Over the years, NSCC has created a variety of membership classes, each with different initial and continuing membership requirements. These requirements are currently scattered throughout NSCC's Rules. With the objective of promoting greater transparency, NSCC is reorganizing and restructuring its Rules related to member types, the membership application process, and the ongoing requirements of NSCC members in a form that it believes will make them more readily located and understood by applicants and members alike.

[1] U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 58100 (July 3, 2008), 73 FR 39759.

[3] The August 4, 2008, amendment was technical in nature and did not require the proposed rule change to be noticed, again.

[4] Both NSCC and FICC's Government Securities Division (''GSD'') share a number of common members, and both act as central counterparties with respect to certain transactions submitted by members. Harmonization of NSCC and FICC Rules is an ongoing process, and additional NSCC and FICC ''harmonizing'' rule filings will follow.

To accomplish this, NSCC is restructuring Rule 2 (previously, ''Members'') into a revised Rule 2 (''Members and Limited Members'') and is creating a new Rule 2A (''Initial Membership Requirements'') and a new Rule 2B (''Ongoing Membership Requirements and Monitoring''). Current provisions and rule text will be moved from existing rules and addenda and will be relocated within these newly structured rules. Certain provisions will be modified where necessary and, where possible, harmonized with analogous provisions of GSD's rules. Additionally, NSCC proposes to add descriptive text to its Rules with regard to the membership application process and with regard to the voluntary membership retirement process (*i.e.*, text which codifies NSCC's current process of evaluating applicants and the current process by which an existing member may voluntarily retire from membership in NSCC).

1. Membership Types—Members and Limited Members

NSCC's previous Rule 2 (currently titled ''Members'') provided that an applicant may apply to become a member that uses all of NSCC's services or to become a member that uses certain limited services.

In restructuring and revising Rule 2, NSCC seeks to clearly, concisely, and in one location, set forth each membership type differentiating between member types that may generally, unless otherwise limited by NSCC access all services made available by NSCC (often referred to as ''full service Members'') and those member types that may utilize NSCC's systems and services only on a limited basis (''Limited Members''). Limited Members will include the following: Fund Members, Insurance Carrier/Retirement Services Members, Municipal Comparison Only Members, Mutual Fund/Insurance Services Members, Data Services Only Members, Commission Billing Members (previously ''Non-Clearing Members''), Settling Bank Only Members, and Third Party Administrator Members. This change is cosmetic only, logically grouping member types, and will not alter in any way each member's existing rights and obligations.

Additionally, NSCC is adding text to Rule 2 making it clear that no full service Member or Limited Member may submit or confirm any transaction, charge, request, instruction, or transmission through NSCC's services, or otherwise utilize NSCC's services, in contravention of any law, rule, regulation, or statute.

2. Consolidation of Membership Standards and Requirements Within the Rules

The membership qualifications, financial standards, and operational requirements for each member type previously were set forth in separate rules and addenda, which were spread throughout NSCC's Rules.[4]

To consolidate this information, NSCC is creating two new rules, Rule 2A and Rule 2B, which will contain the content moved from membership Rules 3, 31, 51, 54, 56, and 60. Rule 2A (''Initial Membership Requirements'') provides information regarding initial membership eligibility requirements for all member types and addresses the membership application and evaluation process. Rule 2B (''Ongoing Membership Requirements and Monitoring'') contains provisions regarding the continuing requirements of members. For ease of reference, NSCC is also relocating and consolidating the detailed membership qualifications, financial standards, and operational requirements for all member types into Addendum B (renamed ''Qualifications and Standards of Financial Responsibility, Operational Capability and Business History''). The content NSCC is reorganizing into Addendum B is currently spread throughout Addenda B, I, Q, and R.

Accordingly, NSCC is deleting current membership related Rules 3 (specifically, Sections 2, 5, and 6), 31, 51, 54, 56, and 60. In addition, NSCC will delete Addenda I, Q, and R.

3. Use of the Terms ''Members'' and ''Settling Members'' Throughout the Rules

Currently, an applicant that agrees to limit its use of NSCC's services to those specified by NSCC (*i.e.*, Mutual Fund Services and/or Insurance and Retirement Services) is called a ''Mutual Fund/Insurance Services Member.'' Thus when the term ''Member'' is used within NSCC's Rules, it may apply to a full service Member (which may generally use all NSCC services), a Mutual Fund/Insurance Services Member (which may only utilize the Mutual Fund and Insurance and Retirement Processing Services), or to both depending upon the context. Additionally, NSCC's Rules make reference to ''Settling Members,'' which may apply to a full service Member, a Mutual Fund/Insurance Services Member, a Non-Clearing Member, or all three member types. It is only in further understanding the Rules or in the context of a term's use that one may determine to which member type a Rule may apply.[5] Accordingly, NSCC proposes to modify all references to ''Settling Member'' and to ''Member'' within each NSCC Rule to clearly indicate which member type a rule is applicable. Definitions associated with these terms (contained in Rule 1) will be modified, and the term ''Settling Member'' will be deleted from NSCC's Rules.

4. Rule 15 (''Financial Responsibility and Operational Capability'')

Rule 15 contains, among other things, the requirements of members with regard to reports to be filed on an ongoing basis (*e.g.*, annual audited financial statements, Financial and Operational Combined Uniform Single (''FOCUS'') Reports, *etc.*) and notifications that members are required to make to NSCC regarding any failure to maintain their membership qualifications and standards, including notifications of certain material changes in business, ownership, or control. NSCC proposes to move these ongoing reporting requirements into new Rule 2B. Rule 15 will then be renamed ''Assurances of Financial Responsibility and Operational Capability.''

In Section 2.A. (''Reports and Information'') of new Rule 2B, NSCC is adding text that clarifies that unless specifically set forth within the Rule, the time periods established for submitting reports and data to NSCC are set forth in the form of notices posted on NSCC's Web site and that each

[4] ''Members'' qualifications, standards, and requirements were located in Rule 2 and in Addendum B. ''Mutual Fund/Insurance Services Members,'' also defined to be ''Members,'' qualifications, standards, and requirements were located in Rule 2 and in Addendum B. ''Fund Members'' qualifications, standards, and requirements were located in Rule 51 and Addendum I. ''Insurance Carrier/Retirement Services Members'' qualifications, standards, and requirements are located in Rule 56 and in Addendum Q. ''Third Party Administrator Members'' qualifications, standards, and requirements were located in Rule 60 and in Addendum R. ''Data Services Only Members'' qualifications, standards, and requirements were located in Rule 31. ''Municipal Comparison Only Members'' qualifications, standards, and requirements were located in Rule 3, Section 2. ''Non-Clearing Members'' qualifications, standards, and requirements were located in Rule 3, Section 2. ''Settling Bank Only Members'' qualifications, standards, and requirements were located in Rule 54.

[5] For example, as a Mutual Fund/Insurance Services Member may not participate in the Continuous Net Settlement Service (''CNS''), any reference to ''Members'' within Rule 11 (''CNS'') will not apply to Mutual Fund/Insurance Services Members. Any reference to ''Settling Member'' within Rule 17 (''Fine Payments'') will apply to all full-service Members, Mutual Fund/Insurance Services Members, and Non-Clearing Members (which NSCC is renaming ''Commission Billing Members'').

member is required to retrieve all notices from NSCC's Web site daily.

In Section 2.B. (''Notification of Changes in Condition'') of new Rule 2B, NSCC is changing the reporting requirements of certain member types with respect to providing NSCC with written notice of events that will effect a change in control of the member or that could have a material impact on the member's business and/or financial condition. Historically, this provision applied to full service Members (*i.e.*, those Members for which certain activity is guaranteed at a fixed point in the clearance and settlement process) as well as Mutual Fund/Insurance Services Members, Fund Members, and Insurance Carrier/Retirement Services Members (*i.e.*, those member types whose activity is limited to use of non-guaranteed services). NSCC has determined that this notification provision should apply solely to full service Members.

Additionally, NSCC seeks to delete the current requirement that a Commission Billing Member (previously called a ''Non-Clearing Member'') provide NSCC with written and oral notice if it is no longer in compliance with any of the relevant qualifications and standards for membership. Commission Billing Members participate in NSCC solely for the purpose of paying and receiving broker commissions and file transmissions that are sent to NSCC directly from either the New York Stock Exchange or the American Stock Exchange. As there are no NSCC financial or operational requirements applicable to this member type and the participation of the member is coordinated between NSCC and the member's Exchange, the current requirement is not necessary.

5. Rule 1 (''Definitions and Descriptions'')

NSCC proposes the following with respect to terms defined within Rule 1:

Board of Directors

The current definition is modified to make clear that the term ''Board of Directors'' means the Board of Directors of NSCC or a committee thereof acting on delegated authority.

Commission Billing Member

NSCC is renaming Non-Clearing Members ''Commission Billing Members'' to better reflect the nature of their participation in NSCC's services. Non-Clearing Members utilize NSCC's Commission Settlement Service solely for the payment and collection of commissions.

Limited Member

The term ''Limited Member'' will mean a Person whose use of NSCC's services is limited to those services specified by NSCC.

Person

The proposed term ''Person'' will mean a partnership, corporation, limited liability corporation, or other organization, entity, or individual.

Registered Broker-Dealer

The term ''Registered Broker-Dealer'' (currently defined in Rule 2 as ''a broker or dealer registered under the Securities Exchange Act of 1934, as amended'') is being moved to Rule 1.

Settling Member

The term ''Settling Member'' is being deleted from NSCC's Rules. Each member type encompassed by this term is being specifically named within NSCC's Rules.

Other conforming technical changes to Rule 1 are being made to accommodate the restructuring of the Rules.

6. Rule 2A (''Initial Membership Requirements'')

Applicant Operational Testing Requirements

Under NSCC's Rules, certain applicants as determined by NSCC must demonstrate that they will be able to satisfactorily communicate with NSCC. These applicants conduct system/operational tests with NSCC. NSCC is adding new text to its rules (Rule 2A, Section 1.C. [''Application Documents'']) to make clear NSCC's current requirement with regard to applicant testing.

Member's Agreement

NSCC's Rules currently provide that members sign and deliver to NSCC a member's agreement. The applicable provisions of each type of member's agreement have historically been set forth in the Rule that applies to that member type (*e.g.*, a Fund Member's agreement provisions are contained in Rule 51, a full service Member's provisions are contained in Rule 2, a Third Party Administrator Member's provisions are contained in Rule 60). Regardless of member type, each member agreement has certain standard provisions that generally apply to all members (*e.g.*, the only services the member may use are those that are permitted by NSCC, that the member will abide by NSCC's Rules and be bound by all provisions of the Rules, etc.) and certain other provisions that are unique to particular member types (*e.g.*, Fund Members have a unique provision with regard to NSCC's inspection of their books and records).

NSCC new Rule 2A, Section 1.E. (''Membership and Other Agreements'') contains the main member agreement provisions for all member types, as well as address the requirements with regard to any other agreements.

Third Party Administrator (''TPA'') ACH Agreements

NSCC's Rules currently state that TPA Members (non-settling members) must provide NSCC with an agreement for preauthorized payments (an ''ACH'' agreement) so that NSCC may collect monthly charges pursuant to Rule 26 (''Bills Rendered''). To accommodate payment methods other than ACH (*i.e.*, ''e-payment'' using a credit card or bank account), NSCC is replacing the specific TPA ACH requirement within its Rules with more generic text.

7. Rule 2B (''Ongoing Membership Requirements and Monitoring'') Reports and Information

Annual Audited Financial Statements

NSCC's Rules currently state that a member whose membership is contingent upon a guarantee of a third party must provide a copy of the annual audited financial statements of the guarantor. If such statements for the member or its guarantor are not available, NSCC may accept at its sole discretion consolidated financial statements prepared at the level of the parent of the member or guarantor. NSCC is modifying this text to make clear that it may accept consolidated financial statements or financial information prepared at the level of the parent of such entity.[6]

Call Reports

New Rule 2B, Section 2.A.(c) applies to Call Reports filed with NSCC by members that are banks or trust companies. To the extent that such information is not contained within the Call Report or the member is a bank or trust company that is not required to file a Call Report, such member will be required to provide NSCC with information containing each of its capital levels and ratios.

[6] NSCC is also correcting a typographical error in Rule 2B, Section 2.A.(a) in that ''each'' guarantor should read ''such'' guarantor.

Supplemental and Quarterly Financial Statements Filed With The National Association of Insurance Commissioners (''NAIC'')

NSCC is deleting the current Rule 15 requirement that Insurance Companies provide NSCC with copies of their supplemental and quarterly financial statements filed with the NAIC or the Insurance Company's regulatory authority. Currently, NSCC receives annual audited financial statements and annual regulatory reports from these members in order to monitor adherence to membership requirements. The revised rule language will conform the Rules to current practice.

Securities Exchange Act Rule 15c3–1 Notification

NSCC is adding Rule 2B, Section 2.A.(g) to its Rules to require that a member that has provided notice to the Commission pursuant to paragraph (e) of Securities Exchange Act Rule 15c3–1 (''Notice Provisions Relating to Limitations on the Withdrawal of Equity Capital'') shall notify NSCC and shall provide NSCC with a copy of such notice by close of business on the day such notice is provided to the Commission.

Operational Testing

NSCC requires that certain ''top tier'' members participate in periodic connectivity testing with NSCC for business recovery purposes. NSCC is adding Rule 2B, Section 3 (''Operational Testing'') to its Rules to specifically set forth NSCC's operational testing requirements.

Ongoing Monitoring—Surveillance Status

Currently NSCC's ''credit risk matrix,'' (*i.e.*, the provision relating to NSCC's ongoing monitoring of full service Members) appears in Addendum B. NSCC is moving its current risk matrix into new Rule 2B. NSCC is also replacing the term ''Settling Member'' with ''Member'' as the credit risk matrix only applies to full service ''Members.''

Voluntary Retirement

NSCC is adding Rule 2B, Section 5 (''Voluntary Retirement'') to its Rules, which is the current process by which an active participant may voluntarily retire as an NSCC member.

8. Addendum B (''Qualifications and Standards of Financial Responsibility, Operational Capability and Business History'')

Immediate Placement on Surveillance by NSCC

Currently, NSCC's Rules provide that applicants to become a Member, Mutual Fund/Insurance Services Member, Fund Member, or Insurance Carrier/Retirement Services Member may not be known to be subject to any other action or condition the existence of which will require it to be placed on surveillance by NSCC. In addition, the financial requirements for certain members (full service Members and Mutual Fund/Insurance Services Members) state that the member must have a capital ratio or percentage that will not require the applicant to be placed on immediate surveillance by NSCC. All applicants must meet their minimum financial requirements, as applicable to their member type. NSCC is deleting these provisions.

When the NSCC membership standards were developed, the NSCC credit risk matrix was not in place. As a result of the implementation of the credit risk matrix, it is possible that once an applicant is approved for membership, it may be placed directly on NSCC's Watch List (*i.e.*, surveillance status). As sufficient discretion to deny membership based on financial, operational, or character issues exists in other sections of NSCC's rules, elimination of these provisions will not diminish NSCC's authority under its Rules to deny an applicant membership.

Fund Member Applicants Subject to Securities Exchange Act Rule 17a–11 Reporting

NSCC is deleting Addendum I (''Standards of Financial Responsibility and Operational Capability for Fund Members''), which includes a requirement that a broker-dealer Fund Member applicant not be subject to reporting under Securities Exchange Act Rule 17a–11 (''Notification Provisions for Broker and Dealers''). As a Fund Member, an applicant must meet NSCC's minimum financial requirements for membership (and, as stated above, NSCC retains sufficient discretion to deny membership based on financial, operational, or character issues in other sections of NSCC's Rules). Thus, NSCC has determined that this requirement is duplicative and that its elimination will not diminish NSCC's authority under its Rules to deny an applicant membership if it does not meet the applicable financial standards.

Financial Responsibility—Entities That Qualify for Membership Under the Category of ''Other'' Entity Types

In certain instances in NSCC's membership Rules, an applicant that does not qualify for membership under one of the specifically defined qualification criteria established for its membership type, may apply for membership if it has demonstrated to NSCC that its business and capabilities are such that it could reasonably expect material benefit from direct access to NSCC's services. NSCC's financial requirements for such an applicant required that it meet financial stability standards as were applied to the industry in which the applicant was associated. Because industry standards have not always been well-defined and as there has not always been consensus among market participants as to what those industry standards should be, in new Section 1 of Addendum B, NSCC is modifying the financial requirements for ''other'' applicants by requiring that such applicants satisfy such minimum standards of financial responsibility deemed appropriate by NSCC.

Business History

NSCC's Rules currently provide that Insurance Carrier/Retirement Services applicants and Third Party Administrator applicants (both non-guaranteed service members) must have an established business history of a minimum of three years or personnel with sufficient operational background and experience to ensure the ability of the applicant to conduct such a business. The business history requirement for full service Members, as well as Mutual Fund/Insurance Services Members and Fund Members (both non-guaranteed service members) is six months, or the member must have personnel with sufficient operational background and experience to ensure the ability of the applicant to conduct such a business.

NSCC has determined that the business history requirement of Insurance Carrier/Retirement Services and Third Party Administrator applicants need not be any more stringent that those applied to Fund Members and Mutual Fund/Insurance Services Members. Therefore, NSCC is changing the three year requirement to six months.

Fund Members That Are Insurance Companies

Under NSCC's Rules, an Insurance Company may apply to become a Fund Member; however, the financial requirements for Insurance Companies

is not specifically set forth in Addendum I. Addendum I states that all ''other'' applicants shall be required to meet financial stability and operational capability standards as are applicable to the industry in which the applicant is associated. Historically, NSCC looked to its Insurance Carrier/Retirement Services Member financial standards set forth in Rule 57. NSCC is clearly stating Insurance Company financial standards under its Fund Member financial requirements in Addendum B, Section 3.

9. Rule 3 (''Lists To Be Maintained'')

In consolidating NSCC's membership standards, NSCC is moving to Rule 2 the portions of Rule 3 (specifically, Sections 2, 5, and 6) that pertain to Municipal Comparison Only Members, Non-Clearing Members, and/or Data Services Only Members. For purposes of clarity, the remaining information within Rule 3 is being reorganized and reordered.

10. Addendum D (''Statement of Policy Envelope Settlement Service'')

To more accurately reflect the scope of the information contained within Addendum D, NSCC is renaming it ''Statement of Policy Envelope Settlement Service, Mutual Fund Services, Insurance and Retirement Processing Service and Other Services Offered by the Corporation.''

11. Rule 38 (''Captions'')

Mirroring FICC's Rules, NSCC is adding language to Rule 38 to make clear that NSCC's Rules are governed by New York substantive law. This language currently exists in NSCC's membership agreements only. Rule 38 will be renamed ''Governing Law and Captions.''

12. Technical Corrections

In 2006, NSCC submitted for immediate effectiveness proposed rule change SR–NSCC–2006–07 which made clarifying and technical changes to NSCC's Rules related to funds which are eligible for processing on Fund/Serv.[7] At that time, the membership qualifications contained within Section 1(viii) of Rule 31 (''Data Services Only Member'') should have been modified to reflect the definitional change made within Rule 1 with respect to ''TPA.'' Accordingly, NSCC is correcting the text within its rules to eliminate the reference to ''defined contribution plans as defined in Section 414(i) of the Internal Revenue Code of 1986, as amended,'' and to refer instead to ''a retirement or other benefit plan.''

In 2006, NSCC submitted for immediate effectiveness proposed rule change SR–NSCC–2006–14 which, among other things, deleted references to the Product Repository service as NSCC had determined not to offer the service.[8] At that time, all references within NSCC's Rules to ''Repository Data'' should have been deleted. Accordingly, NSCC is seeking to delete such references.

In 2005, the Commission approved NSCC proposed rule change SR–NSCC–2005–01 which clarified that the operational capability that is ordinarily focused upon by NSCC during the application process is the ability of an applicant to appropriately communicate with NSCC—that is the ability to input to NSCC and to receive output from NSCC on a timely and accurate basis.[9] The rule change removed certain provisions that might be interpreted to impose upon NSCC an obligation to make determinations with respect to particular aspects of operational capability. Instead, NSCC relies upon the requirement that the applicant in fact be able to satisfactorily communicate with NSCC as generally stated in the operational capability requirements currently set forth for members in NSCC's Rules. At the time of the filing, the provision within Rule 60 with respect to approval of TPA Member applicants based upon an alternative operational standard should have been deleted. Accordingly, NSCC now seeks to delete this provision from its Rules. NSCC will continue to retain the right to examine any aspect of an applicant's or member's business pursuant to the provisions of Rule 15.

In 2005, the Commission approved NSCC proposed rule change SR–NSCC–2005–14 which added Rule 64 (''DTCC Shareholders Agreement'') requiring that full service Members of NSCC purchase shares of the common stock of The Depository Trust & Clearing Corporation (''DTCC''), NSCC's parent corporation, and that certain Limited Member types could voluntarily purchase such shares.[10] Section 5 of Rule 64 made incorrect references to ''Members'' and should have referenced all member types specified in Section 2 (''Members'') and Section 3 (''Fund Members, Insurance Carrier/Retirement Services Members, Municipal Comparison Only Members, and Mutual Fund/Insurance Services Members'') of Rule 64. Accordingly, NSCC now correcting such references.

In 2004, the Commission approved NSCC proposed rule change SR–NSCC–2003–05 which modified NSCC's Rules to provide that notices to members posted by NSCC via electronic format (*i.e.*, posted on NSCC's Web site) meet NSCC's notification obligations.[11] At that time, Section 7 of Rule 45 (''Notices'') was added to NSCC's Rules with an incorrect reference to Section 3. NSCC is seeking to remove this incorrect reference.

III. Discussion

Section 19(b) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.[12] The Commission believes that NSCC's rule change is consistent with this Section because it should perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions by assisting NSCC applicants and members in understanding, and thereby complying with, NSCC's membership standards and requirements.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder. In approving the proposed rule change, as amended, the Commission considered the proposal's impact on efficiency, competition, and capital formation.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–2006–17), as amended, be and hereby is approved.

[7] Securities Exchange Act Release No. 54366 (August 25, 2006), 71 FR 52199.

[8] Securities Exchange Act Release No. 54921 (December 12, 2006), 71 FR 76415.

[9] Securities Exchange Act Release No. 51600 (April 22, 2005), 70 FR 22167.

[10] Securities Exchange Act Release No. 52922 (December 7, 2005), 70 FR 74070.

[11] Securities Exchange Act Release No. 50085 (July 26, 2004), 69 FR 45872.

[12] 15 U.S.C. 78q–1(b)(3)(F).

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–1022 Filed 1–16–09; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before March 23, 2009.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Nancy Sternberg, Program Manager, Program Gateway Program, Office of the Chief Information Officer, Small Business Administration, 409 3rd Street, 4th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Nancy Sternberg, Program Manager, Program Gateway Program, Office of the Chief Information Officer, 202–205–6285, *nancy.sternberg@sba.gov;* Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov*.

SUPPLEMENTARY INFORMATION: Customer feedback is critical to developing Web products and marketing materials that meet the needs of the small business community. This generic information collection request encompasses several data collection activities that will help SBA obtain information necessary to plan and deliver information and services to the public more efficiently and effectively.

Title: ''Small Business Customer Feedback.''

Description of Respondents: Potential and Current Small and Medium-seized Business Owners.

Form Number: N/A.

Annual Responses: 3,840.

Annual Burden: 842.

Jacqueline White,

Chief, Administrative Information Branch,

[FR Doc. E9–1044 Filed 1–16–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before March 23, 2009.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to David Becker, Acting Chief Financial Officer, Office of the Chief Financial Officer, Small Business Administration, 409 3rd Street, 6th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: David Becker, Acting Chief Financial Officer, Office of the Chief Financial Officer, 202–205–6122, *david.becker@sba.gov*; Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov*.

SUPPLEMENTARY INFORMATION: SBA will use data from (1) recipients of SBA-backed loans or SBIC financing to access customers satisfaction & perception of program impact and (2) 7(a) lenders to examine factors used to determine if credit elsewhere requirements are met.

Title: ''An Assessment of Small Business Administration Loan and Investment Performance.''

Description of Respondents: This survey will be administered to a random sample of businesses assisted under various SBA programs.

Form Numbers: 2284, 2285.

Annual Responses: 1.

Annual Burden: 346.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. E9–1116 Filed 1–16–09; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2009–0001]

Occupational Information Development Advisory Panel Meeting

AGENCY: Social Security Administration (SSA).

ACTION: Notice of Inaugural Meeting.

DATES: February 23, 2009, 8:30 a.m.–4:30 p.m. (EST); February 24, 2009, 8:30 a.m.–5 p.m. (EST); February 25, 2009, 8:30 a.m.–12 p.m. (EST)

Location: Sheraton Crystal City Hotel.

ADDRESSES: 1800 Jefferson Davis Highway, Arlington, VA 22202.

SUPPLEMENTARY INFORMATION: *Type of Meeting:* The meeting is open to the public.

Purpose: This discretionary Panel, established under the Federal Advisory Committee Act of 1972, as amended, shall report to the Commissioner of Social Security. The Panel will provide independent advice and recommendations on plans and activities to replace the Dictionary of Occupational Titles used in the Social Security Administration's (SSA) disability determination process. The Panel will advise the Agency on creating an occupational information system tailored specifically for SSA's disability programs and adjudicative needs. Advice and recommendations will relate to SSA's disability programs in the following areas: medical and vocational analysis of disability claims; occupational analysis, including definitions, ratings and capture of physical and mental/cognitive demands of work and other occupational information critical to SSA disability programs; data collection; use of occupational information in SSA's disability programs; and any other area(s) that would enable SSA to develop an occupational information system suited to its disability programs and improve the medical-vocational adjudication policies and processes.

Agenda: The Panel will meet on Monday, February 23, 2009, from 8:30 a.m.until 4:30 p.m. (EST); Tuesday, February 24, 2009, from 8:30 a.m. until 5 p.m. (EST) and Wednesday, February 25, 2009, from 8:30 a.m. to 12 p.m. (EST). The agenda will be available on the Internet at *http://www.socialsecurity.gov/oidap/* one week prior to the meeting.

The Panel will hear presentations on a variety of issues including: a general overview of the Agency's policy, procedures and business practices as they relate to the use of the Dictionary of Occupational Titles in the disability

programs; a summary of agency concerns and questions about its occupational information needs; and, an overview of the disability determination process. The Panel will also deliberate on issues presented and discuss its organization and operating procedures. The Panel will determine dates and identify tentative agenda items for future Panel meetings. The Panel will not hear public comment during the Inaugural Meeting. You may submit public comment in writing at any time in (not to exceed five pages) to the Panel address below.

Individuals who need special accommodation in order to attend the meeting (e.g., sign language services, assistive listening devices, or materials in alternative formats such as large print or CD) should notify Debra Tidwell-Peters via e-mail to *debra.tidwell-peters@ssa.gov* or by telephone at 410–965–9617, no later than February 9, 2009. SSA will attempt to meet requests made but cannot guarantee availability of services. All meeting locations are barrier free.

Contact Information: Records of all public Panel proceedings are maintained and available for inspection. Anyone requiring further information should contact the Panel staff at: Occupational Information Development Advisory Panel, Social Security Administration, 6401 Security Boulevard, 3–E–26 Operations, Baltimore, MD 21235–0001. Telephone: 410–965–9617. Fax: 410–597–0825. For additional information, please visit the Panel Web site at *http://www.socialsecurity.gov/oidap*.

Debra Tidwell-Peters,

Designated Federal Officer, Occupational Information Development Advisory Panel.

[FR Doc. E9–950 Filed 1–16–09; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 6484]

Office of the Chief of Protocol; Gifts to Federal Employees From Foreign Government Sources Reported to Employing Agencies in Calendar Year 2007; Correction

AGENCY: Department of State.

ACTION: Notice; Correction.

SUMMARY: This document contains a correction to the Notice ''Gifts to Federal Employees From Foreign Government Sources Reported to Employing Agencies in Calendar Year 2007'' published in the **Federal Register** on December 2, 2008, in FR Volume 73, Number 246. This notice is a request to change the identity of the foreign donor and government of a gift given to the Honorable Condoleezza Rice, Secretary of State of the United States, on January 5, 2007.

FOR FURTHER INFORMATION CONTACT: Tiffany Divis, Senior Gifts Officer and Special Assistant, Office of the Chief of Protocol, 2201 C Street, NW., Suite 1238, Washington, DC 20520, office number 202–647–1161.

Correction

In the **Federal Register** of December 2, 2008, in FR Volume 73, on page 78493, in the third column, correct the sixth paragraph to read:

The Custodian of the Two Holy Mosques King Abdullah Bin Abdul Aziz Al Saud, King of the Kingdom of Saudi Arabia.

Dated: January 9, 2009.

Patrick F. Kennedy,

Under Secretary for Management, Department of State.

[FR Doc. E9–969 Filed 1–16–09; 8:45 am]

BILLING CODE 4710–20–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending December 27, 2008

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et seq.*

The due date for Answers, Conforming Applications, or Motions To Modify Scope are set forth below for each application. Following the Answer period, DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2008–0382.

Date Filed: December 23, 2008.

Due Date for Answers, Conforming Applications, or Motion To Modify Scope: January 13, 2009.

Description: Amendment No. 1 of Travel Service, a.s. to its application for an exemption and foreign air carrier permit requesting to include scheduled foreign air transportation of persons, property and mail between a point or points in the European Community and the Member States of the European Union, and a point or points in the United States, to the full extent allowed under the Air Transport Agreement between the United States and the European Community and the Member States of the European Union; and to register its trade name ''Smart Wings,'' and that it be made part of its exemption and foreign air carrier permit.

Docket Number: DOT–OST–2005–22228 and DOT–OST–2008–0392.

Date Filed: December 22, 2008.

Due Date for Answers, Conforming Applications, or Motion To Modify Scope: January 12, 2009.

Description: Application of Southwest Airlines Co. (''Southwest'') requesting a certificate of public convenience and necessity and exemption authority to authorize Southwest to engage in foreign scheduled air transportation of persons, property and mail between the United States and Canada. Southwest also requests that the Department designate it for such service.

Renee V. Wright,

Program Manager, Docket Operations Federal Register Liaison.

[FR Doc. E9–1061 Filed 1–16–09; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Guidelines for Preparation of Environmental Assessments: Notice of Withdrawal of Circular

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Withdrawal of Circular.

SUMMARY: The Federal Transit Administration (FTA) is providing notice that it is withdrawing circular C5620.1, ''Guidelines for Preparing Environmental Assessments.'' The circular, which was issued in 1979, is outdated and should no longer be relied upon for guidance or cited in documents prepared for federally funded transit projects. FTA plans to develop new guidance at some point in the future.

DATES: The effective date of the withdrawal of the circular is January 21, 2009.

FOR FURTHER INFORMATION CONTACT: Carl Bausch, Office of Planning and Environment, Federal Transit Administration, 1200 New Jersey Ave

SE., East Building, Washington, DC 20590, phone: (202) 366–1626; or Christopher S. Van Wyk, Office of Chief Counsel, same address, phone: (202) 366–1733.

SUPPLEMENTARY INFORMATION: By this notice, FTA is withdrawing circular C5620.1, ''Guidelines for Preparing Environmental Assessments.'' The circular was intended to provide guidance on the preparation of environmental assessments pursuant to the National Environmental Policy Act of 1969 (NEPA). Since the time of the circular's issuance in 1979, there have been numerous substantive legal decisions and changes in applicable law that significantly affect the way in which environmental assessments are prepared pursuant to NEPA. These changes, including a major revision of FTA's regulations for implementing NEPA at 23 CFR Part 771 issued in 1987, have rendered the circular too inaccurate and deficient to continue to provide guidance on the preparation of environmental assessments pursuant to NEPA. Thus, FTA is providing this notice that the circular is withdrawn, should no longer be used as guidance, and should no longer be cited in documents prepared for federally funded transit projects.

The circular will be moved to the ''archive'' section of its public Web site on the date of publication of this notice. FTA plans to develop new guidance at some point in the future.

Issued on: January 12, 2009.

Sherry E. Little,

Acting Administrator.

[FR Doc. E9–1013 Filed 1–16–09; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2008–0074; Notice 2]

Goodyear Tire & Rubber Company, Denial of Petition for Decision of Inconsequential Noncompliance

Goodyear Tire & Rubber Company (Goodyear), has determined that certain passenger car tires manufactured during the week of January 7, 2008 failed to comply with the labeling requirements of paragraph S5.5.1(a) of 49 CFR 571.139, Federal Motor Vehicle Safety Standard (FMVSS) No. 139 *New Pneumatic Radial Tires for Light Vehicles.* FMVSS No. 139 requires that radial tires manufactured before September 1, 2009 for use on motor vehicles that have a gross vehicle weight (GVWR) rating of 10,000 pounds or less must be labeled with the Tire Identification Number (TIN) on one side of the tire and a full TIN or partial TIN on the opposite side. Pursuant to 49 CFR Part 573, Goodyear filed a noncompliance report with the National Highway Traffic Safety Administration (NHTSA) notifying NHTSA of the noncompliance.

Pursuant to 49 U.S.C. 30118(d) and 30120(h), and 49 CFR part 556, on March 28, 2008, Goodyear submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. 30118 and 30120 on the basis that this noncompliance is inconsequential to motor vehicle safety. NHTSA published notice of receipt of the petition, with a 30-day public comment period, on June 12, 2008 in the **Federal Register**. 73 FR 33486. In response to the petition, NHTSA did not receive any comments. To view the petition and all supporting documents, log onto the Federal Docket Management System (FDMS) Web site at: *http://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2008–0074.''

For further information on this decision, contact Mr. George Gillespie, Office of Vehicle Safety Compliance, NHTSA, telephone (202) 366–5299, facsimile (202) 366–7002.

Summary of Goodyear's Petition

Goodyear petitioned NHTSA for a determination that a noncompliance in approximately 18 Goodyear Eagle RS–A P235/55R18 99V passenger car tires manufactured in its Lawton, Oklahoma plant during the week of January 7, 2008 is inconsequential to motor vehicle safety. Paragraph S5.5.1(a) of FMVSS No. 139 requires that radial tires manufactured before September 1, 2009 for motor vehicles less than 10,000 GVWR be permanently labeled with (1) a full TIN required by 49 CFR Part 574 on one sidewall of the tire, and (2) except for retreaded tires, either the full or a partial TIN containing all characters in the TIN, except for the date code, and at the discretion of the manufacturer, any optional code, must be labeled on the other sidewall of the tire.[1]

In its petition, Goodyear stated that the 18 Goodyear Eagle RS–A P235/55R18 99V passenger car tires were mismarked.

Goodyear described the noncompliance as a failure to mark the tires with a complete or partial TIN on the sidewall opposite the sidewall with the full TIN. Thus, Goodyear describes the noncompliance as follows:

Actual stamping is ''NOT FOR SALE'' (on one sidewall) Correct stamping should be: ''M60Y LNER.'' (on that sidewall).

Goodyear makes the argument that this noncompliance is inconsequential to motor vehicle safety because the tires meet or exceed all other applicable FMVSS performance standards, and that the tires were designed, manufactured and tested to the standards and regulations as applicable and they meet all regulatory performance test requirements.

Goodyear also explains its belief that the Tire Identification Number (TIN) and the partial TIN are used to properly identify tires that are involved in a safety campaign. Goodyear stated its belief that the full TIN is molded on the intended outboard sidewall of these tires and consumers could be directed to have both sidewalls inspected for the TIN if any safety campaign would be required for these tires in the future. Goodyear compared this situation to that of any tire involved in a safety campaign that required the 4-digit week and year code to determine if it were involved.

Goodyear also stated that it has corrected the problem that caused these errors so that they will not be repeated in future production.

In summation, Goodyear states that it believes that because the noncompliances are inconsequential to motor vehicle safety that no corrective action is warranted.

NHTSA's Decision

NHTSA does not agree that Goodyear's noncompliance with FMVSS No. 139 is inconsequential to motor vehicle safety. As discussed below, the tire markings required by paragraph S5.5.1(a) of FMVSS No. 139 provide valuable information to assist consumers in determining if their tires are the subject of a safety recall.

The Firestone tire recalls in year 2000 highlighted the difficulty that consumers experienced when attempting to determine whether a tire is subject to a recall if the tire is mounted so that the sidewall bearing the TIN faces inward, i.e., underneath the vehicle. After a series of congressional hearings about the safety of and experiences regarding the Firestone tires involved in those recalls,

[1] Tires manufactured after September 1, 2009 must be labeled with the TIN on the intended outboard sidewall of a tire and either the TIN or partial TIN on the other sidewall. 49 CFR 571.139 S5.5.1(b). If a tire manufactured after September 1, 2009 does not have an intended outboard sidewall, one sidewall must be labeled with the TIN and the other sidewall must have either a TIN or partial TIN. *Id.*

Congress passed and the president signed into law the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act on November 1, 2000. Public Law 106–414. 114 Stat. 1800.

One matter addressed by the TREAD Act was tire labeling. Section 11 of the TREAD Act required a rulemaking to improve the labeling of tires to assist consumers in identifying tires that may be the subject of a recall.

In response to the TREAD Act's mandate, NHTSA published a final rule that, among other things, required that the TIN be placed on a sidewall of the tire and a full or partial TIN be placed on the other sidewall. *See* 67 FR 69600, 69628 (November 18, 2002), as amended 69 FR 31306 (June 3, 2004). In the preamble to the 2002 final rule, the agency identified the safety problem which prompted the issuance of the rule. 67 FR at 69602, 69606 and 69610. The agency explained that when tires are mounted so that the TIN appears on the inward facing sidewalls, motorists have three difficult and inconvenient options for locating and recording the TINs. Consumers must either: (1) Slide under the vehicle with a flashlight, pencil and paper and search the inside sidewalls for the TINs; (2) remove each tire, find and record the TIN, and then replace the tire; or (3) enlist the aid of a garage or service station that can perform option 1 or place the vehicle on a vehicle lift so that the TINs can be found and recorded. Without any TIN information on the outside sidewalls of tires, the difficulty and inconvenience of obtaining the TIN by consumers results in a reduction of the number of people who respond to a tire recall campaign and the number of motorists who unknowingly continue to drive vehicles with potentially unsafe tires.

Goodyear suggests that a recall of these tires could include an instruction to check the inboard sidewall if the TIN is not found on the outboard sidewall. This approach is inadequate. The noncompliance here is the exact problem that plagued millions of Firestone tire owners in 2000 and one that Congress mandated that NHTSA address. When the TIN is placed on one sidewall of a tire and that sidewall is mounted on the inboard side of a wheel, it is very difficult and inconvenient for the consumer to locate and record the TIN. In such situations, consumers who attempt to determine if a tire is within the scope of a recall may not be able to read the inboard sidewall without taking one of the three inconvenient steps discussed above. The difficulty and inconvenience that locating a TIN under these circumstances poses serious impediments to the successful recall of the noncompliant tire, which may result in motorists continuing to drive their vehicles with potentially unsafe tires.

While NHTSA has determined in the past that in some instances TIN marking omissions were inconsequential to motor vehicle safety, those determinations occurred prior to the adoption of FMVSS No. 139 pursuant to the TREAD Act. Following the enactment of the TREAD Act, NHTSA found that there is a safety need for a full TIN on one sidewall and a full or partial TIN on the other sidewall. As previously discussed, FMVSS No. 139 now requires TIN markings on both sidewalls of a tire so that consumers can readily determine if a tire is subject to a safety recall. Accordingly, the omission of a TIN or partial TIN on either sidewall is now considered to be a serious safety problem.

In consideration of the foregoing, NHTSA has decided that the petitioner has not met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Goodyear's petition is hereby denied, and the petitioner must notify owners, purchasers and dealers pursuant to 49 U.S.C. 30118 and provide a remedy in accordance with 49 U.S.C. 30120.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8)

Issued on: January 13, 2009.

Daniel C. Smith,

Associate Administrator for Enforcement.

[FR Doc. E9–1012 Filed 1–16–09; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 13, 2009.

The Department of the Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 20, 2009 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1962.

Type of Review: Extension.

Form: 8899.

Title: Notice of Income Donated Intellectual Property.

Description: Form is filed by charitable org. receiving donations of intellectual property if the donor provides a timely notice. The initial deduction is limited to the donor's basis; additional deductions are allowed to the extent of income from the property, reducing excessive deductions.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 5,430 hours.

OMB Number: 1545–1231.

Type of Review: Revision.

Title: Final (T.D. 9436) Tax Return Prep/IA–38–90 Final Regulations (T.D. 8382) Penalty on Income Tax Return Preparers Who Understate Taxpayer's Liability on a Federal Income Tax Return or a Claim for Refund.

Description: This information is necessary to make the record of the name, taxpayer identification number, and principal place of work of each tax return preparer, make each return or claim for refund prepared available for inspection by the Commissioner of Internal Revenue, and to document that the tax return preparer advised the taxpayer of the penalty standards applicable to the taxpayer in order for the tax return preparer to avoid penalties under section 6694. The likely respondents are tax return preparers and their employers. These regulations implement amendments to the tax return preparer penalties under sections 6694 and 6695 of the Internal Revenue Code and related provisions under sections 6060, 6107, 6109, 6696, and 7701(a)(36) reflecting amendments to the Code made by section 8246 of the Small Business and Work Opportunity Tax Act of 2007 and section 506 of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008. The final regulation affects tax return preparers and provides guidance regarding the amended provisions.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 10,679,320 hours.

OMB Number: 1545–0913.

Type of Review: Extension.

Title: Below-Market Loans LR–165–84 (NPRM).

Description: Section 7872 re-characterizes a below-market loan as a market rate loan and an additional transfer by the lender to the borrower equal to the amount of imputed interest. The regulation requires both the lender and the borrower to attach a statement to their respective income tax returns for years in which they have either imputed income or claim imputed deductions under section 7872.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 481,722 hours.

OMB Number: 1545–1955.

Type of Review: Extension.

Form: 8894.

Title: Request to Revoke Partnership Level Tax Treatment Election.

Description: IRC section 6231(a)(1)(B)(ii) allows small partnerships to elect to be treated under the unified audit and litigation procedures. This election can only be revoked with the consent of the IRS. Form 8894 will provide a standardized format for small partnerships to request this revocation and for the IRS to process it.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 186 hours.

OMB Number: 1545–1353.

Type of Review: Extension.

Title: FI–189–84 (TD 8517—Final) Debt Instruments With Original Discount; Imputed Interest on Deferred Payment Sales or Exchanges of Property.

Description: These regulations provide definitions, reporting requirements, elections, and general rules relating to the tax treatment of debt instruments with original issue discount and the imputation of, and accounting for, interest on certain sales or exchanges of property.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 185,500 hours.

OMB Number: 1545–1041.

Type of Review: Extension.

Title: PS–102–86 (TD 8316—Final) Cooperative Housing Corporations.

Description: This regulation provides an elective alternative to the proportionate share rule for allocating interest and taxes to the tenant stockholders of cooperative housing corporations.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 625 hours.

OMB Number: 1545–1466.

Type of Review: Extension.

Title: Third-Party Disclosure Requirements in IRS Regulations.

Description: This submission contains third-party disclosure regulations subject to the Paperwork Reduction Act of 1995.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 68,885,183 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Nicholas A. Fraser, (202) 395–5887, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Celina Elphage,

Treasury PRA Clearance Officer.

[FR Doc. E9–1070 Filed 1–16–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Proposed Collection; Comment Request; Suspicious Activity Report by Insurance Companies

AGENCY: Financial Crimes Enforcement Network (''FinCEN'').

ACTION: Notice and request for comments.

SUMMARY: FinCEN invites comment on a renewal without change of an information collection requirement contained in the form ''Suspicious Activity Report by Insurance Companies,'' or the SAR–IC, FinCEN Form 108. In the interim until Bank Secrecy Act database issues are resolved, insurance companies will report suspicious activities using the ''Suspicious Activity Report by the Securities and Futures Industries,'' (SAR–SF, FinCEN Form 101). This request for comments also covers 31 CFR 103.16. This request for comments is being made pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. 3506(c)(2)(A).

DATES: Written comments are welcome and must be received on or before March 23, 2009.

ADDRESSES: Written comments should be submitted to: Department of the Treasury, Financial Crimes Enforcement Network, Regulatory Policy and Programs Division, P.O. Box 39, Vienna, VA 22183, Attention: PRA Comments—SAR-Insurance Companies Reporting. Comments also may be submitted by electronic mail to the following Internet address: *regcomments@fincen.treas.gov*, again with a caption, in the body of the text, ''Attention: PRA Comments—SAR-Insurance Companies Reporting.''

Inspection of comments. Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Vienna, VA. Persons wishing to inspect the comments submitted must request an appointment with the Disclosure Officer by telephoning (703) 905–5034 (not a toll free call).

FOR FURTHER INFORMATION CONTACT: The FinCEN Regulatory Helpline at 800–949–2732, select option 7.

SUPPLEMENTARY INFORMATION:

Title: Suspicious Activity Reporting by Insurance Companies; 31 CFR 103.16.

OMB Number: 1506–0029.

Form Number: FinCEN Form 108.

Abstract: The statute generally referred to as the ''Bank Secrecy Act,'' Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–14, 5316–5332, authorizes the Secretary of the Treasury, *inter alia,* to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities, to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.[1] Regulations implementing the Bank Secrecy Act appear at 31 CFR Part 103. The authority of the Secretary to administer the Bank Secrecy Act has been delegated to the Director of FinCEN.

The Secretary of the Treasury was granted authority in 1992, with the enactment of 31 U.S.C. 5318(g), to require financial institutions to report suspicious transactions. On October 17, 2002, FinCEN issued a notice of proposed rulemaking requiring insurance companies to report suspicious transactions (*See* 67 FR 64067). The final rule (*See* 70 FR 66761) can be found at 31 CFR 103.16.

In the preamble to the notice of proposed rulemaking, FinCEN indicated that we would be developing a suspicious activity reporting form for insurance companies entitled

[1] Language expanding the scope of the Bank Secrecy Act to intelligence or counter-intelligence activities to protect against international terrorism was added by Section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001 (the ''USA Patriot Act''), Pub. L. 107–56.

''Suspicious Activity Report by Insurance Companies,'' or ''SAR–IC.'' [2] This action renews the currently approved form which is currently on-hold until database technical difficulties are resolved (*See* 72 FR 23891). Once resolved, the SAR–IC, FinCEN Form 108, will be released. In the interim, insurance companies have been instructed to file using the SAR–SF, FinCEN Form 101, which is similar in format and content. Renewal of the SAR–SF is currently pending public comment (*See* 73 FR 74230).

The information collected on the SAR–IC is required to be provided pursuant to 31 U.S.C. 5318(g) and 31 CFR 103.16. This information will be made available, in accordance with strict safeguards, to appropriate criminal law enforcement and regulatory personnel, for use in official performance of their duties, for regulatory purposes and in investigations and proceedings involving domestic and international money laundering, terrorist financing, and other financial crimes.

Reports filed by insurance companies required to report suspicious transactions under 31 CFR 103.16, and any reports filed voluntarily by other insurance companies will be subject to the protection from liability contained in 31 U.S.C. 5318(g)(3) and the provision contained in 31 U.S.C. 5318(g)(2) which prohibits notification of any person involved in the transaction that a suspicious activity report has been filed.

The interim form to be used by insurance companies may be viewed at *http://www.fincen.gov/forms/files/fin101_sar-sf.pdf.*

Type of Review: Renewal of a currently approved collection.

Affected public: Business or other for-profit institutions.

Frequency: As required.

Estimated Burden: The average completion time for the form is 1 hour per response. The recordkeeping average for 31 CFR 103.16 and the form is 3 hours per response for a total burden of 4 hours per response.

Estimated number of respondents: 1,200.

Estimated Total Annual Responses: 3,600.

Estimated Total Annual Burden Hours: 14,400

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained under the Bank Secrecy Act must be retained for five years.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected: (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: January 13, 2009.

James H. Freis, Jr.,

Director, Financial Crimes Enforcement Network.

[FR Doc. E9–1069 Filed 1–16–09; 8:45 am]

BILLING CODE 4810–02–P

[2] *See* 67 FR 64067–64075.

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations, Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of 3 additional individuals whose property and interests in property have been blocked pursuant to the Foreign Narcotics Kingpin Designation Act (''Kingpin Act'') (21 U.S.C. 1901–1908, 8 U.S.C. 1182).

DATES: The designation by the Director of OFAC of the three individuals identified in this notice pursuant to section 805(b) of the Kingpin Act is effective on January 14, 2009.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available on OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, tel.: (202) 622–0077.

Background

The Kingpin Act became law on December 3, 1999. The Kingpin Act establishes a program targeting the activities of significant foreign narcotics traffickers and their organizations on a worldwide basis. It provides a statutory framework for the President to impose sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and to the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury consults with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security when designating and blocking the property and interests in property, subject to U.S. jurisdiction, of persons who are found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On January 14, 2009, OFAC designated three additional individuals whose property and interests in property are blocked pursuant to section 805(b) of the Foreign Narcotics Kingpin Designation Act.

The list of additional designees is as follows:

1. ZABALA PADILLA, Omar Arturo (a.k.a. ZABALA PADILLA, Omar Enrique; a.k.a. ''Lucas Gualdron''); Colombia; DOB 11 Jul 1969; POB Bucaramanga, Colombia; Nationality Colombia; Cedula No. 91267294 (Colombia); International FARC

Commission Member for France, Italy, and Switzerland (INDIVIDUAL) [SDNTK].

2. GARCIA ALBERT, Maria Remedios (a.k.a. ''Soraya''; a.k.a. ''Irene''); Spain; DOB 17 Feb 1951; POB Avila, Spain; D.N.I. 00263695–T (Spain); International FARC Commission Member for Spain (INDIVIDUAL) [SDNTK].

3. RODRIGO VEGA, Vlaudin (a.k.a. ''Carlos Vlaudin''); Australia; DOB 03 Mar 1960; Citizen Chile; Passport J1722726 (Chile); International FARC Commission Member for Australia (INDIVIDUAL) [SDNTK].

Dated: January 14, 2009.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E9–1072 Filed 1–16–09; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0677]

Proposed Information Collection (Contract for Training and Employment) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to ensure contracts between VA and training facilities/vendors are consistent with the Federal Procurement Regulations.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 23, 2009.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0677'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Contract for Training and Employment (Chapter 31, Title 38 U.S. Code), VA Form 28–1903.

OMB Control Number: 2900–0677.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 28–1903 is used to standardize contracts agreements between VA and training facilities/vendors providing vocational rehabilitation training and employment to veterans. VA uses the data collected to ensure that veterans are receiving training and employment as agreed in the contract.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 1,200 hours.

Estimated Average Burden per Respondent: 60 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 1,200.

Dated: January 12, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–1036 Filed 1–16–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0678]

Proposed Information Collection (Agreement To Train on the Job Disabled Veterans) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to assure that on the job training establishments are providing veterans with the appropriate rehabilitation training.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 23, 2009.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0678'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's

functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Agreement to Train On The Job Disabled Veterans, VA Form 28–1904.

OMB Control Number: 2900–0678.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 28–1904 is a written agreement between an On the Job Training (OJT) establishment and VA. The agreement is necessary to ensure that OJT is providing claimants with the appropriate training and supervision, and VA's obligation to provide claimants with the necessary tools, supplies, and equipment for such training.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 150 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 600.

Dated: January 12, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–1037 Filed 1–16–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0205]

Proposed Information Collection (Applications and Appraisals for Employment for Title 38 Positions and Trainees); Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed evaluate claimants' qualification for employment in VA's healthcare services.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 23, 2009.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov*; or to Mary Stout, Veterans Health Administration (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or *e-mail: mary.stout@va.gov*. Please refer to ''OMB Control No. 2900–0205'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Mary Stout at (202) 461–5867 or FAX (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Applications and Appraisals for Employment for Title 38 Positions and Trainees, VA Forms 10–2850, 2850a through d, VA Form Letters 10–341a.

OMB Control Number: 2900–0205.

Type of Review: Extension of a currently approved collection.

Abstract: VA will use the data collected on VA Forms 10–2850, 2850a through d, VA Form Letters 10–341a and b to evaluate an applicant's qualification for employment with the VA, as well as their training, educational, and professional experiences. The data is necessary to determine the applicant's suitability, grade level and clinical privileges.

Affected Public: Individuals or households.

Estimated Annual Burden:

a. Application for Physicians, Dentists, Podiatrists and Optometrists, Chiropractors, VA Form 10–2850—7,450 hours.

b. Application for Nurses and Nurse Anesthetists, VA Form 10–2850a—29,799 hours.

c. Application for Residents, VA Form 10–2850b—15,893 hours.

d. Application for Associated Health Occupations, VA Form 10–2850c—9,933 hours.

e. Application for Health Professions Trainees, VA Form 10–2850d—28,143 hours.

f. Appraisal of Applicant, VA Form Letter 10–341a—25,410 hours.

g. Trainee Qualification and Credentials Verification Letter, VA Form Letter 10–341b—7,266 hours.

Estimated Average Burden Per Respondent:

a. Application for Physicians, Dentists, Podiatrists and Optometrists, Chiropractors, VA Form 10–2850—30 minutes.

b. Application for Nurses and Nurse Anesthetists, VA Form 10–2850a—30 minutes.

c. Application for Residents, VA Form 10–2850b—30 minutes.

d. Application for Associated Health Occupations, VA Form 10–2850c—30 minutes.

e. Application for Health Professions Trainees, VA Form 10–2850d—30 minutes.

f. Appraisal of Applicant, VA Form FL 10–341a—30 minutes.

g. Trainee Qualification and Credentials Verification Letter, VA Form 10–341b—5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. Application for Physicians, Dentists, Podiatrists and Optometrists, Chiropractors, VA Form 10–2850—14,900.

b. Application for Nurses and Nurse Anesthetists, VA Form 10–2850a—59,598.

c. Application for Residents, VA Form 10–2850b—31,786.

d. Application for Associated Health Occupations, VA Form 10–2850c—19,866.

e. Application for Health Professions Trainees, VA Form 10–2850d—56,286.

f. Appraisal of Applicant, VA Form 10–341a—50,820.

g. Trainee Qualification and Credentials Verification Letter, VA Form 10–341b—87,190.

Dated: January 12, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–1038 Filed 1–16–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0121]

Agency Information Collection (Obtaining Supplemental Information From Hospital or Doctor) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 20, 2009.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0121'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0121.''

SUPPLEMENTARY INFORMATION: *Title:* Obtaining Supplemental Information from Hospital or Doctor, VA FL 29–551b.

OMB Control Number: 2900–0121.

Type of Review: Extension of a currently approved collection.

Abstract: The form letter is used to request medical evidence from an insured's attending physician or hospital in connection with continuing disability insurance benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 28, 2008 at pages 64014–64015.

Affected Public: Individuals or households.

Estimated Annual Burden: 61 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 244.

Dated: January 12, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–1057 Filed 1–16–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0178]

Agency Information Collection (Monthly Certification of On-the-Job and Apprenticeship Training) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before February 20, 2009.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0178'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900–0178.''

SUPPLEMENTARY INFORMATION:

Title: Monthly Certification of On-the-Job and Apprenticeship Training, VA Forms 22–6553d and 22–6553d-1.

OMB Control Number: 2900–0178.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants receiving on-the-job and apprenticeship training complete VA Form 22–6553d to report the number of hours worked. Schools or training establishments also complete the form to report whether the claimant's educational benefits are to be continued unchanged or terminated, and the effective date of such action. VA Form 22–6553d–1 is an identical printed copy of VA Form 22–6553d. Claimants use VA Form 22–6553d–1 when the computer-generated version of VA Form 22–6553d is not available. VA uses the data collected to process a claimant's educational benefit claim.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 10, 2008, at page 66690.

Affected Public: Individuals or households.

Estimated Annual Burden: 30,722 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: Monthly.

Estimated Number of Respondents: 20,481.

Number of Responses Annually: 184,329.

Dated: January 12, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–1058 Filed 1–16–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0034]

Agency Information Collection (Trainee Request for Leave—Chapter 31, Title 38, U.S.C.) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice

announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 20, 2009.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0034'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@va.gov*. Please refer to ''OMB Control No. 2900–0034.''

SUPPLEMENTARY INFORMATION:

Title: Trainee Request for Leave—Chapter 31, Title 38, U.S.C., VA Form 28–1905h.

OMB Control Number: 2900–0034.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants complete VA Form 28–1905h to request leave from their Vocational Rehabilitation and Employment Program training. The trainer or authorized school official must verify on the form that the absence will or will not interfere with claimant's progress in the program. Claimants will continue to receive subsistence allowance and other program services during the leave period as if he or she were attending training. Disapproval of the request may result in loss of subsistence allowance for the leave period.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 28, 2008, at page 64015.

Affected Public: Individuals or households.

Estimated Annual Burden: 7,500 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 30,000.

Dated: January 12, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–1059 Filed 1–16–09; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Wednesday,
January 21, 2009

Part II

Department of Labor

Employment Standards Administration

29 CFR Parts 403 and 408
Labor Organization Annual Financial Reports; Final Rule

DEPARTMENT OF LABOR

Employment Standards Administration

29 CFR Parts 403 and 408

RIN 1215–AB62

Labor Organization Annual Financial Reports

AGENCY: Office of Labor-Management Standards, Employment Standards Administration, Department of Labor.

ACTION: Final Rule.

SUMMARY: The Department of Labor's Employment Standards Administration (''ESA'') Office of Labor-Management Standards (''OLMS'') publishes this Final Rule to make several revisions to the current Form LM–2 (used by the largest labor organizations to file their annual financial reports) that will provide additional information on Schedules 3, 4, 11 and 12, clarify reporting under certain functional categories and add itemization schedules corresponding to categories of receipts, and establish a procedure and standards by which the Secretary of Labor may revoke a particular labor organization's privilege to file a simplified annual report, Form LM–3, where appropriate, after investigation, due notice, and opportunity for a hearing. The changes are made pursuant to section 208 of the Labor-Management Reporting and Disclosure Act (''LMRDA''), 29 U.S.C. 438. The final rule will apply prospectively.

DATES: *Effective Date:* This rule shall take effect on February 20, 2009.

Applicability Date: This rule will apply prospectively to labor organizations whose fiscal years begin on or after July 1, 2009.

FOR FURTHER INFORMATION CONTACT: Denise Boucher, Director of the Office of Policy, Reports and Disclosure, at: Denise M. Boucher, U.S. Department of Labor, Employment Standards Administration, Office of Labor-Management Standards, 200 Constitution Avenue, NW., Room N–5609, Washington, DC 20210, (202) 693–1185 (this is not a toll-free number). (800) 877–8339 (TTY/TDD).

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

This final rule is issued pursuant to section 208 of the LMRDA, 29 U.S.C. 438. Section 208 authorizes the Secretary of Labor to issue, amend, and rescind rules and regulations to implement the LMRDA's reporting provisions. Secretary's Order 4–2007, issued May 2, 2007, and published in the **Federal Register** on May 8, 2007 (72 FR 26159), contains the delegation of authority and assignment of responsibility for the Secretary's functions under the LMRDA to the Assistant Secretary for Employment Standards and permits re-delegation of such authority. This rule implements section 201 of the LMRDA, which requires covered labor organizations to file annual, public reports with the Department, identifying the labor organization's assets and liabilities, receipts, salaries and other direct or indirect disbursements to each officer and all employees receiving $10,000 or more in aggregate from the labor organization, direct or indirect loans (in excess of $250 aggregate) to any officer, employee, or member, loans (of any amount) to any business enterprise, and other disbursements during the reporting period. 29 U.S.C. 431(b). The statute requires that such information shall be filed ''in such detail as may be necessary to disclose [a labor organization's] financial conditions and operations.'' *Id.*

Section 208 authorizes the Secretary to establish ''simplified reports for labor organizations or employers for whom [s]he finds that by virtue of their size a detailed report would be unduly burdensome.'' Section 208 also authorizes the Secretary to revoke this privilege for any labor organization or employer if the Secretary determines, after such investigation as she deems proper and due notice and opportunity for a hearing, that the purposes of section 208 would be served by revocation.

II. Background

A. Introduction

On May 12, 2008, the Department issued a notice of proposed rulemaking (73 FR 27346) proposing to modify and improve the Form LM–2 by requiring additional information about the receipt and disbursement of labor organization funds, and establish standards and procedures for revoking, where appropriate, the privilege afforded some labor organizations to file simplified annual reports, after investigation, due notice, and opportunity for hearing. As noted in the proposal, the revisions to Form LM–2 and the standards and procedures for revoking a labor organization's simplified filing privilege are part of the Department's continuing effort to better effectuate the reporting requirements of the LMRDA.

The Department initially provided for a 45-day comment period ending June 26, 2008. In response to public requests, the Department published a notice extending the comment period to July 11, 2008. (73 FR 34913). The Department received 536 comments on the LM–2/LM–3 NPRM, excluding requests for extensions. Of these comments, approximately 45 were unique comments. The remaining comments were copies of a form letter endorsing the proposal. Comments were received from labor organizations, employers, trade and public interest groups, and two Members of Congress.

The LMRDA's various reporting provisions are designed to empower labor organization members by providing them the means and information to maintain democratic control over their labor organizations and ensure a proper accounting of labor organization funds. Labor organization members are better able to monitor their labor organization's financial affairs and to make informed choices about the leadership of their labor organization and its direction when they receive the financial information required by the LMRDA. By reviewing the reports, a member may ascertain the labor organization's priorities and whether they are in accord with the member's own priorities and those of fellow members. At the same time, this transparency promotes both the labor organizations' own interests as democratic institutions and the interests of the public and the government. Furthermore, the LMRDA's reporting and disclosure provisions, together with the fiduciary responsibility provision, 29 U.S.C. 501, which directly regulates the primary conduct of labor organization officials, operate to safeguard a labor organization's funds from depletion by improper or illegal means. Timely and complete reporting also helps deter labor organization officers or employees from making improper use of such funds or embezzling assets.

The final rule brings the reporting requirements for labor organizations in line with contemporary expectations for the disclosure of financial information. Today labor organizations are more like modern corporations in their structure, scope, and complexity than the labor organizations of 1959.[1] Further, as benefits have become a larger component of compensation, information about such benefits has

[1] There are now more large labor organizations affiliated with a national or international body than ever before. At the close of FY 2005, 4,452 labor organizations, including 101 national and international labor organizations, reported $250,000 or more in total annual receipts. Unless otherwise noted, all estimates are based on data from the OLMS electronic labor organization reporting system (''e.LORS'') for FY 2005.

become more important to members.[2] Moreover, labor organization members today are better educated, more empowered, and more familiar with financial data and transactions than ever before. As labor organization members, no less than as consumers, citizens, or creditors, they expect access to relevant and useful information in order to make fundamental investment, career, and retirement decisions, evaluate options, and exercise legally guaranteed rights.

B. The LMRDA's Reporting and Other Requirements

In enacting the LMRDA in 1959, a bipartisan Congress made the legislative finding that in the labor and management fields ''there have been a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct which require further and supplementary legislation that will afford necessary protection of the rights and interests of employees and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and their officers and representatives.'' 29 U.S.C. 401(a).

The statute was the direct outgrowth of a congressional investigation conducted by the Select Committee on Improper Activities in the Labor or Management Field, commonly known as the McClellan Committee, chaired by Senator John McClellan of Arkansas. In 1957, the committee began a highly publicized investigation of labor organization racketeering and corruption; and its findings of financial abuse, mismanagement of labor organization funds, and unethical conduct provided much of the impetus for enactment of the LMRDA's remedial provisions. *See generally* Benjamin Aaron, *The Labor-Management Reporting and Disclosure Act of 1959,* 73 Harv. L. Rev. 851, 851–55 (1960). During the investigation, the committee uncovered a host of improper financial arrangements between officials of several international and local labor organizations and employers (and labor consultants aligned with the employers) whose employees were represented by the labor organizations in question or might be organized by them. *See generally Interim Report of the Select Committee on Improper Activities in the Labor or Management Field,* S. Rep. No. 85–1417 (1957); *see* also William J. Isaacson, *Employee Welfare and Benefit Plans: Regulation and Protection of Employee Rights,* 59 Colum. L. Rev. 96 (1959).

The statute was designed to remedy these various ills through a set of integrated provisions aimed at labor organization governance and management. These include a ''bill of rights'' for labor organization members, which provides for equal voting rights, freedom of speech and assembly, and other basic safeguards for labor organization democracy, *see* 29 U.S.C. 411–15; financial reporting and disclosure requirements for labor organizations, their officers and employees, employers, labor relations consultants, and surety companies, *see* 29 U.S.C. 431–36, 441; detailed procedural, substantive, and reporting requirements relating to labor organization trusteeships, *see* 29 U.S.C. 461–66; detailed procedural requirements for the conduct of elections of labor organization officers, *see* 29 U.S.C. 481–83; safeguards for labor organizations, including bonding requirements, the establishment of fiduciary responsibilities for labor organization officials and other representatives, criminal penalties for embezzlement from a labor organization, a prohibition on certain loans by a labor organization to officers or employees, prohibitions on employment and officeholding of certain convicted felons in a labor organization, and prohibitions on payments to employees, labor organizations, and labor organization officers and employees for prohibited purposes by an employer or labor relations consultant, *see* 29 U.S.C. 501–05; and prohibitions against extortionate picketing, retaliation for exercising protected rights, and deprivation of LMRDA rights by violence, *see* 29 U.S.C. 522, 529, 530.

Financial reporting and disclosure was conceived as a partial remedy for these improper practices. As noted in a key Senate Report on the legislation, disclosure would discourage questionable practices (''The searchlight of publicity is a strong deterrent.''); aid labor organization governance (Labor organizations will be able ''to better regulate their own affairs. The members may vote out of office any individual whose personal financial interests conflict with his duties to members.''); facilitate legal action by members against ''officers who violate their duty of loyalty to the members''; and create a record (The reports will furnish a ''sound factual basis for further action in the event that other legislation is required.''). S. Rep. No. 187 (1959), at 16, *reprinted in 1 NLRB Legislative History of the Labor-Management Reporting and Disclosure Act of 1959,* at 412.

Section 201 of the LMRDA requires labor organizations to file annual, public reports with the Department, detailing the labor organization's financial condition and operations. 29 U.S.C. 431(b). The Department has developed several forms for implementing the LMRDA's financial reporting requirements. The annual report forms (Form LM–2, Form LM–3, and Form LM–4), require information about a labor organization's assets, liabilities, receipts, disbursements, loans to officers and employees and business enterprises, direct and indirect payments to each officer, and payments to each employee of the labor organization paid more than $10,000 during the fiscal year.[3] The reporting detail required of labor organizations, as the Secretary has established by rule, varies depending on the amount of the labor organization's annual receipts. 29 CFR 403.4.

Labor organizations with annual receipts of at least $250,000 and all labor organizations in trusteeship (without regard to the amount of their annual receipts) must file the Form LM–2. 29 CFR 403.2–403.4. This form may be filed voluntarily by any other labor organization. The Form LM–2 requires receipts and disbursements to be reported by functional categories, such as representational activities; political activities and lobbying; contributions, gifts, and grants; union administration; and benefits. Further, the form requires filers to allocate the time their officers and employees spend according to functional categories, as well as the payments that each of these officers and employees receive, and it compels the itemization of certain transactions

[2] The balance between wages/salaries paid to workers and their ''other compensation'' has changed significantly during this time. For example, in 1966, over 80% of total compensation consisted of wages and salaries, with less than 20% representing benefits. U.S. Department of Labor, Report on the American Workforce (2001) 76, 87. By 2007, wages dropped to 70.8% of total compensation and benefits grew to 29.4% of the compensation package. U.S. Department of Labor, Bureau of Labor Statistics Chart on Total Benefits, available on the Web site of the Bureau of Labor Statistics, *http://www.bls.gov.*

[3] The format of Forms LM–2 and LM–3 remained essentially unchanged from the early 1960s, when the Department issued the first and second generation of rules under the Act, until October 2003 when the revised Form LM–2 was issued. *See, e.g.,* 25 FR 433 (Jan. 20, 1960); 28 FR 14383 (Dec. 27, 1963). The Form LM–4 was adopted by a final rule in 1992 with an effective date of December 31, 1993. *See* 57 FR 49356–49365 (Oct. 30, 1992). The effective date was subsequently postponed until December 31, 1994. *See* 58 FR 28304 (May 12, 1993). The Form LM–4 was then revised slightly and adopted by a final rule with the same December 31, 1994 effective date. *See* 58 FR 67594 (Dec. 21, 1993).

totaling $5,000 or more. This form must be electronically signed and filed with the Department.[4]

Forms LM–3 and LM–4 were developed by the Secretary to meet the LMRDA's charge that she develop ''simplified reports for labor organizations and employers for whom [s]he finds by virtue of their size a detailed report would be unduly burdensome,'' 29 U.S.C. 438. A labor organization not in trusteeship that has total annual receipts less than $250,000 for its fiscal year may elect, ''subject to revocation of the privilege,'' to file Form LM–3 or Form LM–4, depending on its total annual receipts, instead of Form LM–2. *See* 29 CFR 403.4(a)(1).[5] The Form LM–3, which may be used by a labor organization with annual receipts of $10,000 or greater, but less than $250,000, is a five-page document requiring labor organizations to provide particularized information by certain categories, but in less detail than Form LM–2. A labor organization not in trusteeship that has total annual receipts less than $10,000 for its fiscal year may elect, ''subject to revocation of the privilege,'' to file Form LM–4 instead of Form LM–2 or Form LM–3. 29 CFR 403.4(a)(2). The Form LM–4 is a two-page document that requires a labor organization to report only the total amounts of its assets, liabilities, receipts, disbursements, and payments to officers and employees.

With regard to each of these reports, the LMRDA states that the Secretary of Labor shall ''prescribe the[ir] form and publication * * * and such other reasonable rules and regulations * * * as he may find necessary to prevent the circumvention or evasion of such reporting requirements.'' 29 U.S.C. 438. This final rule revises the Form LM–2 and establishes a procedure and standards for revocation of a labor organization's simplified filing privilege. The revised Form LM–2 will provide greater transparency of labor organization finances and effectuate the goals of the LMRDA.

III. Changes to the Form LM–2 and the Form LM–3

A. Form LM–2

1. Introduction

The Department proposed changes to enhance the Form LM–2 by requiring labor organizations to disclose additional information about their financial activities to their members, this Department, and the public. Each of the changes proposed has been adopted in the final rule, with some modifications in response to public comment received on the proposals. On the revised form, labor organizations will provide additional information in Schedule 3 (''Sale of Investments and Fixed Assets'') and Schedule 4 (''Purchase of Investments and Fixed Assets'') that will allow verification that these transactions are performed at arm's length and without conflicts of interest. Schedules 11 and 12 have also been revised to require reporting of the value of benefits paid to and on behalf of officers and employees. This change will provide a more accurate picture of total compensation received by labor organization officers and employees. Labor organizations will report on Schedules 11 and 12 travel reimbursements indirectly paid on behalf of labor organization officers and employees. This change will provide more accurate information on travel disbursements for labor organization officers and employees. The enhancements also include additional schedules corresponding to the following categories of receipts: Dues and Agency Fees; Per Capita Tax; Fees, Fines, Assessments, Work Permits; Sales of Supplies; Interest; Dividends; Rents; On Behalf of Affiliates for Transmittal to Them; and From Members for Disbursement on Their Behalf. These new schedules will require the reporting of additional information, by receipt category, of aggregated receipts of $5,000 or more. The $5,000 threshold for itemization is used throughout the Form LM–2. This change is consistent with the information currently provided for disbursements. Finally, the Department is amending the Form LM–2 instructions to conform to the requirements of the Form T–1 published on October 2, 2008.[6]

The Department also sought comment on three specific questions: Whether the functional categories on the Form LM–2 should be changed in order to improve their usability to members of labor organizations and the public; whether the confidentiality exception from the Form LM–2 instructions should be narrowed, clarified or removed; and ''whether all transactions greater than $5,000 should be identified by amount and date in the relevant schedules, permitting, however, labor organizations, where acting in good faith and on reasonable grounds, to withhold information that otherwise would be reported, in order to prevent the divulging of information relating to the labor organization's prospective organizing or negotiat[ing] strategy.'' 73 FR at 27352–53. Comments were received on these questions; however, with the exception of a clarification about the use of the confidentiality exception for reporting payments under a job targeting or market recovery program, the Department has made no changes to the Form LM–2 on the points for which specific comments were requested.

The Department framed the request regarding the appropriateness of the functional reporting categories as follows:

> The Department also requests comment from the public regarding the appropriateness of the current functional disbursement categories in the Form LM–2. Comment is sought on whether changes should be made to these sections in order to improve their usability to members of labor organizations and the public.

73 FR at 27348. Numerous comments were received on this question. Several commenters expressed support for the continued use of the functional categories, which they find useful. Some commenters argued that no changes should be made to the functional categories, arguing that the functional categories place an unnecessary burden on unions and that unions have already spent considerable time to modify their

[4] The Form LM–2 and its instructions are published at 68 FR 58449–523 (Oct. 9, 2003) and are available at *http://www.olms.dol.gov.* Copies of the Form LM–3 and Form LM–4 are also available at *http://www.olms.dol.gov.*

[5] The 2003 rule set this amount at $250,000. However, the rule inadvertently failed to change the figure in 29 CFR 403.4(a)(1) from $200,000 to $250,000. As part of this final rule, the Department has revised section 403.4(a)(1) by correcting it to read ''$250,000.'' *See* text of regulation.

[6] When the current Form LM–2 was revised in 2003, the Department also established a Form T–1. The latter was vacated by the DC Circuit in *American Federation of Labor and Congress of Industrial Organizations* v. *Chao,* 409 F.3d 377 (2005). See discussion at 73 FR 57412, 57413 (Oct. 2, 2008). The Form LM–2 instructions contained descriptive information about the Form T–1. As discussed in its proposal to revise the Form LM–2, 73 FR at 57416, the Department noted that it had proposed to establish a new Form T–1 (73 FR 11754 (Mar. 4, 2008)) and that a final Form T–1 rule would affect the instructions to the Form LM–2. Because the Form T–1 published on October 2, 2008, 73 FR 57412, differs in some respects from the Form T–1, as described in the 2003 rule, the Department has revised the relevant portion of the Form LM–2 instructions to reflect the new Form T–1. The most significant changes have been made to Section X of the General Instructions. Compare the language of the new Form LM–2 instructions, at pages 4–6, with the language in the new Form T–1 instructions, at pages 1–3, shown at 73 FR at 57457–59. Minor changes have been made to sections II and VII of the General Instructions; items 10 (''Trusts or Funds'') and 11 (''Political Action Committee Funds''); and Schedule 7 (''Other Assets'').

accounting systems to allow for reporting on the current Form LM–2. Among the suggestions for improving the functional categories were the following:

- Separate reporting for organizing and representation functions and require additional itemization.
- Lower the itemization threshold from $5,000 to $200.
- Require accurate reporting of time spent, rather than an estimate to the nearest 10%, by officers and employees on activities in the functional categories.
- Require details regarding specific matters, cases, contracts, or grievances for which legal fees or other representational expenses, including staff time, are incurred.

The Department requested comment on the functional categories to further its understanding of any problems, concerns, or areas where improvement would be useful. Other than the items specifically listed, the Department did not propose general changes to the functional categories. The Department sought comment for informational purposes. That information has been received and reviewed and will be used to guide any changes that may be proposed in this area in the future.

The remaining two questions are discussed below in connection with Schedule 15.

The enhancements adopted in today's final rule, as more fully described below, will ensure that information is reported in such a way as to meet the objectives of the LMRDA by providing labor organization members with useful data that will enable them to be responsible and effective participants in the democratic governance of their labor organizations. The enhancements are designed to provide members of labor organizations with additional and more detailed information about the financial activities of their labor organization that is not currently available through the Form LM–2 reporting. Moreover, experience with the software and technology developed for the 2003 revisions show that it is possible to provide the level of detail necessary to give labor organization members a more accurate picture of their labor organization's financial condition and operations without imposing an unwarranted burden on reporting labor organizations. The Department is revising the Form LM–2 software currently in use by Form LM–2 filers to conform to the enhancements made in today's final rule and will make the software available to filers without charge.

2. The Revisions to the Form LM–2 and Instructions

a. General

The Department received numerous comments on the proposed changes to the Form LM–2. While many comments concerned particular aspects of the proposal, many who opposed the proposal made some or all of the following claims: (1) The proposal comes too soon after, and without adequate justification to depart from, the reporting requirements established in 2003; (2) the proposal lacks the support of union members and supersedes their right to examine records underlying their union's financial reports; and (3) the proposal, especially the additional itemization to be required of labor organizations, places unnecessary and costly burdens on them. The comments received on these points are discussed below.

(1) Timing and Justification for Changing the Form

Several commenters raised questions about the timing of and justification for the proposed changes. For example, one commenter stated that the Department's proposal to require additional detailed reporting by labor organizations was made without any review by the Department of whether the 2003-revised Form LM–2 has been effective or beneficial to union members. It suggested that the Department failed to provide concrete examples of the need for a particular change or for how a change would address a concrete problem. Another commenter stated that by changing the reporting requirements so soon after the 2003 revision, the Department would impose needless, but significant, non-recurring costs on filers.

The 2003 rule represented an extensive change in the annual financial reports required under the LMRDA. The 2003 rule represented the first significant change in the Form LM–2 in over 40 years. Among other things, it required unions to report information in new functional categories, union officials to allocate how they spend their time working on members' interests, itemize major disbursements, identify tardy accounts receivables, and file the reports electronically in a format that allows for computer-assisted review and dissemination via the Internet. When the Department formulated its proposal to revise further the Form LM–2, it had the benefit of three cycles of reviewing forms submitted in accord with the 2003 revision to assess the utility of the form and to identify areas in which improvement was needed. In developing the proposals, the Department has had the opportunity to review thousands of forms and to tap the experience gained by its staff in investigating Form LM–2 issues and from their dialogue with union officials and union members while providing Form LM–2 compliance assistance to them. The Department has had the additional benefit of the lessons learned since the 2003 rule took effect in developing other LMRDA reports (Form LM–30 and Form T–1) and defending these reports in litigation before the federal courts.

The changes proposed and adopted in the instant rulemaking are incremental changes to the 2003 revisions. As stated in the NPRM and the discussion below, the Department acknowledges that unions will incur some additional burden in making the changes. In contrast to the 2003 revisions to the Form LM–2, however, the burden is minimal. Unions already have systems with the capability of itemizing disbursements; and there is no apparent reason (and none of the commenters suggested otherwise) why the same systems cannot be adapted for itemizing receipts.

As discussed in greater detail in the PRA section of the preamble, the Department has carefully considered the comments about its preliminary burden estimates, as set forth in the NPRM. The Department has revised upwards its estimate of the recurring burden associated with the new changes to the Form LM–2 to 15.6 hours, an increase of about 35 percent from the estimate in the NPRM. The revised estimate includes the changes made to the form and instructions from their proposed versions.

(2) Benefits to Union Members

Some commenters stated that the Department failed to explain why union members would find the proposed reporting requirements to be useful. Another commenter expressed concern about the absence of any studies showing how union members are using the information being reported under the 2003-revised Form LM–2 to improve the accountability and fiscal management of their unions. As the Department explained in the NPRM, 73 FR at 27346–48, the proposed rules were designed to improve the transparency of union finances and better effectuate the intention of Congress in enacting the Act's reporting and disclosure provisions. As discussed above, the proposed changes were the result of the Department's experience with the 2003-revised Form LM–2. Through this experience, it became evident to the Department's staff that

the Form LM–2 incompletely reflected the compensation paid to union officials. Notably missing from the reports was a true reflection of the amounts of compensation being paid to or on behalf of individual officials. *See* 73 FR at 27350. While salaries and most other disbursements were being reported on an individual basis, the reports failed to disclose the total amount of travel expenses incurred by union officials or the amount of benefits paid to them. In a similar fashion, the 2003 Form LM–2 failed to provide itemization of a union's receipts. Without this information, union members, the Department, and the public have been missing pertinent, material information about the union's finances. The Department's proposals, as adopted in this rule, provide greater transparency about a union's finances. Further, each of the proposals was accompanied by one or more illustrations of why the changes are necessary and how they will benefit union members. These examples show the still opaque nature of the current reporting in some areas; the examples were chosen to highlight the problems rather than serve as an exhaustive listing of the problems.

Some of the commenters suggest that union members have little or no concern about how the union conducts its finances and none about transactions as little as $5,000. They further suggest that any interest is easily met by a member's right for ''just cause'' to review the union's financial records if he or she has questions relating to the union's finances. They assert, in effect, that LMRDA section 201(c), which provides union members a right to review records underlying a union's financial report for ''just cause,'' becomes superfluous because of the additional detail that the Department would require.

The commenters correctly recognize that Congress provided members an important right to obtain additional information about their union's finances. The LMRDA requires both that a labor organization file annual reports with the Department, LMRDA section 201(b), 29 U.S.C. 431(b), and make available to its members the information required to be contained in the annual report. LMRDA section 201(c), 29 U.S.C. 431(c). However, they mistakenly view detailed reporting as undermining that right. In the Department's view, the additional detail required by the changes to the Form LM–2 promotes the right of union members to seek further information about their union's finances. Sections 201(b) and (c) are complementary. As noted by the DC Circuit, there is no inconsistency between the itemization required by the Form LM–2 and subsection 201(c) because section 201(c) simply requires disclosure of data that underlies a subsection 201(b) report. *AFL–CIO* v. *Chao,* 409 F.3d 377, 383–384 (D.C. Cir. 2005). The Court explained that additional detail in the subsection 201(b) reports would facilitate a union member's right to probe further pursuant to subsection 201(c). *Id.* Today's rule is entirely consistent with the approach taken by the Department in 2003 and the court's view of the interplay between section 201(b) and 201(c). The information that will be reported on the Form LM–2 under this final rule enhances the member's right to examine underlying records. It enables a member to more easily identify transactions warranting additional scrutiny, which he or she can then pursue by requesting and examining underlying records. It thereby promotes the interests of the inquiring member, his or her fellow members, and the labor organization as an institution.

By providing itemization of receipts, labor organizations will better disclose to their members a more complete accounting of all funds received and the identity of individuals and entities with which the labor organization does business. The Department also can use this information to determine the purpose of any receipt from one source in an amount of $5,000 or more, which will help identify possible misappropriation of funds. Members will be able to determine that money received by the labor organization is actually accounted for. For example, labor organization members can ensure that money they paid to the organization for disbursement on their behalf is properly accounted for on the Form LM–2. If there is no itemized receipt in new Schedule 22 for payments of $5,000 or more, or the receipt is less than expected, then the member will know that the money was not properly reported and may pursue his or her right to examine the union's books and records underlying the information reported on the Form LM–2.

One commenter made the point that the question whether unions should make itemized disclosures of sales of union assets to non-insiders is the kind of question that should be resolved by the unions themselves in accord with their internal democratic processes. This process, it was argued, would better accord with members' real interests than the Department's imputed interest. The commenter points out that in many, if not most, instances the Department has acknowledged that the added detail on the proposed revised Form LM–2—for example the sale of a union automobile for less than its book value to a non-insider-can only be evaluated by a union member who, if he or she believes the matter worthy of further scrutiny, can follow up by exercising his or her LMRDA § 201(c) right to inspect union records. The Department agrees with the assessment that in most cases union members will be in the best position to determine whether a particular transaction or transactions raise questions that demand further examination of the underlying details. Nonetheless, as discussed above, Congress established a reporting system in which the Department and the general public also serve important roles.

The Department cannot ensure adequate disclosure if itemization and reporting policies are left to the discretion of individual unions. Different reporting standards would lead to as many different forms and reporting requirements as there are labor organizations. Finally, members would have to research each individual labor organization to determine whether and where they report. For example, a member of a local who is affiliated with an international has an interest in the local, international, and any intermediate body. Under this final rule, the member can go to the Department Web site and search each labor organization's filings containing information reported in a consistent format. If the decisions were left to the unions' own choice, members would be provided information varying in detail and which could change from year to year, denying members the ability to make reliable historical and cross-union comparisons. The integrated reporting system adopted by the Department ensures that members can find information and know what information is provided on the reports.

A number of the commenters asserted that the new receipt reporting requirements would produce a forest of financial minutia that is expensive to track and impossible for members to meaningfully interpret. One commenter estimated that the average Form LM–2 report is 195 pages. The commenters also stated that labor organizations with $50 million or more in annual receipts filed, on average, 96.3 more pages in 2007 than in 2004, a 97.4% increase. He stated that the proposed changes would add substantial length to the reports. This commenter and others questioned how many members will have the time, patience, and resources to meaningfully

delve into their labor organization's Form LM–2 report.

The Department acknowledges that additional reporting requirements add length to a report and that the interest of individual union members to examine their union's finances will vary greatly from individual to individual. The Department also recognizes that a typical member will not have an interest in investigating each transaction listed on the Form LM–2. However, a member need not study his or her labor organization's entire Form LM–2 for the report to be useful. The member can use the summary schedules for quick references or, as discussed above, use the search function to find specific transactions. The summary schedules allow for quick references. For example, a quick look at any summary schedule might reveal a large number where one would expect a small number or a small number where one might expect a large number. If such a disparity is identified, the member is free to search the itemized receipt/disbursement schedules to investigate the unexpected aggregate. In one case a labor organization indicated on its Form LM–2 summary schedule that it had received $5,037,071 in rent. This accounted for more than ten percent of the labor organization's total receipts. No itemized schedule for rents is available on the current Form LM–2. Another labor organization indicated on its Form LM–2 summary schedule that it had received $15,123,482 in receipts on behalf of affiliates for transmittal to them. This accounted for almost a quarter of the labor organization's receipts, exceeded only by per capita taxes. Like rents, receipts on behalf of affiliates for transmittal to them are not itemized on the current Form LM–2. However, the newly revised Form LM–2 will provide the information necessary to evaluate the rent receipts and receipts on behalf of affiliates for transmittal to them. Another labor organization indicated that it received $6,900,000 in loans. This was the third largest source of its receipts and accounted for more than ten percent of its total receipts. Closer examination of the labor organization's Form LM–2 Schedule 9 (''Loans Obtained'') indicated that the loans were obtained from two institutions. There is no indication that these loans were illegal, but a member may want to know more about a large loan received in a year when the labor organization's total receipts exceeded its disbursements by more than two million dollars. Further, itemization allows a member to search his or her labor organization's Form LM–2 for specific vendors or purchasers.

A commenter expressed concern that the Department has failed to recognize that labor organizations have numerous internal controls in place to detect and prevent embezzlement, including multiple levels of review for receipts and disbursements, annual internal audits, segregation of duties, banking tools such as ''positive pay,'' digital checks that eliminate check stock inventories and therefore, the changes are not providing additional benefit to union members. The Department acknowledges that many labor organizations have internal controls in place to detect and prevent embezzlement. In 2008, these internal controls combined with the Department's on-going audit program and study of Form LM–2s have resulted in 93 embezzlement convictions and $3,134,415 in restitution. Notwithstanding these efforts, many financial irregularities continue to go undetected. The greater transparency provided by today's rule will allow union members and the Department to better detect such irregularities and better deter, in the first instance, union officials and others from engaging in questionable financial practices.

A few commenters stated that the additional reporting required by the proposals would confuse union members who would not be able to discern the nuances associated with these new requirements. The Department disagrees with this suggestion. The changes required by this rule are straightforward and will not be confusing to union members, whose ability to understand basic financial information seems to be underestimated by some commenters. Moreover, the Department would expect labor organizations to assist their members in properly understanding the financial reports and the Department, through its extensive compliance assistance program, is ready and able to assist any members who have questions.

(3) Itemization

A number of commenters asserted that it was a mistake for the Department in 2003 to require itemization of major disbursements,[7] and that this mistake, in effect, would be compounded by applying this requirement to major receipts by a labor organization. At least one commenter stated that the $5,000 threshold is too high; it suggested lowering it to $200. The question whether itemization is beneficial was answered in the 2003 rulemaking. As set forth in the preamble to that rule, 68 FR at 58389–91, itemization promotes the transparency of union finances, thereby providing union members with information essential for them to exercise their democratic rights within the union and to ensure that the union's finances receive appropriate scrutiny by the members, this Department, and the public.[8] In that rule, itemization was required for major disbursements by a union, providing greater transparency on that side of a union's ledger. Today's rule, in large part, merely extends that requirement to the union's receivables, allowing members to see more clearly the source and amount of the union's finances.

The principle of aggregation, *i.e.*, reporting an organization's total expenditures within a particular category, while an accepted accounting principle, provides only a partial view of an organization's finances, a shortcoming addressed in the 2003 rule by requiring itemization of disbursements of $5,000 or greater and in today's rule by requiring as a general rule that receipts of $5,000 or greater must be identified. In those instances, where commenters demonstrated a particular problem with itemizing certain receipts, the Department has modified its proposals to meet these concerns. As discussed below, the Department acknowledges that the rule will impose some additional burden on labor organizations, but not nearly as much as suggested by some commenters.[9]

[7] The existing instructions for the Form LM–2 (created in 2003) require itemization of ''any individual disbursement of $5,000 or more or total disbursements to any single entity or individual that aggregate to $5,000 or more during the reporting period.''

[8] The 1959 Senate report on the version of the bill later enacted as the LMRDA mandated that union members receive a full accounting of ''union internal processes and financial operations.'' S. Rep. No. 187, at 2, *reprinted in 1 NLRB Leg. Hist. of the LMRDA*, at 398. The LMRDA states that a full accounting includes ''information in such detail as may be necessary accurately to disclose [the labor organization's] financial condition and operations for its preceding fiscal year * * * [including] receipts of any kind and the sources thereof.'' 29 U.S.C. 431(b). Senator Kennedy stated that ''receipts of any kind'' was ''intended to be as broad as it suggests * * * receipts of any kind and the sources thereof.'' As noted in the Senate report ''the members who are the real owners of the money and property of the organization are entitled to a full accounting of all transactions involving their property.'' S. Rep. No. 187, at 8, *reprinted in 1 NLRB Leg. Hist. of the LMRDA*, at 404. This rule furthers the Department's goal of increased transparency.

[9] The Department has reduced the recordkeeping and reporting burden associated with Schedules 14 and 15, by requiring labor organizations to only report on these schedules the yearly aggregates it receives from represented employers and labor organizations.

The primary purpose of this rulemaking is the furtherance of labor organization transparency. *See* 73 FR at 27346–47. OLMS experience over years of auditing and investigating union financial activities indicates that increased access to information concerning a labor organization's finances will enable members to protect their own interests through more effective vigilance over union funds, and will aid OLMS in enforcement efforts. Although a member will not have knowledge of each receipt received by the labor organization, interested members will have information on many of the itemized dues and agency fees, per capita taxes, fees, fines, assessments, and work permits, sales of supplies, interest, dividends, rents, receipts on behalf of affiliates for transmittal to them, and receipts from members for disbursement on their behalf. For example, a member will be able to determine whether his or her labor organization is receiving the appropriate interest and dividends on its investments. Schedule 5 (''Investments'') will list the book value of each investment of $5,000 or more as of the end of the year. The member can look at his or her labor organization's most recent Form LM–2 (for the last fiscal year covered by the 2003 revisions) to determine the book value of particular assets. With this information and the information provided on the new Form LM–2, the member can determine how much the labor organization received in increased value or interest during the reporting year. The member can calculate the amount of appreciation or interest, the latter based on either the rate of the particular institution identified on the Form LM–2 or the market average, which is available on the Internet. A disparity between the rate computed from the Form LM–2 and the market rate may indicate that further investigation is warranted to determine whether the disparity is due to bad investment choices or culpable actions. Moreover, as discussed in the preceding section, itemization effectively complements a member's right to examine documentation underlying the information reported on the Form LM–2 by allowing him or her to identify major financial receipts involving the union, a task that would be very impractical, at best, without the itemization required by today's rule.

b. Particular Aspects of the Rule

The following is a ''section-by-section'' discussion of the sections, items and schedules on the revised Form LM–2 and instructions:

Items 1–21. These items are unchanged, except for some minor editorial changes, mostly concerning the reporting of information about trusts in which labor organizations hold an interest. *See* n. 6.

Statement A. This statement is unchanged.

Statement B. Receipts and Disbursements: This statement currently contains two primary columns, one with the heading ''Cash Receipts'' and one with the heading ''Cash Disbursements.'' Under each heading are items listed that describe categories of receipts or disbursements that should be reported. There are no changes to the items listed under ''Cash Receipts.'' As discussed below, however, the Department is adding, as proposed, additional schedules to correspond to items listed under ''Cash Receipts'' for which currently no schedules exist. As a result of these changes, the remaining cash disbursement items will be renumbered on Statement B. The new Form LM–2, including the new numbering system for the cash disbursement items can be found in the appendix to this final rule.

Schedules 1–2. These schedules are unchanged.

Schedules 3 and 4—Sale of Investments and Fixed Assets and Purchase of Investments and Fixed Assets: The Department adopts its proposal, but exempts certain stock transactions from particularized reporting as further discussed below. The first new column on the form, entitled ''Name and Address of Purchaser (A),'' will disclose the purchasers of investments and fixed assets from the labor organization, if in the aggregate the sales amount to $5,000 or more per purchaser. A second column ''Date (C)'' will disclose the date of the sale. These additions will provide members of labor organizations and the public with information necessary to verify that the sale was transacted at market price and at arm's length, thereby helping prevent interested parties from unjustly enriching themselves by purchasing labor organization assets at below-market price. In addition to the reasons discussed below, this disclosure is important because if an insider (*e.g.*, officer or employee) receives property at below market price the receipt of such property is a disbursement to the insider that should be reported on Schedule 11 or 12.

As explained in the NPRM, 73 FR at 27349–50, the Department believes that Schedules 3 and 4 of the current Form LM–2 do not provide labor organization members with adequate information to enable them to determine whether a particular purchase or sale of an investment or asset was transacted at market price and at arm's length. For instance, one labor organization in its latest Form LM–2 reported that it had sold a ''John Deere Lawn Tractor, Trailer and Mower'' for $678, even though this asset had a book value and cost of $18,000. Another labor organization reported that it had sold automobiles that had a book value of $57,997, a ''real estate investment trust'' that had a book value of $25,735, and furniture and equipment with a book value of $7,634. For each of these items, the union listed the sale price as $0. This same labor organization sold corporate stocks with a book value of $29,570,505 for $34,297,627. Another union sold a Ford Explorer for $9,252 that had a book value of $23,471. As explained in the NPRM, 73 FR at 27349, in all these situations, labor organization members would be unable to determine whether the labor organization received fair market value for the items that it sold, whether an insider benefited from these transactions, or whether the union's officials are properly managing the labor organization's finances.

The Department's review of data filed on the current Form LM–2 has demonstrated that the current form does not provide labor organization members with a clear understanding of the entities that are receiving in some cases hundreds of millions of dollars of the labor organization members' money. For instance, as discussed in the NPRM, *id.,* one labor organization listed disbursements of $789,369,139, another labor organization reported disbursements of $313,978,214, and another labor organization reported disbursements of $156,544,561. Labor organizations also report smaller amounts on this schedule. For instance, three labor organizations reported disbursements of $5,353, $5,350, and $6,952 on this schedule. None of the reports disclose the parties that sold these assets to these labor organizations. As such, the members of these labor organizations are not in a position to know whether these sums of money were well spent. The enhancements made today to Schedules 3 and 4 will help ensure the disclosure of any potential conflicts of interest between the seller and the labor organization.

The book value of an asset is the value at which the investment or fixed asset was shown on the labor organization's books and reflects the lower of its cost or market value. *See* 73 FR at 27413 (unchanged from current instructions to the form). The value of certain assets such as stocks can vary greatly within

the fiscal year. Because the date of sales is not listed on the current Form LM–2, a labor organization member is unable to determine whether the labor organization received good value on the sale transaction. As the Department explained in its proposal, 73 FR at 27349, the stock on the day of the sale may have been worth much more than its book value. In this scenario, a labor organization member would be unable to determine whether the stocks were sold by the labor organization at market value. The labor organization's financial report filed on the current Form LM–2 would show this transaction as a profit for the labor organization, but the transaction could also have been detrimental to the labor organization if the asset was sold at a price below current market value. The changes made in today's final rule will help ensure disclosure of any potential conflicts of interest between the purchaser and the labor organization. The schedule will total all individually itemized transactions and will provide the sum of the sales by itemized individual purchasers and the sum of all non-itemized sales of investments and fixed assets, as well as the total of all sales.

The Department received many comments supporting the proposed changes to the Form LM–2. Many of these comments were identical or nearly so. Commenters expressed support for the Department's proposed revisions to Schedules 3 and 4, which, in their view, would allow union members to spot transactions where union officers and employees are given advantageous prices when purchasing labor organization assets. Another commenter approved of the Department's ongoing promotion of transparency. Additionally, the commenter agreed with the Department that the additions to Schedules 3 and 4 will provide members with the information necessary to scrutinize those transactions to ensure the best practices when managing their money.

Some commenters questioned the wisdom of requiring unions to provide additional detail in the Form LM–2 reports, asserting that the new information would add length to the reports and further burden unions without benefit to members. They raised specific objection to the burden associated with reporting details concerning the sale and purchase of investments and assets. The Department does not expect the average member to investigate each investment or asset sale/purchase listed on the Form LM–2. Such an undertaking by a single member would be time consuming and impracticable. However, a member need not study its labor organization's entire Form LM–2 for the report to be useful. The member can use the Schedules 3 and 4 summary schedules for quick references or use the search function to find specific transactions. For example, a quick look at the summary schedules for Schedules 3 and 4 might reveal a large number where one would expect a small number or a small number where one might expect a large number. Once one of these disparities is identified the member is free to search the itemized schedules for an explanation for the unexpected aggregate. In one case, a labor organization indicated on its Form LM–2 summary schedule that it had received $527,937 from the sale of investments and fixed assets. This accounted for over 94 percent of the labor organization's total receipts. A closer look at Schedule 3 of its Form LM–2 indicated that the labor organization had received all of the $527,937 from the sale of one building. This sale left the labor organization with only $1,347 in fixed assets. Another labor organization indicated that it received $64,389,415 from the sale of investments and fixed assets, almost half of the labor organization's total receipts. Upon closer inspection of the labor organization's Form LM–2 a member would find that $15,782,856 of the $64,389,415 was from the sale of ''common stock.'' However, the same schedule indicated that none of the money from the sale was reinvested. Nothing indicates that either of these sales was illegal, but a member may want to know more about such a large sale of union assets. Further, itemization allows a member to search his or her labor organization's Form LM–2 for specific sellers or purchasers. Using the OLMS Web site, a member can easily search his or her labor organization's Form LM–2 for a specific seller or purchaser in seconds, *e.g.*, the labor organization's president's brother. The changes to Schedules 3 and 4 will provide members with information necessary to verify that sales/purchases are transacted at market price and at arm's length.

The majority of the commenters believed that an exception should be created for the purchase and sale of publicly-traded assets on a registered market exchange. They stated that the reporting of these open market, arms length transactions would provide no relevant information to a member. Further, since these trades are through the ''market,'' it is doubtful that the ''seller'' and ''buyer'' information is even available, due to investments being pooled and matched by the investment broker market. The only purchaser information available to provide on the proposed new investment schedules would be that of the broker. A national labor organization pointed out that the Department does not require disclosure of transactions involving securities on registered public exchanges, such as the NYSE and NASDAQ, on Form LM–30. Therefore, the labor organization reasoned that the same transactions should not be disclosed on Form LM–2. In both contexts, such sales and purchases of securities are by definition transacted at ''market prices'' and ''at arm's length.'' 29 U.S.C. 432(b).

The Department agrees with the commenters' position that an exception should be created for bona fide market transactions over a registered securities exchange. Consistent with the current Form LM–2 and the Form LM–30, the Department excepts marketable securities from itemization on Schedule 3. The labor organization will not be required to itemize the purchase or sale of marketable securities when the end seller or purchaser, *i.e.*, the party transacting with the labor organization, is not known. (Such as sales of stock over a registered exchange.) The instructions have been revised and include the direction that ''Marketable securities are those for which current market values can be obtained from published reports of transactions in listed securities or in securities traded 'over the counter,' such as corporate stocks and bonds, stock and bond mutual funds, state and municipal bonds, and foreign government securities.'' The total amount of such sales will be reported on Schedule 3 Detailed Summary page.

A number of commenters stated that their investment activities are run through independent investment groups, asserting that for this reason such activities should be excepted from the proposed reporting requirement. The Department disagrees that an exception for investment manager transactions is appropriate. Such an exception is neither good policy nor necessary. Although the investment manager may have independent control over the individual investments, the labor organization still has control over the manager. If the labor organization is dissatisfied with returns or particular purchases/sales, then it is free to hire a new investment manager. Thus, the investment manager is never truly independent. Further, the exception laid out above should alleviate many of the commenters' concerns. Most of the investment manager purchases/sales will qualify for the exception provided

for bona fide transactions made with a registered securities exchange. Those transactions that do not qualify for the exception, i.e., securities purchased outside these highly regulated channels, will be of particular interest to members, the public, and the Department. These are the types of transactions that are subject to abuse whether it is abuse by the labor organization or the independent investment manager. Therefore, the Department has chosen not to create an exception for investment manager transactions.

A number of commenters expressed a concern that the additional information required for the sale and purchase of investments on Schedules 3 and 4 will be deceptive. A national labor organization argued that the value of a given stock transaction cannot be understood absent an understanding of market conditions, news affecting that particular stock and market segment at the time of sale and the investment manager's strategy resulting in the sale. Additionally, it stated that the ''market price'' of a tangible item, such as a car, cannot be objectively determined without knowledge of the degree of wear-and-tear, local market conditions, and the like. Without these essential facts a national labor organization stated that listing the name of the purchaser and the date of the sale may well lead union members to conclude that a buyer received a windfall when, in fact, that is not the case. The labor organization suggested that the Department retain the current reporting format, aggregating the total of all such sales and purchases and the net effect on assets.

The Department disagrees with the suggestion that the proposed changes to Schedules 3 and 4 will be deceptive. As discussed earlier, members will be able to assess without difficulty whether the sale or purchase of an asset and its price appears appropriate given its timing and the existing market conditions. Unlike the previous Form LM–2, members will now be able to evaluate sales/purchases by date and purchaser/seller. This clearly improves the members' ability to evaluate a transaction in its particular context. To use an example discussed above and in the NPRM, 73 FR at 27349, a labor organization indicated on its Form LM–2 that it sold a Ford Explorer for $9,252, but listed its book value at $23,471. The previous Form LM–2 included price information and a general description. The identification of the buyer can be used to identify interested party transactions, but it can also be used to better understand the sale. For example, the Ford Explorer might have been sold to a dealership rather than on the open market. In this case the identification of the buyer would alleviate any concern of an interested party windfall. The disclosure of this information will allow members to make preliminary assessments of sales/purchases from the information provided on the Form LM–2. If necessary, as discussed below, they can then exercise their section 201(c) right to obtain additional information about the particular transaction. It should be noted that most securities transactions will fall within the exception discussed above.

The additional information that will be disclosed on the Form LM–2 will enable union members, the general public, and the Department to focus their attention on particular transactions involving significant sums of money. As some commenters have acknowledged the information will be most directly beneficial to union members who will be most familiar with the transactions and the parties involved, but the information also improves the ability of the public and the Department to examine the details of a transaction. Moreover, to the extent the union believes that any particular transaction could be misleading, the union may choose to provide additional information on the Form LM–2 to minimize this possibility. By adopting this rule, the Department is setting a minimum standard that labor organizations must meet for reporting the sale and purchase of investments and assets. A number of commenters stated that the revisions were not necessary and would not benefit members. Multiple national labor organizations stated that union members already have access to any information necessary to assess sales of union assets. They explained that any individual member could exercise his or her section 201(c) right to obtain the information.

The Department recognizes that members possess the right to examine any books, records and accounts to obtain information on the purchase/sale of investments and assets under 29 U.S.C. 431(c). However, members have no way of knowing whether they need to request the information from the labor organization without the Form LM–2. As explained above, a quick look at the summary schedules for Schedules 3 and 4 might reveal a large number where one would expect a small number or a small number where one might expect a large number. Once one of these disparities is identified the member is free to search the itemized schedules for an explanation for the unexpected aggregate. In one case, a labor organization indicated on its Form LM–2 summary schedule that it had received $35,224,391 from the sale of investments and fixed assets. This accounted for over half of the labor organizations total receipts. A closer look at Schedule 3 of its Form LM–2 indicated that it had sold ''corporate stocks'' for $34,297,627. *See* 73 FR at 27349. Nothing indicates that this sale was illegal, but a member may want to know more about such a large sale of union assets. Under the new reporting requirements the member will now be able to evaluate whether the transaction occurred at arm's length or not. The member need only look for the purchaser/seller information to know whether the transaction merits further inquiry. If the transaction occurred on a registered exchange the labor organization will not detail that transaction. In this case, the member will know that no insiders received unjust enrichment from the transaction. However if the transaction occurred not on a registered exchange but through some other means the transaction information of the date and identity of the purchaser/seller will be useful to the member. If the itemized schedules do not provide an adequate explanation or reveal a transaction with an interested party then the member is free to request additional information from the labor organization pursuant to 29 U.S.C. 431(c). This process is more efficient for both the labor organization and the member. Labor organizations will not have to provide information unless the member finds a particularly interesting transaction and the member will not have to request superfluous information to obtain a clear accounting of the labor organization's activities. Both itemization reporting and the changes adopted in this rule are essential to providing members with a clear picture of their labor organization's activities.

Two commenters offered alternatives to requiring a labor organization to disclose the name and address of the purchaser or seller in transactions involving labor organization investments and other assets. A labor organization suggested that if the Department is concerned about sales of assets for less than market value it can merely mandate disclosure of specifically such sales of union assets. Another commenter suggested that the Department pare down the report and ask about specific areas of concern. For example, instead of modifying Schedules 3 and 4 as currently proposed, the Department should simply ask about related party transactions and any non-routine

transactions and specifically define related parties.

In the Department's view, the suggested approach is a poor substitute for the full transparency achieved under the Department's proposal. The Department seeks to provide members with the tools by which each member can make his or her own evaluations of the financial decisions made by the officials of his or her labor organization. Although members as a general rule will have the greatest interest in matters involving a party in interest or a sale of an asset for less than market value, members will also have an interest in other less easily categorized transactions. For example, a member may have an interest in the sale of a building to a non-party in interest at what appears to be fair market price. As a general matter, the sale of the building might indicate to the member that his or her labor organization is selling off assets or not managing his or her money appropriately. But a sale of the asset to a particular individual or group, such as a sale to a company in which a union official's long-time associate has an interest or to a company in which a politician or his or her associate has an interest (who might have inside information about a possible change in zoning that would substantially increase the value of the property) would be of substantial interest to members. Itemization of the purchase/sale of investments and assets provides members with a base from which they can evaluate transactions.[10]

Therefore, the Department adopts the reporting requirements as outlined in the NPRM with an added exception that labor organizations need not report bona fide purchases or sales of securities traded on a securities exchange registered as a national securities exchange under the Securities Exchange Act of 1934, shares in an investment company registered under the Investment Company Act of 1940 or securities of a public utility holding company registered under the Public Utility Holding Company Act of 1935.

Schedules 5–10. These schedules are unchanged except for a minor editorial change to the instructions for Schedule 7 to clarify the reporting of information about a trust in which a labor organization is interested. *See* n. 6.

Schedule 11—All Officers and Disbursements to Officers; and

Schedule 12—Disbursements to Employees: The Department proposed two substantive changes to the categories of disbursements reported on these schedules: Reporting of indirect disbursements to officers and employees for hotels (room rent charges) and public carrier transportation; and disclosure of benefits disbursed to officers and employees. No commenters suggested that one approach was appropriate for officers and another for employees. In today's rule, the same revisions are being made to both Schedules 11 and 12. In today's final rule the Department has decided to adopt the proposed items with minor changes. These changes are discussed below.

a. Indirect Disbursements to Officers and Employees for Hotels (Room Rent Charges) and Public Carrier Transportation

The Department proposed to eliminate the existing exception to the reporting of indirect disbursements, thus requiring the reporting of both direct and indirect payments on behalf of a particular union official for hotels (room rent charges and public carrier transportation charges) on Schedule 11. The Department adopts the proposal, with a minor clarification as discussed below.

Indirect disbursements for official business, which include travel and lodging expenses, will be reported in Column G, on both Schedule 11, ''All Officers and Disbursements to Officers'' and Schedule 12, ''Disbursements to Employees.'' This column is clearly identified, and is distinct from columns listing gross salary, allowances, and benefits. Concerns raised by commenters that union members may not grasp the ''nuances of the reporting categories'' and that disclosure would result in inflated figures of total compensation are unwarranted.

As explained in the NPRM, 73 FR at 27350, disbursements for temporary lodging and transportation made directly to a labor organization official by the labor organization are now reported, by individual, on Schedule 11; however, if the labor organization pays the vendor directly for the travel it is not reported by individual. This distinction does not serve the purpose of section 201(b)(3) of the LMRDA, 29 U.S.C. 431(b)(3), which calls for reporting of ''other direct or indirect disbursements (including reimbursed expenses) to each officer and also to each employee.''

A ''direct disbursement'' to an official is a payment made by the labor organization to the official in the form of cash, property, goods, services, or other things of value. An ''indirect disbursement'' to an official is a payment made by the labor organization to another party for cash, property, goods, services, or other things of value received by or on behalf of the officer. Such payments include those made through a credit arrangement under which charges are made to the account of the labor organization and are paid by the labor organization. For example, when a union, through its credit arrangements, is billed directly and pays the airline bills of an officer or employee, the union will have to include this amount as part of the disbursements made to the particular official. If the credit arrangement results in an invoice that is detailed by officer or employee, *e.g.*, hotel room rent charges, the labor organization will use this detailed invoice when allocating expenses by officer or employee. If the billing arrangement is set up in such a way that expenses are not detailed by officer or employee, *e.g.*, when a labor organization purchases a block of hotel rooms for its officers or employees, then the labor organization will divide the total cost by the number of officers or employees for which the expense was incurred. The instructions to the form now clarify that unions may allocate these disbursements in this manner.

The distinction between reporting of direct and indirect disbursements was established because of the difficulties faced by unions over 40 years ago in reconstructing documentation for certain payments for their prior fiscal year. Because of this difficulty, organizations were allowed to report such disbursements as functional expenses of the organization rather than as disbursements to particular officials. This distinction remained in the instructions and was not revisited by DOL despite changes in data reporting and record retention methods over the

[10] One commenter suggested that the Department replace the Book Value column with a Market Value or Par Value column. In the commenter's view, this change would allow those studying the Form LM–2 to determine whether the sale of an investment or fixed asset was at market value and at arm's length.

The Department has decided not to change the values reported on Schedules 3 and 4 column (E), ''Book Value.'' Book value is ''the value at which the investment or fixed asset was entered on the labor organization's books.'' Form LM–2 Instructions page 16. Depending on when the asset was obtained, the book value will reflect the asset's original or depreciated value. Book value allows for regularized reporting of the value of assets. Unlike market or par value (the latter applicable only to equitable assets and even then of limited utility to union members and the public), book value does not pose problems of verification in comparing the value of the reported asset and the value carried on the union's books. Further, unlike market value which can be determined independently through the market (*e.g.*, by bluebook, comparable real estate values, market price of stock) book value cannot be easily ascertained by union members and others reading the Form LM–2. For these reasons, the Department views the book value as an essential check to determine the union's compliance with this aspect of its reporting obligation.

intervening decades. This issue was not addressed in the 2002–2003 rulemaking.

As noted in the NPRM, 73 FR at 27350, payment for an official's travel and lodging expenses by credit card does not reduce the significance of the expense to a labor organization member; yet the current Form LM–2 treats the method of payment as significant. Travel and lodging expenses for a particular official may raise questions among the membership for various reasons. The choice of transportation by public carrier (airplane, train or bus) and the level of accommodation (first-class or coach) may be significant to a member. Lodging choices may run from a motor inn to a five-star hotel; where options are available, the officer's choice of accommodation may be significant to a member. However, the mode of payment now controls whether a labor organization member knows the full extent of disbursements made for a particular official of the labor organization. Although the specifics of the travel will not appear on the Form LM–2, members will have a better understanding of the total amount of disbursements made to or on behalf of a particular official. Through this more complete reporting, members of the labor organization will be better able to determine whether such disbursements warrant further scrutiny, including review of the underlying documentation maintained by the labor organization.

The Department received almost 500 form letters endorsing its proposal to require disclosure of indirect disbursements. These commenters stated that such disclosure would provide union members a more accurate idea of how much their union is spending on these matters. Noting agreement with the proposal, a commenter stated that all expenditures for travel for officers should be reported regardless of the method of payment to the vendor. Another commenter noted specific examples of union spending that highlighted the importance of disclosure of travel disbursements. The commenter explained that while one large union's membership declined 15% last year, the union expended members' dues money to hold meetings at resorts and casinos in destinations including Palm Springs, Las Vegas, and Atlantic City.

One commenter alleged that a review of the legislative history of the LMRDA does not provide support for the disclosure of indirect disbursements made on behalf of an officer or employee for official business. The commenter alleged that Congress was particularly concerned with schemes through which corrupt employers and union officials could enrich or benefit themselves by structuring indirect payments through relatives or to vendors of goods and services that were unrelated to their duties as union officials.

While Congress did evince a particular concern over corrupt schemes in which union officers sought to enrich themselves through indirect payments, it also clearly intended that union members receive a full accounting of their union's financial operations. *See* discussion above, at n.8. The mandate for a full accounting does not exempt transactions that may be considered ''official business.''

Commenters questioned the utility of providing disclosure of indirect disbursements. The Department believes that union members have an interest in learning the full extent of disbursements made to or for labor organization officials. Travel and lodging expenses may be of particular interest when officers and employees are not utilizing particularly cost effective modes of transportation, levels of accommodation, or choice of lodging. This more complete reporting will help members determine whether such disbursements warrant further scrutiny. Information about travel and lodging expenses is no less valuable when payments are made indirectly to the vendor rather than directly to the union official.

Several commenters suggested that sums aggregated by individual officials, as called for under the proposed rule, could easily be misconstrued by membership and the public. One commenter believed that the data would unfairly make individual officers targets because of their ''allegedly excessive spending.'' They provided as an example the contrasting circumstances of two union officials—one who travels often, but cheaply, will have a large amount of money in travel expenses, while another official who only travels once but flies first class and stays at a high-end hotel will appear to be more fiscally responsible with union funds. The Department recognizes that dollar figures alone will not show how profligate or not union officers are with their members' money. A member, however, who is familiar with the demands of an officer's duties, including travel on behalf of the union, will be able to determine from the sums reported whether the expenses incurred seem about right or not and, if the latter, identifies a need for closer scrutiny of particular expenses. One commenter stated that the proposed change would allow ''labor's enemies'' to falsely inflate an official's compensation by including the cost of legitimate business travel. Another commenter noted that such indirect disbursements do not meet the IRS definition of income. As discussed earlier, the Department believes that union members deserve the benefit of increased transparency and these commenters concerns can be best addressed by providing information about a union's policies, so members will better understand the amounts reported by individual officers. Better education may also be the answer to concerns about false claims about disbursements to union officer officials. In any event, the Department does not believe that members should be denied information relevant to disbursements made to their officers because of the asserted ''misuse'' of public information. Because Congress chose to make union financial reports public, the Department is required to make public information it deems necessary for union members to possess a full picture of their union's finances. Finally, the Department recognizes, as it believes the public does also, that the Form LM–2 and IRS forms do not capture identical information. Indirect disbursements represent a significant aspect of a union's expenditures—and as such are important for purposes of disclosure without regard to any tax consequences they may pose for individuals.

Commenters also noted that aggregation of the data by specific officers would not provide the same utility as disclosure of the specific details of such payments and that aggregation may prove misleading to members. Two commenters argued that disclosure of union travel and expense policies would be more useful to members than data regarding indirect travel expenses. One commenter asserts that the data revealed by eliminating the exemption for indirect expenses will not afford union members any more useful information than they already have by examining the labor organization's itemized expenditures for individual hotels and common carriers on Schedules 15 and 19. This commenter provides that a union's travel and expense policies, which are available to members upon request, are far more probative because they explain the types of expenses that officers and employees are entitled to incur when they travel. Some commenters noted that providing specific details of payments for travel and lodging would be more useful to union members than providing aggregate sums. Two international unions argued that requiring disclosure of union travel and expense policies would be more useful to members.

The Department acknowledges that providing union members additional information regarding the specific details of travel disbursements and providing members copies of travel and expense policies would provide the members access to possibly useful information. As noted in the NPRM, 73 FR 27350, eliminating the exception from reporting indirect disbursements will provide union members a more accurate accounting of the total amount spent on travel and lodging for union officials. This data will help union members better determine whether further investigation is warranted. To the extent that labor organization commenters believe greater detail would benefit union members, labor organizations are free to amend their bylaws to require a level of disclosure or specificity that is greater than that required by the Form LM–2.

b. Disclosure of Benefits Disbursed to or on Behalf of Officers and Employees

As a second change to this schedule, the Department proposed the addition of a new column to allow disclosure of benefits disbursements made to each labor organization official. The final rule adopts the proposed changes. Columns ''(A)'' through ''(E)'' are unchanged from the current form. Column ''(F)'' will be redesignated ''Benefits.'' This is the only new column on the schedules requiring disclosure of additional information. Column ''(G)'' will be redesignated ''Disbursements for Official Business.'' Column ''(H)'' will be redesignated ''Other Disbursements not reported in (D) through (G).'' Column ''(I)'' will be added for ''Total.''

In response to comments received, the Department is adding clarifying information to the requirements for this schedule as follows:

- Reasonable estimates may be used if precise cost figures are not readily available for benefits provided to individual officers, e.g., insurance premiums, defined benefit plan contributions, and so forth.
- FICA, federal and state unemployment tax, workers' compensation taxes, and other employer taxes that are legally required to be paid by the employer are not included within the scope of benefits for officers and employees. These types of payments are to be reported on the Form LM–2 in the manner provided for in the current instructions.
- The reporting changes adopted by this rule only apply to disbursements on behalf of labor organization officers and employees. These changes do not apply to disbursements to persons who are no longer officers or employees of the labor organization. Thus, disbursements on behalf of individuals who have retired from employment by the labor organization will be handled the same way that these disbursements are currently handled for members, *i.e.*, they will be aggregated in Schedule 29.

In proposing the identification of total benefits paid to officials on an individual by individual basis, the Department explained that the current Form LM–2 fails to provide sufficient information on disbursements by the labor organization to or on behalf of its officers. *See* 73 FR at 27350. In the Department's view, labor organization members should know the value of benefits paid by the union to its officers. Benefits received by officers for life insurance, health insurance, and pensions, for example, make up an important part of the compensation package paid for by the union and its members. Reporting benefits disbursed in the aggregate on Schedule 20 (*i.e.*, reporting the total benefits paid to all union officials) does not provide a complete picture of compensation received by individual labor organization officers. For example, as noted in the NPRM, *id.*, one local in its Form LM–2 listed almost $500,000 for ''Officer's Union Fringes'' even though the labor organization had fewer than ten full-time officers. From this information alone, a member of a labor organization would have no way of knowing, for example, if these benefits were evenly distributed among the officers, or if one officer received $400,000 and the other eight officers split the remaining amount. Rather than report fringe benefits in the aggregate on the current Schedule 20, the labor organization will now report the benefits on Schedule 11 by individual labor organization officer.

In another instance, again as noted in the NPRM, *id.*, a labor organization reported payments of $49,542 to ''Various Companies'' for ''Benefits Administration'' and payments of $64,219 to ''Various School Districts'' for ''Benefits paid on behalf of officers.'' Another labor organization reported on its Form LM–2 total disbursements of $461,971, $460,203, and $244,780 to certain individual officers. *Id.* This disclosure did not take into account that these same officers and employees also received $181,297, $184,397, and $161,240 respectively as contributions to their employee benefit plans. These benefits payments were reported to the IRS on an individual-by-individual basis, as required by the IRS; however, these payments are simply lumped together on the Form LM–2, without identifying the amounts paid to individual officers. The above examples demonstrate that the current Form LM–2 fails to provide a full accounting of labor organizations' disbursements to their officials. The current Form LM–2 allows benefits payments made to or on behalf of officers to be lumped together with general benefits paid to members in Schedule 20. With such large disbursements listed in one category, it is impossible for labor organization members to ascertain what benefits are being paid to labor organization officers and employees. The Department believes that combining these disbursements into an aggregate on a single schedule does not adequately inform labor organization members and the public regarding benefits paid to labor organization officers, and thus in this area the full reporting mandate of the LMRDA is not fulfilled.

By requiring unions to report the total amount of benefits disbursements made to each officer, members and the public will see the total payments made to or on behalf of each officer. This increased transparency will better enable union members to evaluate whether the compensation paid to each officer is appropriate for the services he or she renders to the organization. This information will allow union members, among other uses, to debate and vote to change the amount of the compensation if they deem it appropriate and consistent with their organization's constitution, by laws, and the organization's financial status. They also will be able to evaluate whether the costs of the benefits provided by the union are in line with market conditions and benefits paid to officers by other labor organizations—a factor that may bear on the performance of the union officials with stewardship over the union's finances.

The Department received mixed comments on its proposal. About 500 commenters who submitted form letters endorsed the Department's proposal to require unions to report aggregate benefits disbursements for each officer and employee. One commenter cited data from a large labor organization's 2007 Form LM–2 that showed pension benefits paid of $15,858,309 and combined payroll for officers and employees of $40,468,063. The commenter noted that the data may indicate ''very generous pension benefits,'' but without the proposed change ''there is no way of telling from looking at Form LM–2.'' Many others opposed the proposal. One commenter stated that the proposed disclosure of aggregate benefits data is unnecessary because union members already have access to much of this information

already under the Form LM–2; others stated that any other information needed may be obtained by invoking their ''just cause'' right to examine the union's underlying financial reports; while some suggested that the information, as earlier noted, was available to union members by requesting a copy of the union's IRS Form 990. While the Department agrees that the current Form LM–2 provides important information about the salaries paid to individual officers, members receive only an incomplete picture of the payments made to individual officers. Without the reporting required by today's rule, members would be left guessing as to the total compensation paid to particular officers. Moreover, as discussed further below, the IRS Form 990 fails to provide the same level of transparency as proposed by the Department.

Commenters are correct that labor organizations are required to track and report officer benefits disbursements for the IRS Form 990. There is a minor level of overlap in the information required to be disclosed for officers and employees on the Form 990 and the Form LM–2. Disclosure of benefits disbursements on the Form LM–2 is not identical to the disclosure required on the Form 990 because the Form 990 requires disclosure of this information for ''key employees,'' unlike the Form LM–2 where this information must be disclosed for all employees earning $10,000 or more a year.[11] As such, while there is overlap between the Form 990 and the Form LM–2, the Form LM–2 will provide more comprehensive information because the required disclosures apply to a larger group of individuals. Moreover, the Department's proposal ensures that all members will have ready access to this particular information in a single database. While some members might be aware that individual payments would be reported to the IRS, others are not likely to be aware of this disclosure source. Additionally, union members should be able to determine easily the total compensation paid to all their officials, not merely the key officials. Where a labor organization has a large number of highly paid employees, only a fraction will be reported on the Form 990. While a few commenters suggested that the Department underestimates the burdens associated with tracking the information in a way that allows compliance with both the Form LM–2 and the IRS Form 990, the Department remains convinced that unions can maintain their records in a way that avoids any unnecessary additional burden. This point is further discussed below in the Department's analyses under the Regulatory Flexibility Act and the Paperwork Reduction Act.

Other commenters stated that members already know or can easily estimate the value of the benefits paid to officers. One commenter stated that each of its officers and employees participated in the same medical plan as its members, so members could already ascertain the value of the benefits provided to officers and employees. The Department recognizes that in some instances a member can estimate the value of a particular benefit, but that this will exist only for certain benefits and for certain unions. Transparency is ill served where it varies from union to union and from benefit to benefit.

Several commenters asserted that some benefits would be difficult to report on an individual-by-individual basis. For example, one commenter noted that it would be burdensome to collect data because there may be multiple benefit plans involved (0034) (0044). Another commenter noted that the insured group may vary from month to month, requiring the organization to recalculate the amount attributed to each officer and employee, which may result in increased costs. Other commenters requested clarification of how to treat benefits for retirees, lump sum benefit data, and administration expenses associated with benefits.

The Department recognizes that labor organizations may have to estimate the particular value of a benefit provided a union official. It is not the intention of the Department to impose on unions a complex methodology to arrive at the most precise valuation of benefits made to each individual official. In this regard, the Department notes that the IRS, which requires labor organizations to report all forms of deferred compensation, allows: ''[r]easonable estimates * * * if precise cost figures are not readily available.'' *See* instructions to 2007 IRS Form 990, p. 41. Under this final rule, the Department will also accept reasonable good faith estimates of the value of benefits paid to individual officials.[12]

As noted above, several commenters expressed concerns about the need to report information that could intrude upon an individual's legitimate concerns for his or her privacy. Several commenters raised a generalized concern that the proposal would raise privacy issues under HIPAA. Four commenters raised specific concerns about reporting payments where the labor organization is self-insured and thus pays directly for the health care of its officials. The commenters argue that a self-insured organization would violate HIPAA by providing information relating to ''past payment[s] for the provision of health care.'' One commenter noted that it would be unable to report some information, even if it were required, because the employees in the union's accounting office are unable to view records that include protected health information. Two comments noted that the proposal would allow a union member for just cause to examine the underlying information which would violate HIPAA. Another commenter, while noting that the Department was not requiring labor organizations to identify the nature or value of any particular benefit—the Department proposed only that the total value of all the benefits to an individual be reported—questioned whether this would sufficiently address HIPAA privacy concerns.

As noted in the NPRM, 73 FR at 27351, the Department is fully cognizant of the need to protect the legitimate privacy interests of individuals under HIPAA and other laws. To further address the concerns of commenters, the Department, as discussed below, has clarified the rule to further protect the privacy of individuals. However, the Department disagrees with the premise of some commenters that the rule as proposed infringed on the privacy of individuals. In the 2003 revisions to the Form LM–2, the Department made the decision to aggregate the benefits paid to union officials on Schedule 20 (Benefits) based on privacy considerations. *See* 68 FR 58374, 58387, 58399, 58426 (Oct. 9, 2003). Based on those same considerations, the Department crafted Schedule 11 and Schedule 12 in order to preserve the privacy interests of individuals. Under the proposal and the final rule, a person

[11] For Form 990 purposes, the IRS defines a ''key employee'' as ''any person having responsibilities, powers, or influence similar to those of officers, directors, or trustees.'' Instructions to IRS Form 990 (2007), at p. 40. To illustrate this requirement, the IRS states: A chief financial officer and the officer in charge of the administration are both key employees if they have the authority to control the organizations, activities, its finances, or both.'' *Id.* For the 2008 tax year, the IRS is requiring Form 990 filers to also provide information on the filer's five current highest compensated employees (other than officers, directors, trustees, or key employees) receiving more than $100,000 in reportable compensation from the filer or related organizations. IRS Form 990 (2008), Part VII, Section A, 1a.

[12] As noted in the NPRM, 73 FR at 27351, the changes are consistent with the level of disclosure required in other contexts for executive and employee compensation. Both the IRS (*see* Form 990) and the Securities and Exchange Commission (*see* 71 FR 78338 (2006)) require similar disclosure for certain officials.

reading the report would be unable to ascertain what types of benefits labor organization officers and employees receive, only the total value of these benefits. For instance, if a labor organization officer received a matching contribution to a 401(k) plan in the amount of $5,000, indirect payment of health insurance premiums in the amount of $6,700, and a health club membership in the amount of $1,200, the labor organization's Form LM–2 would disclose that this officer received a total of $12,900 in benefits. Given that benefits that must be reported are aggregated without identifying the nature of particular benefits that comprise the total, the potential for disclosing information of a private or protected nature is only remotely possible if at all. However, in those rare instances, where a labor organization, in good faith and on reasonable grounds, believes that a particular disclosure would violate HIPAA, or other federal or state law, or confidential settlement agreement, it should not include that particular information for the affected individual, but should instead include its value as part of the aggregated, non-itemized amount reported on the schedules and identify that reason and the individual affected in item 69 (additional information) of the Form LM–2.

On a related matter, a commenter questioned whether FICA, federal and state unemployment tax, long term disability insurance, accident death and dismemberment insurance, and workers' compensation would be required to be included in the benefits disclosure by the officer or employee's name. As noted above, the Department is not requiring labor organizations to report the value of such payments on an individual-by-individual basis.

Schedule 13—Membership Status: This schedule is unchanged.

Detailed Summary Page: The current detailed summary page contains information from Schedule 14 through Schedule 19. The new detailed summary page, as proposed and adopted by today's rule, includes information from Schedule 14 through Schedule 29. These summary pages provide a snapshot of the labor organization's activities. Members of the union and the public may then use this snapshot to determine whether further analysis of the individual itemized schedules is required. There is no additional burden associated with these summary schedules because the software will automatically enter the totals in the appropriate lines of the summary schedules as the labor organization fills out the individual itemization schedules.

Schedules 14–22. Currently, Form LM–2 filers only report the total amount received from dues and agency fees, per capita taxes, fees, fines, assessments, and work permits, sales of supplies, interest, dividends, rents, receipts on behalf of affiliates for transmittal to them, and receipts from members for disbursement on their behalf on Statement B. As noted in the NPRM, these line items exceed $20 million in some instances. 73 FR at 27351. For example, one labor organization stated that it received over $298 million in per capita taxes and another received over $28 million in rent. *Id.* Little useful information can be discerned from these totals alone. The Department proposed that for each of these schedules the labor organization would separately identify payments from any individual or entity that alone or in the aggregate total $5,000 or greater during a reporting period. The Department has adopted this proposal with some modifications for schedules relating to the receipt of dues payments and per capita taxes. The general instructions for completing these schedules have been modified to account for these changes, including notice to filers that they should complete the revised schedules 14 (''Dues and Agency Fees'') and 15 (''Per Capita Tax'') before completing the summary detail page.

As explained in the NPRM, 73 FR at 27351, the lack of itemization of most receipts on the current Form LM–2 makes it easier for individuals to embezzle money coming to labor organization accounts. In one case, the president and treasurer of a local labor organization converted over $184,129 in dues checks. *See* 73 FR at 27352. One commenter took issue with this example in the NPRM, stating that simply requiring a listing of checks received by a Form LM–2 filer will not prevent the type of embezzlement identified in the example. (38) The commenter noted that the purpose of every receipt is not reflected in a corresponding disbursement of the same amount, reducing the value of the new itemization schedules. The Department agrees that it will not be possible to track the disbursement of each receipt from the information on the revised Form LM–2. The difference between the receipt and disbursement functional categories makes such a comparison impossible. Nonetheless, the itemization of individual receipts provides helpful information to union members. The revised form will contain itemized information for each check that is $5,000 or more and disclose whether other checks aggregate to $5,000 or more. The change will address this problem, which extends to all the various reporting categories on the current form and not merely the receipt of dues payments, because now receipts-side embezzlements like the embezzlement of $184,129 mentioned above will be harder to hide.

The Department proposed to add new schedules that coincide with the items of cash receipts listed on Statement B.[13] In today's final rule, the Department adopts the proposal with the modifications discussed below. The Department is revising the existing Form LM–2 to include schedules for dues and agency fees, per capita taxes, fees, fines, assessments, and work permits, sales of supplies, interest, dividends, rents, receipts on behalf of affiliates for transmittal to them, and receipts from members for disbursement on their behalf. Except as discussed below, the itemization schedules for receipts will operate in the same fashion as do the itemization schedules for disbursements.

Schedule 14—Dues and Agency Fees. The Department proposed the requirement that a labor organization report dues and agency fees of $5,000 or more it receives from an individual or entity during the reporting period, and that each individual payment of $5,000 or more be disclosed on a separate line. The Department adopts the proposal as modified. As modified, labor organizations are not required to itemize such payments made by individual members. The aggregate dues and agency fees received directly from a represented employer must be reported by each individual employer. However, as modified, filers will only have to report for each employer the total such payments received during the reporting period—not each payment from the employer that alone or in combination with other payments is $5,000 or greater. Filers will enter in Column (A) the full name and business address of the represented employer. Filers will enter in Column (B) the purpose of the receipt of $5,000 or more, which means a brief statement or description of the reason the receipt was received. An adequate description includes information about the number and type of units covered by the receipt and the number of employees covered by the receipt. Filers will enter in Column (C) the total received from the represented employer during the reporting period.

Some commenters expressed concerns with the difficulties associated with

[13] Current schedules 14 through 20 will be re-numbered as schedules 21 through 29.

itemizing the receipt of dues. As explained by one commenter, its members work for multiple employers that are signatory to collective bargaining agreements. Under collective bargaining agreements, working dues are deducted from members' paychecks and forwarded to an intermediate body or a local union. The commenter explained that in such situations information regarding the specific employer may not be transmitted to or recorded by the intermediate body, leading to difficulties in how to report such receipts. The commenter posited three possibilities: The dues can be considered received from (a) the member from whose paycheck the dues were deducted, (b) the employer that forwarded the dues either to the labor organization or to another entity that then forwarded the dues to the labor organization, or (c) where the working dues were sent by an employer to some other entity and then forwarded to the union, the entity that forwarded the dues. Another commenter explained that many unions do not allocate or transmit on a receipt-by-receipt basis the dues they receive on behalf of local unions or affiliates. The commenter explained that under the unions' own internal procedures they would do so only periodically and based on the total amount collected during that period. This commenter explained that the itemization of dues receipts would have to make calculations that do not correspond to the amounts they actually transmit to their locals; he also indicated that unions would have to devise accounting systems that pro rate every dues check received or perform such calculations manually. One commenter explained that the timing of the dues deductions from members' pay varied from unit to unit and that employers of more than one unit often remit payment for these units in a single check to the international. One commenter expressed concern that the Department was confused about how dues money is handled by most unions, including unions in the railroad industry.

The Department believes that labor organizations have misread the Department's proposal and thereby overstated the burdens associated with reporting the receipt of dues payments. The Form LM–2 Instructions, as proposed, state on page 31 that the filer must enter ''the purpose of each individual receipt of $5,000 or more which means a brief statement or description of why the union received the receipt.'' *See* 73 FR at 2742. The proper reporting of dues will depend on how the dues are collected. If the dues are received directly from the employer, the labor organization receiving these payments should identify the employer that sent the dues. If another entity, such as an intermediate body, sent the dues to the labor organization, then the labor organization receiving the payments should identify the intermediate body and the intermediate body should list the dues payments received from the employer on the schedule for ''receipts on behalf of affiliates for transmittal to them'' (now renumbered as schedule 21). Both the intermediate body and the labor organization must identify the units covered by the payment.

If a parent labor organization receives $5,000 or more on behalf of affiliates for transmittal to them from a represented employer covering an affiliated labor organization then the parent labor organization must identify the payer, the type or classification of the payment (which in most cases will be dues), the purpose, including information as to which affiliates the receipt covers, and the amount of the receipt. This type of information will be readily available as the parent must determine what portion of the check is to be disbursed to each local. The Department recognizes that unions may have to change the manner in which they capture and report information such as dues, but they remain free to devise their own procedures for collecting this information in order to meet the reporting requirements. The Department has not required unions to conform their procedures to a prescribed template; they are free to craft their own procedures so long as the dues receipts are fairly and accurately allocated and reported.

Two commenters expressed concern that the itemization of the dues schedule would disclose members' personal information. Under the proposal, a labor organization would have to report the member's name and address. The commenters felt that members' names and addresses should remain confidential. The same concern was expressed with respect to initiation fees, fines, assessments, and work permits. The Department has accommodated these concerns. The Department is not requiring the identification of members who made payments directly to their labor organization for dues, fees, fines assessments, work permits, and disbursements on their behalf. Instead, the labor organizations should add these amounts to the aggregate reported on the line 3 (Other Receipts) of summary schedules 14, 16, and 22.

Schedule 15—Per Capita Tax. The Department proposed that a labor organization report on a new Schedule 15 per capita payments it receives from an individual or entity during the reporting period. The Department adopts the proposal as modified to clarify how the information should be described.

The labor organization will report per capita taxes of $5,000 or more received during the reporting period. Per capita taxes received directly from a labor organization must be aggregated for the year and reported by each individual labor organization. Filers will enter in Column (A) the full name and address of the labor organization from which the per capita tax was received. Enter in Column (B) the purpose of the receipt of $5,000 or more, which means a brief statement or description of the reason the receipt was received. An adequate description includes information about the number and type of units covered by the receipt and the number of employees covered by the receipt. Filers will enter in Column (C) the total received from the represented employer during the reporting period.

The Department received several comments relating to the reporting of per capita taxes. Because the comments on this schedule were essentially the same as those received on the other new schedules proposed for a labor organization's receipts, they are discussed together below.

Schedule 16–22. As earlier discussed, the Department proposed the addition of these schedules to capture, by functional category, a labor organization's various receipts. Labor organizations are required to itemize the individual categories of receipts aggregated to $5,000 from any one source. The labor organization will be required to complete a separate itemization schedule for each individual or entity from which the labor organization has received $5,000 or more. Each transaction from that individual or entity will include information about the individual, the purpose of the payment, the date of the payment, and the amount of the payment. The total amount received from the individual or entity, both itemized and non-itemized, will be included at the bottom of the itemized schedule. The totals from each itemized schedule will then be added together and that number will be entered in the appropriate item on Statement B.

By establishing this reporting obligation, the Department is requiring labor organizations to provide the same information about their ''major'' receipts as they are currently required to report

about their ''major'' disbursements. Most of the general comments about the proposal to require itemization of both sides of the ledger were addressed earlier in the preamble. Neither those comments nor the Department's response to those comments will be repeated. Instead, only comments about particular aspects of the receipts schedules, not already discussed, are addressed below. Schedules 16, 21, and 22, like Schedules 14 and 15, require filers to identify receipts by units, jobs, and timeframes. The instructions have been modified for this purpose.

A national labor organization stated that it does not break down sales of supplies by entity and will have to alter substantially its account system to track the sales of supplies to affiliates by entity. Another national labor organization was particularly concerned with itemizing receipts on Schedule 21, ''Receipts on Behalf of Affiliates for Transmittal to Them.'' The commenter explained that many parent labor organizations collect dues, fees, and other amounts that include the members' dues for subordinate or local unions. The commenter stated that it will be extremely difficult to designate the precise amount of each receipt to be transmitted to one or more locals or affiliates. One labor organization calculated that the proposed receipts schedules will increase its yearly burden by 250–500 hours (compared to the Department's estimated average of .47 hours per year). A commenter estimated that the ''per capita tax'' schedule alone would increase the number of itemized entries on its Form LM–2 by 1,200. Another commenter stated that under the Department's proposal it would have to make about 10,000 itemized entries, one for each employer from whom it receives members' dues payments.

As stated earlier in this preamble and in the preamble to the proposed rule, greater transparency promotes the detection of embezzlement and financial irregularities and, in so doing, also deters individuals at the front end from engaging in criminal or other improper conduct. Receipts from dues, per capita taxes, and sales of supplies are as susceptible to embezzlement or other improper use as any other receipt. For example, as noted in the NPRM, 73 FR at 27351–52, the president and treasurer of a local labor organization converted over $184,129 in dues checks. The dues and agency fees schedule will provide an essential check for transactions between affiliates and parent bodies.[14]

Members of the affiliate labor organization will be able to check the amount their labor organization received in dues against the parent labor organizations receipts on behalf of affiliates for transmittal to them. The same analysis can be done on lump sum payments from the represented employer to the parent labor organization covering multiple affiliates. The member need only look at each of the covered affiliates' dues schedule and aggregate the payments to ensure they match the sum reported on Schedule 21. A difference in these two numbers could indicate embezzlement and warrant further investigation.

As discussed in the NPRM, 73 FR at 27352, the per capita tax schedules of affiliates and parent labor organization can also be used to detect embezzlement and financial irregularities. The member can check for possible embezzlement or misallocation of funds owed his or her labor organization by checking his or her labor organization's per capita tax disbursements reported in Item 57 against the per capita tax receipts of the parent and its intermediate bodies. This can be done by entering his or her labor organization's name in the payer/payee search available on *unionreports.gov.* The search results will identify each labor organization that received per capita taxes from the member's labor organization. These payments can then be aggregated to determine whether the per capita disbursements from the member's labor organization match the per capita receipts reported on all the recipients' per capita tax schedules (Schedule 15). A difference in these two numbers could indicate an embezzlement or misallocation and warrant further investigation.[15]

Schedule 23—Other Receipts: This schedule, currently numbered Schedule 14, will be renumbered Schedule 23. No other changes will be made to this schedule.

Schedule 24—Representational Activities: This schedule, currently numbered Schedule 15, will be renumbered Schedule 24. No other changes will be made to this schedule.

Schedule 25—Political Activities and Lobbying: This schedule, currently numbered Schedule 16, will be renumbered Schedule 25. No other changes will be made to this schedule.

Schedule 26—Contributions, Gifts and Grants: This schedule, currently numbered Schedule 17, will be renumbered Schedule 26. No other changes will be made to this schedule.

Schedule 27—General Overhead: This schedule, currently numbered Schedule 18, will be renumbered Schedule 27. No other changes will be made to this schedule.

Schedule 28—Union Administration: This schedule, currently numbered Schedule 19, will be renumbered Schedule 28. No other changes will be made to this schedule.

Schedule 29—Benefits: This schedule, currently numbered Schedule 20, will be renumbered Schedule 29. As described above in the discussion regarding the proposed changes to Schedule 11 and Schedule 12, those benefits inuring to officers and employees of the labor organization will be listed next to the corresponding officer's or employee's name. Apart from this change, the same disbursements that were disclosed on Schedule 20 will be disclosed on the new Schedule 29. These include direct and indirect disbursements associated with direct and indirect benefits to members and members' beneficiaries.

Special Procedures for Reporting Confidential Information

The Department requested comments on whether to narrow, clarify, or remove the confidentiality exception from the Form LM–2 instructions. The Department recently considered this same question in connection with the Form T–1 rulemaking. There the Department issued a final rule retaining the special procedure without change but cautioning that it was to be used in

[14] The Department recognizes that some national or international labor organizations receive dues payment from hundreds and, in some cases, thousands of employers. Although this will add length to the reports, the recurring burden will be minimal given the sorting feature in accounting software. Further, members interested in tracking payments to and from the national organization and between that organization and an intermediate body of local labor organization will be able to quickly search for payments involving particular employers, labor organizations, and bargaining units. The Department expects that most labor organizations already track such payments in order to ensure they are receiving the appropriate amount in dues payment and that most will receive payments from only a relatively small number of employers.

[15] One commenter noted that it has 750 local affiliates, the vast majority of which have no office address other than the home of the local president or treasurer. It explained that all of these local affiliates make per capita payments over $5,000 per year and therefore it would be required to report on Schedule 15 the name and address of the person/entity making the payment. Expressing concern for the privacy of these officials, it urged the Department to except it from reporting their home addresses. The Department does not agree that an exception is necessary. Labor organizations already must disclose a publicly available address for itself or a registered agent for service of process in order to comply with state corporation laws. Further, the IRS requires a labor organization to list its address on IRS Form 990. For purposes of Schedule 15, a labor organization may use the address used by the labor organization in complying with state law or reported on the Form 990. Alternatively, a labor organization concerned about the disclosure of an officer's home address may elect to obtain a P.O Box and use that as its mailing address.

limited circumstances. As discussed below, the Department reaches the same result here, *i.e.*, preserving the confidentiality procedure. However, based in part on comments received in connection with the proposed changes to the Form LM–2 but primarily based on the agency's interpretation of its own regulations, the Department is clarifying that the procedure may not be used by unions in connection with payments made by them to employers if such payments are made as part of a job targeting, market recovery or similar program.

Additionally, the Department modifies the instructions to clarify that the procedure may be used to report information the disclosure of which is proscribed by HIPPA or other federal or state law and that where this information is reported in aggregated form for this purpose, it is not subject to the per se ''just cause'' proviso of the procedure. *See* 29 CFR 403.8 (2008); *see also* 73 FR at 57449 (revising 29 CFR 403.8(c)).[16] This change conforms the instructions in the Form LM–2 to the instructions and regulatory text in the Form T–1 final rule, which takes effect on December 31, 2008. *See* 73 FR at 57449, 57469.[17]

The instructions currently allow unions to use the confidentiality procedure for information that would (1) identify individuals paid by the union to work in a non-union facility in order to assist the union in organizing employees, provided that such individuals are not employees of the union who receive more than $10,000 in the aggregate from the union in the reporting year; (2) expose the reporting union's prospective organizing strategy; (3) provide a tactical advantage to parties with whom the reporting union or an affiliated union is engaged or will be engaged in contract negotiations; (4) subject to a confidentiality agreement in a settlement agreement; or (5) endanger the health or safety of an individual. *See* 73 FR at 27423–24 (unchanged from current rule). If the receipt or disbursement fits within one of the above categories, then the labor organization need not itemize the receipt or disbursement. Instead, it may include the receipt or disbursement in the aggregated total on Line 3 of Summary Schedule 23 (''Other Receipts'') or on Line 5 of Summary Schedules 24 (''Representational Activities'') or 28 (''Union Administration''), as appropriate. A union member has a statutory right ''to examine any books, records, and accounts necessary to verify'' the labor organization's financial report if the member can establish ''just cause'' for access to the information. 29 U.S.C. 431(c); 29 CFR 403.8. The instructions and regulatory text expressly provide that if a labor organization chooses to utilize the special procedures for confidential information, such use constitutes a per se demonstration of ''just cause for access to the information'' and thus the information must be available to a member for inspection. 68 FR at 58448, 58499–00. Information that is withheld from full disclosure is not subject to the *per se* disclosure rule if its disclosure would consist of individually identifiable health information of the kind required to be protected under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) privacy regulation, violate state or federal law, violate a non-disclosure provision of a settlement agreement, or endanger the health or safety of an individual.

Several commenters objected to the use of special procedures for reporting confidential information. The objections, however, were directed at the use of the procedure to shield from the view of union members and the public the amount of union funds directed at organizing activities, not at the use of the procedure to protect the legitimate privacy interests of individuals. One commenter asserted that the procedure effectively allowed labor organizations to assert unsubstantiated claims as a guise to justify any instance where they elect to withhold information. One commenter argued that the exemption affords labor organizations greater ability to withhold information than what is permitted under the discovery rules of federal civil procedure or permitted by the National Labor Relations Board (NLRB). Another commenter noted that narrowing or removing the exemption ''will provide labor organization members with clearer information regarding [labor organization] receipts and disbursements.'' The commenter argued that financial information should be available to labor organizations' membership without having to petition the labor organization directly. The commenter also alleged that because of potential tax and other impacts and implications, the public is entitled to and should have the same benefit of clarity regarding labor organization receipts and disbursements.

Several commenters argued in favor of maintaining the special procedure for reporting organizing activities, asserting it was necessary to balance the interest of union members in transparency against the interest in protecting a union's ongoing organizing campaigns. One commenter expressed the unsubstantiated view that but for the inclusion of the special procedure in the 2003 rule, the courts would have overturned the rule. Another commenter, while noting that transparency is a positive benefit to the public, urged the Department to weigh this benefit against the labor organizations' primary responsibility—to represent its members. This commenter concluded that the damage done to unions' representational responsibilities far outweighs the value of this transparency in and of itself.

Other comments noted that eliminating the confidentiality exception would be detrimental to legitimate organizing efforts and could compromise a labor organization's efforts to effectively engage in collective bargaining. Specifically, one commenter argued that requiring a union to identify ''salts'' on the Form LM–2 will unreasonably chill, if not destroy, this legitimate form of organizing under the NLRA. Disclosure of ''salts'' could jeopardize the individual's ability to earn a livelihood. This category of information subject to the Special Procedures for Confidential Information remains unchanged in the final rule. Labor organizations should note that notwithstanding the confidentiality provisions any employee who receives over $10,000 in any fiscal year is required by the LMRDA to be disclosed, even if employed as a ''salt.''

One commenter argued that the need for a confidentiality exemption is self evident. One commenter noted that the current exception is already narrowly tailored to protect legitimate union interests while ensuring union members have access to information. Two commenters suggested that concerns that the Department found ''persuasive'' in 2003 when it adopted this narrow exception to itemized reporting are no less real or compelling today. Several commenters also noted that the

[16] In this rulemaking the Department only addresses whether the information is available pursuant to the ''just cause per se'' provision of the special reporting procedure. The Department does not reach the question whether a union member for ''just cause'' would be able to examine underlying documents. The result may well depend upon the particular circumstances giving rise to the member's request, the nature of the information that is at issue, and the potential applicably of non-disclosure provisions under statute and case law.

[17] The revised section reads: ''This provision does not apply to disclosure that is otherwise prohibited by law or that would endanger the health or safety of an individual, or that would consist of individually identifiable health information the trust is required to protect under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Regulation.''

Department cited no complaints from union members that this exception prevented them from accessing information on their union.

Several commenters argued against imputing an improper motive to a labor organization's use of the confidentiality procedure. One noted that a union's decision to protect information from disclosure should not be assumed to connote misuse or abuse of the exception. This commenter alleged that use of the exemption is evidence of the extent to which the Department has already transformed the Form LM–2 from a vehicle Congress created to strengthen unions into a trap for the unwary and a weapon of choice for anti-union consultants bent on stopping workers from organizing. Two commenters believed that misuse of the exemption may be attributed to the steep ''learning curve'' inherent in the complex reporting scheme.

The Department also specifically invited comments on an alternative proposal to require that all transactions greater than $5,000 be identified by amount and date on the relevant schedules, permitting however, labor organizations, where acting in good faith and on reasonable grounds, to withhold information that would otherwise be reported, in order to prevent the divulging of information relating to the labor organization's prospective organizing or negotiating strategy. Only one commenter addressed this proposed alternative. The commenter noted that such an approach did not provide protection for information recognized in the other parts of the existing confidentiality section, such as information that is required to be kept confidential pursuant to a settlement agreement, information the union is prohibited by law from disclosing, or information where disclosure would endanger the health or safety of the individual. The commenter also noted that such an approach would require additional itemization and reporting that would provide meaningless information to members.

The Department has carefully considered the comments relating to the Special Procedures for Reporting Confidential Information. It also has undertaken further review of the use of this procedure by reporting labor organizations. The Department's review of Form LM–2 data indicates that the confidentiality exception is used only by a small number of Form LM–2 filers. However, the Department has found that in some cases where the confidentiality exception is used, large portions of the labor organizations' disbursements are not being itemized. For example, one labor organization treated $360,308.00 in disbursements as confidential information and entered this amount on line 5 of Schedule 17. The $360,308 accounted for 45% of the labor organization's total disbursements. A mid-sized local labor organization treated $1,011,863 as confidential. This accounted for 49% of the labor organization's total disbursements. Finally, a large local labor organization treated $5,931,513.00 as confidential. This accounted for 46% of the labor organization's total disbursements. As these examples demonstrate, an undisciplined use of the special procedures may result in the non-itemization of disbursements of millions of dollars and thus deny members the very transparency that is the foundation of the LMRDA's disclosure provisions.

Thus, while this final rule retains the Special Procedure for Reporting Confidential Information, the Department reemphasizes the limited situations in which it should be used and clarifies that it was not the Department's intention that it should be used to shield the itemization and full disclosure of payments to employers for job targeting, market recovery or other similar programs. In clarifying this aspect of the rule, the Department remains of the view that a labor organization should not be required to disclose information that would harm the labor organization's *prospective* organizing campaign or negotiations, by disclosing strategy that would otherwise be confidential. However, the Department reiterates, as it did in the Form T–1 final rule, that labor organizations are required to itemize transactions related to organizing drives and contract negotiations after the confidentiality interest giving rise to the exemption has ended. The instructions make clear that absent unusual circumstances information about past organizing drives or contract negotiations should not be treated as confidential under the reporting requirements. The Department also reiterates, as noted in the 2003 final rule, the procedures may not be used for Schedules 16 through 18. 68 FR at 58500. This rule has renumbered Schedules 16 through 18 as Schedules 25 through 27. Thus, the instructions for this final rule state that the procedures may not be used for the new Schedule 25 (''Political Activity and Lobbying''), Schedule 26 (''Contributions, Gifts and Grants''), and Schedule 27 (''General Overhead'').

The Department is also clarifying that the procedure may not be used for payments made to employers as part of a labor organization's job targeting, market recovery or other similar program. A commenter urged the Department to eliminate the confidentiality procedure because of what it saw as a widespread practice by labor organizations to avoid reporting the names of, and amount of payments to, employers who had received job targeting funds. Independently, the Department's own recent investigative experience has shown that some labor organizations have been using this procedure to shield from disclosure payments to employers as part of the unions' job targeting or market recovery programs. Although the total number of instances appears relatively small, the amount of money involved is substantial. The labor organizations have informed the Department that they consider such payments to be part of their ''organizing strategy'' and that the disclosure of such payments would adversely affect future organizing efforts. As discussed below, the Department has determined that payments to employers for job targeting or market recovery purposes are not encompassed by the special procedure. Therefore, any payments of $5,000 or greater to a particular employer must be itemized.

In the 2003 rule, the Department, recognizing that the disclosure of certain payments related to organizing might adversely affect a union's legitimate interests, created a special procedure for reporting confidential or sensitive information. The key language of the 2003 rule is embodied in the instructions to the Form LM–2: ''Filers may use the [special procedure for reporting confidential information] to report * * * [i]nformation that would expose the reporting union's prospective organizing strategy. The union must be prepared to demonstrate that disclosure of the information would *harm an organizing drive*'' (emphasis added).

Neither the rule nor its preamble illustrated the particular kinds of payments that would or would not qualify for this limited reporting procedure. Although the preamble to the rule mentioned ''job targeting'' in a few instances, the preamble did not specifically identify which particular schedule should be used for reporting such payments. *See* 68 FR at 58387, 58400. The closest the preamble comes to addressing how job targeting disbursements should be reported is the following statement: ''In the Department's view, receipts and disbursements of job targeting funds that exceed the itemization threshold will be disclosed as a result of the

general reforms implemented by this rule.'' *Id.,* at 58400. The Department acknowledges that the term ''organizing strategy'' is ambiguous, and that the rule did not make clear whether payments made directly to employers, such as job targeting payments, would qualify. The ambiguity of the term is illustrated by literature reviewed by the Department, some of which classified activities as far flung as community service projects and pension investment strategies as being part of a union's ''organizing strategy.'' Kate Bronfenner, *Organizing to Win: New Research on Union Strategies,* 302. The Department never intended that the term should be read so broadly. Such activities may have an indirect impact on the attractiveness of a union to workers, but do not directly attempt to organize workers, and thus fall outside the meaning of the term as interpreted and administered by the Department. Moreover, the ''key language'' of the rule, as quoted above, dictates that the special procedure must be read as limited to information that would ''harm an organizing drive.'' Payments to an employer in order to assist it in bidding for construction jobs on which union members will be paid in accord with union industry practice cannot be viewed as part of an ''organizing drive.'' Such payments stand in contrast to payments commonly associated with an organizing drive, such as payments to printing vendors for literature and signage, and rental of meeting facilities, communication equipment, transportation vehicles, and various consultants. For this reason, the Department modifies the rule by explicitly stating that ''payments made by a labor organization to an employer under a market recovery, job targeting, or like program (*e.g.*, for ''industry advancement''), must be reported. Such payments must be itemized where they aggregate to more than $5,000. If the labor organization chooses to report such payments on Schedule 24 (''Representational Activities''), it may not use the confidentiality exception. Additionally, it is the Department's view that this clarification best serves the LMRDA's purpose, by providing transparency to this substantial aspect of a union's financial operations without impeding a union's prospective organizing drives. In making this change, the Department takes no position in this rule on the propriety or not of job targeting or similar payments made by a labor organization under the Labor Management Relations Act, the Davis-Bacon Act, or other law, or how such information has been addressed under the discovery rules of federal civil procedure and NLRB practice. The changes are based solely on the Department's interpretation of the confidential reporting procedure and its view that the disclosure purposes of the LMRDA are best served by making known to union members and the public the amounts and recipients of job targeting, market recovery or other similar payments.

C. Proposed Procedure and Standards To Revoke the Simplified Reporting Option Where Appropriate in Particular Circumstances

1. Introduction

The Department proposed to establish standards and procedures for revoking the simplified report filing privilege provided by 29 CFR 403.4(a)(1) for those labor organizations that are delinquent in their Form LM–3 filing obligation, fail to cure a materially deficient Form LM–3 report after notification by OLMS, or where other situations exist where revoking the Form LM–3 filing privilege furthers the purposes of LMRDA section 208. The final rule adopts the proposal with some modifications. The new procedure will effectuate the Department's authority to revoke a labor organization's existing Form LM–3 filing privilege if it fails to timely file a Form LM–3 or files a Form LM–3 that is materially deficient. Without such a procedure, the Department has been unable to revoke a labor organization's privilege to file a simplified report—no matter how egregious a labor organization's noncompliance with its reporting obligations, or obvious the indications of financial mismanagement, embezzlement, or corruption within that organization. *See* 73 FR at 27353. The procedures established in this rule will remedy this shortcoming in the Department's reporting system.[18]

As discussed in the NPRM, 73 FR at 27346–47, the goal of these changes is to improve transparency in situations where it is most needed, *i.e.*, where a union has failed to comply with its basic financial reporting obligation. Although it may appear counterintuitive to require a non-compliant organization that fails to meet its relatively simple Form LM–3 obligation to file a more detailed Form LM–2, this view assumes that the only reason for non-compliance was relatively benign, *e.g.*, a responsible officer was brand new to the position or his or her illness delayed the timely submission or clarification of a submission. The Department recognizes that some submissions are delayed for such reasons; thus, the Department did not propose that a delinquent or materially deficient filing would automatically trigger revocation and require the submission of a Form LM–2. However, as most commenters appeared to recognize, the reasons for non-compliance are varied and by no means all benign. Labor organizations will be given the opportunity to explain the reasons for the delay, including mitigating circumstances, and may thereby avoid having to file the Form LM–2. But where revocation is appropriate, the union will incur some additional burden in completing the Form LM–2 but, as discussed below, the burden is manageable and outweighed by the gains in transparency. The Form LM–2 not only requires more detail in general than the Form LM–3, but the Form LM–2 requires information that may be particularly pertinent to situations where possible financial mismanagement or embezzlement may have occurred. This additional financial information will assist members of labor organizations and OLMS investigators in reviewing the labor organization's funds and assets during the reporting period and enable them to determine whether additional scrutiny of the labor organization's finances is in order, for example, by requesting an explanation of the accounting, examining the underlying records of various transactions, or both.[19]

The differences between the Form LM–2 and the Form LM–3 forms have been accentuated by the substantial revisions made to the Form LM–2 in 2003 and those adopted in this final rule. As the Department explained in the preamble to the 2003 Form LM–2 rule, the broad aggregated categories on the old Form LM–2 enabled officials of labor organizations to potentially hide embezzlements and financial mismanagement. 68 FR 58420. The more detailed reporting required of all financial transactions covered by Form LM–2 was designed, in part, to discourage and reduce corruption by making it more difficult to hide

[18] The revocation procedures will not affect labor organizations with annual receipts less than $10,000. While section 208 allows the Secretary to revoke the privilege of such labor organizations to file the highly simplified Form LM–4, the Department is not proposing at this time to apply such procedure to Form LM–4 filers.

[19] OLMS intends to continue its regular practice of contacting Form LM–3 filers at the end of their fiscal year about their filing obligation, and, in doing so, it will inform them of the potential revocation of their privilege to file the Form LM–3 if they are delinquent in filing the form, file a Form LM–3 that is materially deficient, or for other appropriate cause. The instructions to the Form LM–3 already inform labor organization officers of their statutory obligation to file the completed forms with OLMS within 90 days after the end of their labor organization's fiscal year.

financial irregularities from members and the Department's investigators and thereby strengthen the effective and efficient enforcement of the LMRDA. 68 FR 58402. Requiring labor organizations to file a Form LM–2, after a determination that revocation of the privilege of filing a Form LM–3 is warranted, will make it more difficult to hide fraud.

The Form LM–2 requires labor organizations to provide more specific information than the Form LM–3 in several areas relating to labor organization finances including, in part, the following: Investments, fixed assets, loans payable and owed, contributions, grants, and gifts, overhead expenses, union administration, and receipts. With regard to labor organization receipts, Form LM–2 filers are explicitly required to report all receipts including: ''Receipts from fundraising activities, such as raffles, bingo games, and dances; funds received from a parent body, other labor organizations, or the public for strike assistance; and receipts from another labor organization which merged into the labor organization.'' *See* p. 29 of Instructions to Form LM–2, as reproduced at 68 FR 58501.

Form LM–2 requires filers to itemize receipts from and disbursements to any individual or business or other entity that exceed $5,000 in a fiscal year either in a single transaction or aggregated over the year. Itemization prevents a labor organization from ''hiding'' significant receipts from or disbursements to the same individual or entity, a possibility that exists under the Form LM–3. The name, address, and other information must be provided for any such entity or individual. This information, which is not required by the Form LM–3, enables members of a labor organization to detect payments to individuals or entities that are out of the ordinary (given information that is known to the member but would not appear irregular to someone without such information). Thus, this information enables members to identify situations that may reflect a breach of the labor organization's duties to its members or provide a reasonable basis for inquiry to determine whether officials of the labor organization are improperly diverting funds for their own benefit or the shared benefit of others. Additionally, a member who is aware that the labor organization has a financial relationship with one or more of these businesses will be in a better position to determine whether the business has made any required reports (Form LM–10). The itemization of payments at or above $5,000 also puts members in a better position to determine whether any of the recipients of the payments are businesses in which a labor organization official (or the official's spouse or minor child) holds an interest, a circumstance that will require a report to be filed by the official (Form LM–30).

The Form LM–2, unlike the Form LM–3, requires filers to provide a list of accounts receivable and payable (involving a particular individual or entity in an amount of $5,000 or greater, singly or aggregated) that are past due by more than 90 days. As explained in the 2003 Form LM–2 rulemaking, 68 FR at 58401–02, such itemized disclosure can provide a vital early warning signal of financial improprieties. In the case of an already overdue report, the delinquency demonstrates that such improprieties already may exist.

As discussed in the NPRM, 73 FR at 27354, the Department's enforcement experience has shown that the failure of labor organizations to file the annual Form LM–3 on time and without material deficiencies is often an indicator of larger problems about the way such organizations maintain their financial records, and may be an indicator of more serious financial mismanagement. OLMS review of data indicates that labor organizations that are repeatedly delinquent are more likely than other labor organizations to suffer embezzlement, or related crime. For instance, in one recent case an investigation of a labor organization that was delinquent in its reports for two years showed that the labor organization had been the victim of a serious embezzlement. Its former president pled guilty to embezzling $112,525 and received a prison sentence of 33 months, and was ordered to pay back the money he had stolen. In another case, a former financial secretary of a labor organization that had been delinquent in filing its reports for several years pled guilty to embezzlement and was ordered to pay restitution of $103,248 and also received a sentence including confinement for eight months, home detention for four months, and probation for three years. Many of the reasons that contribute to delinquent filings also result in the filing of reports that omit or misstate material information about the labor organization's finances. The members of a labor organization that fails to correct a material reporting deficiency will also benefit from the increased transparency. For example, the labor organization may delay filing a Form LM–3 to avoid making timely public disclosures about financial improprieties of officers, such as the diversion of funds for personal use. Even if the Department eventually succeeds in encouraging a delinquent labor organization to file the required form, the lack of specificity in Form LM–3 may permit significant problems to remain undetected. The greater detail required by the Form LM–2 makes it more difficult to hide such problems.

As discussed in the NPRM, at 73 FR at 27357, the Department's enforcement experience reveals various reasons for delinquent filings, such as a labor organization's failure to maintain the records required by the LMRDA; inadequate office procedures; frequent turnover of labor organization officials and their often part-time status; uncertainty of first-time officers about their reporting responsibilities under the LMRDA and their inexperience with bookkeeping, recordkeeping, or both; an ''inherited bookkeeping mess;'' an inattention generally to ''paperwork;'' overworked or under-trained officers; an officer's unwillingness to question or report apparent irregularities due to the officer's own inexperience or concern about the repercussions of reporting such matters; or a conscious effort to hide embezzlement or the misappropriation of funds by the officers, other members of the organization, or third parties associated with the labor organization. Many of these causes of delinquency highlight the need for more, not less, detailed reporting. The inability to comply with the reporting obligations may be symptomatic of financial management problems, benign or otherwise, within the union. As discussed below, commenters generally agreed with the Department's assessment of why labor organizations are delinquent or deficient in filing the Form LM–3. Some commenters, however, disagreed with the efficacy of additional reporting as a means of detecting fraud or embezzlement. As discussed further below, the Department recognizes that the changes will not eliminate fraud or embezzlement. But the changes should increase the ability of union members, the Department, and the public to identify how the union's finances are being managed. This increased transparency, especially insofar as overdue accounts and major transactions (those valued at $5,000 or greater) are concerned, will increase the prospect that fraud will be uncovered and the fear of detection may deter individuals from engaging in the improper conduct in the first instance.

To implement this procedure and standards for revocation, the Department proposed to modify section 403.4 of its regulations, 29 CFR 403.4, and to amend the instructions to the Form LM–3 in order to fully apprise

filers of the procedure and standards. The Form LM–3 instructions will remain unchanged except for a new paragraph that notes that the privilege to file the Form LM–3 may be revoked under certain circumstances, and refers filers to the standards and procedures set forth in the Department's regulations (29 CFR 403.4).

Where there appear to be grounds for revoking a labor organization's privilege to file the Form LM–3, such as where the labor organization has failed to timely file the Form LM–3, or files a Form LM–3 that lacks material information,[20] the Department will conduct an investigation to confirm the facts relating to the delinquency or other possible ground for revocation. The depth of the investigation will depend upon the particular circumstances. For example, where OLMS has no record of receiving a timely Form LM–3, the investigation may be limited to confirming that the labor organization did not timely submit the report. In other circumstances, an investigation may be needed to review the labor organization's books, to review documents, and to interview subjects and obtain statements from individuals with knowledge about a labor organization's finances and their reporting to determine whether or not the deficiencies on the Form LM–3 are material.

If the Department finds grounds for revocation after the investigation, the Department will send the labor organization a notice of the proposed Form LM–3 revocation stating the reason for the proposed revocation and explaining that revocation, if ordered, will require the labor organization to file the more detailed annual financial report, Form LM–2.[21] The letter will also provide notice that the labor organization has the right to a hearing if it chooses to challenge the proposed revocation; and that the hearing will be limited to written submissions due within 30 days of the date of the notice. The submissions and any supporting facts and argument must be received by OLMS at the address provided in the notice within 30 days after the date of the letter proposing revocation. The letter will also advise that the labor organization's failure to timely respond within 30 days will waive such labor organization's opportunity to request a hearing and the proposed revocation shall take effect automatically unless the Secretary in his or her discretion determines otherwise.

In its written submission, the labor organization must present relevant facts and arguments that address whether: (1) The report was delinquent or deficient or other grounds for the proposed revocation exist; (2) whether the deficiency, if any, was material; (3) whether the circumstances concerning the delinquency or other grounds for the proposed revocation were caused by factors reasonably outside the control of the labor organization; and (4) any factors exist that mitigate against revocation. Factors reasonably outside the control of a labor organization could include, for example, natural disasters that destroyed the records necessary to complete a Form LM–3, or the death or serious illness of the labor organization's president or treasurer while the form was being prepared for filing. Mitigating factors could also include, for example, that the form was timely completed but was mailed to an incorrect address or an attachment was inadvertently omitted from the filing.

After review of the labor organization's submission, the Secretary (or her designee who will not have participated in the investigation) will issue a written determination, stating the reasons for the determination, and, as appropriate based on neutral criteria, informing the labor organization that it must file the Form LM–2 for such reporting periods as he or she finds appropriate. Where a labor organization has failed to timely respond to the notice of proposed revocation, the Secretary will notify the labor organization in writing that its privilege has been revoked (or in an exercise of his or her discretion that revocation is unnecessary). The determination by the Secretary shall be the Department's final agency action on the revocation.

The revocation of the Form LM–3 filing privilege will ordinarily only apply to the fiscal year for which the labor organization was delinquent or failed to file a properly completed amended report after notification of a material deficiency and the fiscal year during which the revocation determination is issued, but in no event will a labor organization be required to submit a Form LM–2 for any past fiscal year for which the labor organization already has properly and timely filed a Form LM–3. If the revocation is for a longer period of time, the Department's reasons will be included in its written determination. Labor organizations that are required to file a Form LM–2 because their Form LM–3 filing privilege has been revoked will not be required to submit the Form LM–2 electronically.

2. Discussion of Comments Received

A few commenters addressed the authority of the Secretary to make the proposed changes. One commenter noted that the Secretary has the statutory authority to revoke the simplified reporting privilege and doing so will promote greater transparency. The commenter also noted that the revocation procedure will act as an effective deterrent to deliberately inaccurate or late reporting of financial information. Others, however, argued that Congress intended revocation under section 208 to be limited to situations where the simplified report would not accurately reflect the finances of a small labor organization, *i.e.*, where filing the simplified form would permit the labor organization to circumvent or evade its reporting obligations. A suggested example of its appropriate use would be where a single labor organization, in effect, was formed as two separate labor organizations in order to decrease its annual receipts below the $250,000 filing threshold for the Form LM–2. The same commenters stated that the authority under section 208 was not intended to be used for individual or episodic violations. In its view, the only appropriate remedies for individual violations are already provided for under the LMRDA—civil and criminal enforcement. Another commenter argued that where conduct is culpable, it should be dealt with through criminal investigations and prosecutions.

The Department disagrees with this narrow reading of the Secretary's authority. Section 208 permits the Secretary to establish simplified forms for labor organizations where she ''finds by virtue of their size a detailed report would be unduly burdensome.'' Section 208 also authorizes the Secretary to revoke a labor organization's privilege to file such forms when the Secretary determines, after investigation, due notice, and an opportunity for a hearing, ''that the purposes of this section would be served [by revocation].'' Contrary to the view of these commenters, section 208 grants her express, unambiguous statutory authority to revoke the

[20] OLMS will notify a filer whose Form LM–3 is materially deficient by letter, advising in what respects the filing is deficient and providing a date by which the filer must submit a corrected Form LM–3. Ordinarily, the filer will be allowed not less than 30 days from the date of the letter to submit a corrected Form LM–3.

[21] The Department anticipates that the new rule will provide ample incentive for labor organizations to fulfill timely their Form LM–3 filing responsibilities. If the rule has that salutary effect, the number of unions potentially subject to revocation of their Form LM–3 privilege will be relatively small. Should this not be the case, available resources may limit the ability of the Department to pursue revocation in all cases where it may be warranted. In such instances, the Department will exercise, fairly and impartially, its enforcement discretion in deciding where revocation should be pursued.

privilege of a labor organization to file a simplified report. There is nothing in the text of the LMRDA or its legislative history to suggest that the Secretary's authority to revoke the privilege is somehow constrained by her separate grant of civil and criminal enforcement powers. The Department's primary method of enforcement to obtain a timely and complete report, a civil action seeking a court order that the labor organization file an adequate report, is a time-consuming process that permits the evasion of the reporting requirements to continue for lengthy periods, denying members the timely disclosure of this financial information, without which they are unable to properly oversee the operations of their labor organization and, where they believe appropriate, to timely change its leadership, policies, or both. Moreover, requiring unions that are delinquent or materially deficient in their reports to file the more detailed Form LM–2 will help identify situations demanding civil and criminal investigations and prosecutions. The revocation process is but one tool that the Department may utilize to ensure that labor organizations are complying with the LMRDA reporting requirements. Where conduct warrants criminal enforcement, the Department will use this complementary tool.

A few commenters took an alternative tack by stating that implicit in the authority to create a simplified financial report is the assumption that simplified reports adequately reveal a small labor organization's finances, or that small organizations are incapable of filing the same report as larger organizations, or both. They suggested limiting revocation to only those situations where a simplified report would not accurately reflect the finances of a small labor organization. While Congress clearly viewed simplified reports as potentially adequate for reporting the finances of small labor organizations, it left the Secretary to decide whether to permit some unions to file a simpler form. It is difficult to square the decision by Congress to leave the choice to the Secretary while, at the same time, hobbling her authority to revoke the authority where she deems it appropriate. Congress left it to the Secretary to determine what is ''unduly burdensome.'' And, where action (or inaction) of individuals, not a union's size, is the reason for the reporting deficiency, the argument that the Secretary is constrained by the language of section 208 loses any remaining force. Commenters have failed to provide any persuasive arguments in support of such a reading.

A few commenters suggested that the Department was exaggerating the problem, one stating that a phone call to the labor organization in question should be sufficient to remedy the problems, while other suggested that the Department should address the problem by providing compliance assistant to small unions so that they will understand their filing obligation. As most commenters appeared to recognize, however, it is hard to exaggerate the difficulties confronting the Department in obtaining timely and complete Form LM–3s from a substantial percentage of unions in this category. The problems persist despite the Department's robust compliance efforts to assist unions with their filing obligations.

Several labor organization commentators believed that increased disclosure was punitive. A commenter asserted that compliance does not appear to be the goal of this proposal, explaining its view that the proposal would impose extraordinary costs on labor organizations. (45) The Department disagrees with this assertion. Filing a delinquent or materially deficient report violates the labor organization's duty to provide accurate disclosure of its financial condition and operations. Such evasion of the reporting requirements may be a sign of more serious financial mismanagement. Increased transparency and disclosure will help labor organization members and the Department ascertain whether serious financial mismanagement is occurring. Revocation of a labor organization's simplified reporting privilege will further the purposes of the LMRDA, namely, ensuring that the organization accurately discloses its financial condition and operations.

Many commenters described the proposal as unnecessarily burdensome. Commenters stated that Form LM–3 filers do not keep track of data that is required on the Form LM–2. Specifically, one commenter believed that the Form LM–2 functional categories would pose a particular challenge for Form LM–3 filers. An additional commenter also noted that aggregation, itemization and categorization could pose a problem. This international labor organization commenter noted that from its experiences with filing Form LM–2 reports for Form LM–3 filers that had been placed in trusteeship, conversion of data to the Form LM–2 format had been difficult.[22]

The Department acknowledges that the Form LM–2 will prove more burdensome to complete than the Form LM–3, a fact that should provide incentive for an organization to file its Form LM–3 on time and without material deficiencies. At the same time, however, the Department believes that some commenters overstate the burden to those labor organizations that will be required to file the Form LM–2. The burden to a labor organization of filing a Form LM–2 is proportionate to the size of the labor organization. Form LM–2 requires additional information and specificity that is not captured by the Form LM–3. A labor organization that has had the Form LM–3 filing privilege revoked will have to assign receipts and disbursements into functional categories, a new task for those unions. However, due to the relatively small number of receipts and disbursements, assigning the receipts and disbursements to functional categories should not require a significant adjustment in the labor organization's recordkeeping systems. The burden imposed by requiring itemization of receipts and disbursements into functional categories is linked to the amount of receipts and disbursements that a labor organization has. A labor organization with less than $250,000 in annual receipts will have significantly fewer receipts and disbursements to itemize than a larger labor organization. And where the labor organization believes that it does not have voluntary resources to complete the form itself, it can turn to its parent or other affiliated unions for assistance or referral to third parties experienced in preparing the Form LM–2. Additionally, labor organizations that will file the Form LM–2 due to having their Form LM–3 filing privilege revoked are relieved of the requirement to file the Form LM–2 electronically, which may reduce the burden of converting files to a system that is compliant with the electronic form.

[22] As ''evidence'' of the burden, two commenters noted that the Form LM–2 is so difficult to complete that the Department, in light of the legal challenge to the 2003 rule, recognized that unions would need at least 18 months to prepare for filing the form. (As discussed in the text, the actual burden to an affected union under this aspect of today's rule will be much less demanding than for a typical Form LM–2 filer. The ''lead time'' for the submission of the Form LM–2s, as revised by the 2003 rule, was provided because of two factors: (1) The need for some unions to substantially revise sophisticated recordkeeping and accounting systems; and (2) the delay in the Department's development of software by which unions would electronically submit their Form LM–2s. Neither factor is in play under the instant rule.

The Department notes that currently situations exist where a Form LM–3 filer may be required to file a Form LM–2 with little notice. For example, a traditional Form LM–3 filer that received $230,000 in annual receipts in the previous year but nearing the end of its current fiscal year eclipses that total, and now has $260,000 in annual receipts must file a Form LM–2 for that year with little advance notice. Similarly, a traditional Form LM–3 filer that received $100,000 in annual receipts in the previous fiscal year but nearing the end of its current fiscal year sells an asset thus bringing its annual receipts over the $250,000 Form LM–2 threshold, would be required to file the Form LM–2 with little advance notice. Additionally, the Department has long required a Form LM–2 to be filed for a labor organization that has been placed in trusteeship without regard to the amount of its annual receipts. Depending on particular circumstances, a Form LM–2 could have to be filed shortly after the imposition of a trusteeship, even though but for the trusteeship, a Form LM–3 would have fulfilled the organization's annual financial reporting obligation. *See* 29 CFR 403.4 and 408.5.

Focusing on the Department's estimate of 96 revocations a year out of a much larger potential universe of delinquent filers, commenters questioned the Department's intention or ability to identify those labor organizations that will be required to file the Form LM 2. Some commenters suggest that the procedure invites, if not compels, arbitrary action by the Department. One commenter noted that nearly 80% of all 2006 Form LM–3 filers filed on time or within 30 days of their filing deadline. The commenter noted that over 2,000 Form LM–3 filers remain delinquent over 30 days after their filing deadline. Another commenter asserted that the proposal would require the Form LM–2 to be filed by less than one-tenth of one percent of all Form LM–3 filers, allowing the Department unbridled discretion in singling out those for sanction. Two commenters questioned what process the Department would utilize to determine which delinquent and deficient filers would have their Form LM–3 filing privilege revoked. One commenter requested the Department present clear, precise, and reasoned criteria for revocation. One commenter worried that the Department would revoke the Form LM–3 filing privilege for labor organizations that filed their Form LM–3 one day late.

Such fear is unfounded and, in any event, premature. As explained in the NPRM, 73 FR at 27370, the Department anticipates that the vast majority of situations where revocation occurs will be for delinquency or material deficiency. (*See* Regulatory Flexibility Analysis below; the Department there estimates that of the 96 cases per year in which the simplified reporting privilege will be revoked all but two will be for delinquency or deficiency.) The term ''other circumstances'' is necessarily broad to encompass situations that are contrary to the Act's disclosure provisions but not easily catalogued in advance. Moreover, the Department's actions are constrained by the language of section 208, which requires that revocation be limited to situations where it would serve the purposes of that section. The Department has established a procedure that ensures due process—notably no commenter has taken issue with the investigatory and decision making process. This process ensures fair and even-handed treatment. Moreover, any labor organization that believes it has been aggrieved by the Department's decision to revoke the Form LM–2 filing privilege could secure judicial review of the Department's decision.

The ''other circumstances'' provision will rarely be used. As the commenters noted, if a large labor organization divided itself into two separate labor organizations, while continuing to function as one entity, the labor organization would be evading the Form LM–2 reporting requirement. In such a situation, the labor organizations may be filing timely Form LM–3 reports, which may comply with the technical requirements of Form LM–3, but revocation would still be warranted. While revocation is appropriate in that instance, the commenters, have failed to make a convincing argument that the Department's statutory discretion should be limited by specifying particular situations where revocation may be appropriate. The Department cannot anticipate every situation where revocation would be appropriate and for this reason it retains the ''other circumstances'' language in the final rule.

Two commenters asserted that the examples of mitigating circumstances in the proposal, ''natural disasters'' and ''death or serious illness'' of the president or treasurer of the labor organization, indicated that the Department will allow mitigation only in the most extreme situations, inviting arbitrariness in singling out violators for the revocation sanction. (38, 40) The language in question does not require such inference. For example, the NPRM stated that ''[m]itigating factors could also include, for example, that the form was timely completed but was mailed to an incorrect address or an attachment was inadvertently omitted from the filing.'' 73 FR 27356. To alleviate this concern, however, the Department acknowledges that mitigating factors, including a labor organization officer's lack of recordkeeping or bookkeeping experience will be taken into account by the Department in deciding whether revocation is appropriate. However, where officers of a labor organization have deliberately obscured its financial condition and operations, the Secretary will exercise her statutory right to revoke the simplified filing privilege of the labor organization.

Two commenters expressed concern that the Secretary could impose the Form LM–2 filing requirement indefinitely. The revocation of the Form LM–3 filing privilege will ordinarily only apply to the fiscal year for which the labor organization was delinquent or filed a materially deficient report, and the fiscal year during which the revocation was issued. However, to the extent that a labor organization continues to fail to accurately disclose its financial conditions and operations despite the revocation, application of the revocation to additional fiscal years may be appropriate. Thus the duration of the revocation is limited by the Section 208 requirement that revocation further the purposes of the Act.

Labor organizations will receive notice of their delinquency well before the revocation process is invoked. Only after notification of the delinquency and voluntary cooperation has failed to resolve the delinquency will a revocation proceeding commence. Labor organizations will be notified that a consequence of failure to file a timely report or filing a report with material deficiencies may be revocation of their simplified reporting privilege. They will be so informed not less than 30 days before the revocation process is invoked. Under the final rule, labor organizations that file a delinquent or materially deficient Form LM–3 will be notified of their right to file a written submission contesting the proposed revocation. The notice also informs the labor organization that failure to file a written submission within 30 days will result in an automatic revocation of their simplified reporting privilege. The written submission must address four issues that should be readily ascertainable to a labor organization official: (1) The existence of a delinquency, material deficiency or other circumstances; (2) whether the deficiency, if any, was material; (3) whether a delinquency or other

circumstance for revocation was caused by factors reasonably outside the control of the labor organization; and (4) any mitigating factors. In light of the labor organization's prior notification of the delinquency and opportunity to voluntarily resolve the delinquency, 30 days is sufficient for a labor organization to prepare its response. The automatic revocation of the simplified reporting privilege for a labor organization that fails to contest the proposed revocation, much like a default judgment in a civil suit, is a reasonable response to the labor organization's continuing inattention to its filing obligations. Whether the privilege will be revoked will ultimately depend on the Secretary's determination of whether revocation is warranted, which is a fact-specific inquiry requiring evaluation of the circumstances of the delinquency, material deficiency or other grounds, and evidence presented by the labor organization.

Several commenters noted the possible consequences to a labor organization whose Form LM–3 filing privilege is revoked. One commenter stated that the need to file the more burdensome Form LM–2 would divert the labor organization from grievance handling and its other core business. By filing a timely Form LM–3 report without material deficiencies a labor organization can avoid any diversion of resources that may occur as a result of the revocation of the simplified filing privilege. One international labor organization worried that labor organization officers may resign should their organization's Form LM–3 privilege be revoked. Another international labor organization believed that if a local labor organization's Form LM–3 filing privilege were revoked the parent organization would move to place the local in trusteeship or merge it with another local organization. Revocation of the Form LM–3 filing privilege is the culmination of an investigation which may unearth underlying financial problems within a labor organization. The Department acknowledges these possible consequences. At the same time, such consequences are foreseeable and, depending on the particular circumstances, may be reasonable and appropriate actions. Where a union official believes that complying with his or her financial reporting obligation will interfere with the union's grievance handling or other responsibilities to its members, the revocation procedure will bring this to light, allowing members to weigh this factor in exercising their democratic right to elect or remove such officer. In the Department's view, there is no merit to the suggestion that filing an annual financial report is not within the union's ''core business.'' Labor organizations, including parent organizations, and individual officers, however, must ultimately decide what actions they deem appropriate in such situations.

One commenter argued that the definition of materiality presented in the NPRM set too low a threshold for material deficiency. The Department disagrees. As explained in the NPRM, the proposed definition of ''material'' was modeled on the standards of the Financial Accounting Standards Board (''FASB''), and the standard applied to corporations in *TSC Industries Inc.* v. *Northway Inc.,* 426 U.S. 438, 449 (1976) and tailored to apply to the unique circumstances of the LMRDA reporting requirements. The standard proposed in the NPRM was as follows: ''a deficiency is 'material' if in the light of surrounding circumstances, the inclusion or correction of the item in the report is such that it is probable that the judgment of a reasonable person relying upon the report would have been changed or influenced.'' 73 FR 27355. One commenter argued that the proposed standard is too low because it does not include language from the FASB regarding the ''magnitude'' of the deficiency and language utilized in *TSC Industries Inc.* v. *Northway Inc.* regarding the ''total mix'' of information available. The Department disagrees with this assessment. The proposed standard requires that a deficiency be judged ''in the light of surrounding circumstances'' which inherently involves consideration of the magnitude of the deficiency in light of the total information available to determine whether ''a reasonable person relying upon the report would have been changed or influenced.''

Some commenters argued that requiring a labor organization to file an opposition to a notice of proposed revocation within 30 days was insufficient and believed that 60 days would be appropriate. Two commenters suggested that the Department implement an alternate compliance system modeled on Federal lobbying disclosure laws. Under the Federal lobbying disclosure system, a lobbyist is notified in writing of his or her noncompliance and then given 60 days to provide an adequate response. If an adequate response is not provided within 60 days the matter is referred to the United States Attorney for the District of Columbia. 2 U.S.C. 1605(a)(8). The Department disagrees with these suggestions. The Department already contacts delinquent Form LM–3 filers to encourage them to fulfill their reporting obligations. Currently if a labor organization's annual report is not received timely, the Department sends the labor organization a delinquency notice letter. If the annual financial report is still not submitted, the Department District Office in whose jurisdiction the labor organization is located will open a delinquent report case and seek to obtain the report. The Department will continue its practice of contacting delinquent filers in order to promote the timely remedying of their delinquency. Only when delinquent filers have failed to timely remedy their delinquency would revocation of the Form LM–3 filing privilege be utilized.

Another commenter noted that filers who could not timely file a Form LM–3 would not likely be able to prepare a written response to a notice of proposed revocation with the 30 days allotted for this purpose. For this reason, the commenter stated that it would be unfair in those situations to, in effect, impose a default judgment. The Department cannot agree with this point of view. As discussed above, the Department currently provides reminders to labor organizations about the need to timely file a Form LM–3; it will continue to provide such ''early warnings'' about the need to timely and completely file the required reports, now coupled with a reminder that failure to do so may result in having to file the more detailed Form LM–2. Where, despite these reminders, a labor organization fails to timely submit its position within 30 days of the revocation notice, the entry of a ''default judgment'' seems entirely appropriate. The Department recognizes that there may be some situations in which a labor organization, for good cause, may be unable to submit a complete statement of position on the proposed revocation within the 30-day timeframe. Where good cause is shown, the Department will approve a timely request for a short extension of time for submission of the union's statement.

One commenter suggested that an exception should be crafted to the Form LM–3 revocation procedures for situations where an international union has assumed responsibility for assuring that locals file LM–3s. The commenter noted that once the Department has notified the international labor organization that its affiliate was delinquent in its reporting obligation, the international would then assist and promote the filing of a delinquent Form LM–3. Another commenter noted that compliance assistance programs have

been effective within the Department of Labor, citing EBSA's ''Delinquent Filer Voluntary Compliance Program.''

The Department promotes the importance of voluntary compliance. It recognizes the efforts that many international labor organizations have made to remedy their affiliated local labor organizations' delinquent reporting. Their efforts to assist and promote timely compliance by their affiliates are a responsible response to a significant problem. Approximately 40 parent national and international labor organizations regularly assist the Department with obtaining delinquent annual disclosure reports from their affiliated organizations. The Department periodically sends each parent organization a list of the subordinate affiliates that have failed to file reports for either of the two most recent fiscal years. An accompanying letter requests that the parent organization assist in obtaining the delinquent reports and in providing the Department with updated contact information, for the labor organization officials responsible for filing them.

The revocation procedure is to be used after attempts to secure timely voluntary compliance, through a program or otherwise, have proven unsuccessful. The procedure established in the final rule is designed to address the situations where despite the best efforts of the Department and parent labor organizations, a labor organization fails to file its required Form LM–3. Whatever its reasons for non-compliance, the time has come to determine whether revocation of the privilege is warranted. The officials of the non-complying labor organization may be trying to obscure the financial condition and operations of the organization in order to hide more serious financial problems, including criminal activity such as embezzlement. The additional information provided by the Form LM–2 is a measured and proportionate remedy to ensure accurate disclosure of the financial condition and operations of a labor organization.

IV. Regulatory Procedures

Executive Order 12866

This final rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. Based on a preliminary analysis of the data the rule is not likely to have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. As a result, a full economic impact and cost/benefit analysis is not required for the rule under Section 6(a)(3) of the Order. However, because of its importance to the public the rule was treated as a significant regulatory action and was reviewed by the Office of Management and Budget. Because this final rule makes revisions to information collection requirements, our discussion of its impact can be found in the Paperwork Reduction Act and Final Regulatory Flexibility Act sections that follow.

Unfunded Mandates Reform

For purposes of the Unfunded Mandates Reform Act of 1995, this final rule does not include a federal mandate that might result in increased expenditures by state, local, and tribal governments, or increased expenditures by the private sector of more than $100 million in any one year, adjusted by the rate of inflation between 1995 and 2008 ($130.38 million) per 2 U.S.C. 1532(a).

Executive Order 13132 (Federalism)

The Department has reviewed this final rule in accordance with Executive Order 13132 regarding federalism and has determined that the final rule does not have federalism implications. Because the economic effects under the rule will not be substantial for the reasons noted above and because the rule has no direct effect on states or their relationship to the federal government, the rule 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.''

Paperwork Reduction Act

This statement is prepared in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501. As discussed in the preamble, this rule implements an information collection that meets the requirements of the PRA in that: (1) The information collection has practical utility to labor organizations, their members, other members of the public, and the Department; (2) the rule does not require the collection of information that is duplicative of other reasonably accessible information; (3) the provisions reduce to the extent practicable and appropriate the burden on labor organizations that must provide the information, including small labor organizations; (4) the form, instructions, and explanatory information in the preamble are written in plain language that will be understandable by reporting labor organizations; (5) the disclosure requirements are implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of labor organizations that must comply with them; (6) this preamble informs labor organizations of the reasons that the information will be collected, the way in which it will be used, the Department's estimate of the average burden of compliance, the fact that reporting is mandatory, the fact that all information collected will be made public, and the fact that they need not respond unless the form displays a currently valid OMB control number; (7) the Department has explained its plans for the efficient and effective management and use of the information to be collected, to enhance its utility to the Department and the public; (8) the Department has explained why the method of collecting information is ''appropriate to the purpose for which the information is to be collected''; and (9) the changes implemented by this rule make extensive, appropriate use of information technology ''to reduce burden and improve data quality, agency efficiency and responsiveness to the public.'' 5 CFR 1320.9; *see also* 44 U.S.C. 3506(c).

A. Issues Raised in Public Comments Related to the Department's Cost Estimates

As the Department has done with the final rule, the NPRM employed the cost conclusions derived in the PRA analysis in order to assess burdens to small labor organizations for the purposes of the Regulatory Flexibility Act (''RFA'') analysis. As a result, for the most part, the comments received by the Department on its costs analysis did not indicate whether they were specifically addressing the PRA analysis, the RFA, or both. Because of the interrelationship between the analyses, and because the RFA specifically requires the Department to address comments related to its burden analysis,[23] the Department has construed all comments received regarding its assessment of costs to the regulated community as comments related to both the PRA and the RFA analysis. Therefore, the introduction to the PRA analysis below is a complete recitation of the

[23] The RFA requires that an agency's final regulatory flexibility analysis include ''a summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments.'' 5 U.S.C. 604(a)(2).

significant issues raised by the comments, the Department's response thereto, and changes made to both the PRA and RFA analyses as a result of those comments.

A number of commenters expressed concern that the Department used as the foundation for the NPRM's burden analysis the Department's estimates of compliance costs associated with revisions made to the LM–2 in 2003, instead of collecting data from a survey of labor organizations' actual compliance costs realized as a result of the earlier revision. Commenters questioned whether the Department could accurately estimate the current Form LM–2 and new Form LM–2 burdens using estimates that pre-dated the current Form LM–2. Although actual data on burden was not available in 2003, labor organizations have been filing the revised Form LM–2 for three years, and several commenters suggested that the Department should have sought information regarding compliance burdens from the regulated community rather than rely on those estimates as a baseline for the burden analysis in this rule.

Several labor organizations provided specific data regarding their own compliance costs associated with that revision. One commenter indicated that his labor organization spent approximately $100,000 in 2004, its first reporting year, on staff time, outside accounting services, and new software to comply with the data gathering requirements of the current Form LM–2, approximately $75,000 more than the Department estimated in the 2003 rule. The same labor organization asserted that it cost an additional $100,000 each year to comply with the recordkeeping and reporting requirements of the 2003 rule, approximately $83,000 more than the Department estimated in the 2003 rule. Two other LM–2 filers estimated that they spent over $120,000 a year to comply with the requirements of the current LM–2 in a timely manner. Based on these estimates, the commenters indicate that the Department has underestimated the total burden by at least 50 percent. Another commenter estimated that the Department had underestimated the total burden by at least a factor of three. Finally, one commenter, citing an unpublished analysis of the increase in the number of pages submitted as part of the LM–2 filing, noted that for labor organizations with at least $50 million in annual revenue, their submissions increased in size an average of 94 percent for the three years of filing experience after the 2003 revisions, suggesting that the Department underestimated the costs to labor organizations associated with complying with those revisions. These commenters and others indicate that actual compliance experience, rather than the Department's estimates, could be used to inform and calculate the Form LM–2 burden estimates associated with the revisions in this rule.

After considering the comments regarding actual costs associated with the LM–2 revision in 2003, the Department has decided to retain the approach adopted in the NPRM and use the costs estimates developed in 2003 as a baseline for the costs associated with this revision. The cost estimates developed in 2003 were the result of a comprehensive and detailed empirical analysis of costs to *all* labor organizations affected by the change, not just the costs incurred by the largest labor organizations. Certainly, some labor organizations will spend more time on recordkeeping and reporting than others, as shown in the examples offered by the commenters. For example, a labor organization with $2,500,000 in annual receipts will have many times more itemized receipts to report than a labor organization with $250,000 in annual receipts. It is likely, as noted above, that there are multiple labor organizations that spend $100,000 or more on recordkeeping and reporting. However, just over half of LM–2 filers have more than $1 million in annual receipts. Those LM–2 filers with less than $1 million in receipts will spend significantly less on recordkeeping and reporting than the larger labor organizations, those with millions in receipts. To account for these size differences, the Department used weighted average burden estimates to ensure that the cost estimates represented the experience of all labor organization filers, and that large labor organizations are not over represented and small labor organizations are not underrepresented in the final burden estimate.

For a number of reasons, the Department has confidence in its 2003 estimates of compliance burdens as a fair and realistic representation of costs to labor organizations for compliance with the previous Form LM–2 revisions. The 2003 estimates were based on the Department's detailed review of the recordkeeping and reporting requirements of the Form LM–2. That review incorporated the expertise of investigators with first-hand knowledge of union financial reporting. In addition, the burden estimates used in 2003 were based on the Department's review of extensive public comments, which included a survey of affected labor organizations submitted by the AFL–CIO as part of its 2003 comment. Where appropriate, the AFL–CIO's survey data were incorporated into the 2003 analysis to improve those burden estimates. In response to public comments in 2003, the Department improved its methodology and, as a result, its overall estimate of burden hours was ultimately increased from 15.25 hours to 292.00 hours. Moreover, to further improve the 2003 burden estimates, the Department conducted internal time trials to determine the amount of time needed to change the accounting structure, document records, and fill out the Form LM–2. Finally, legal challenges by the AFL–CIO to the Department's methodology underlying and conclusions regarding its burden estimates in 2003 were rejected by the court in *American Federation of Labor and Congress of Industrial Organizations* v. *Chao*, 298 F.Supp.2d 104, 121–126 (D.D.C. 2004), *aff'd* 409 F.3d 377 (D.C. Cir. 2005) (*AFL–CIO* v. *Chao*). In the Department's view, the collection of data regarding compliance costs from a survey of affected labor organizations would not result in a significant improvement to the Department's analysis of costs associated with the prior Form LM–2 revisions, and the use of a survey tool would have injected into the analysis substantial issues regarding appropriate respondent sampling, verification of reported respondent costs, and comparability of results to prior estimates, significantly limiting the utility of such an approach.

The majority of comments submitted regarding the Department's burden analysis indicated that the analysis of the costs to implement the new receipts schedule was flawed and significantly underestimated the recordkeeping and reporting burden. In particular, the commenters were concerned that basing the number of itemizations on the current Schedule 14 (''Other Receipts'') grossly underestimated the number of itemized receipts on the other receipt itemization schedules. The commenters pointed out that the current schedule 14 does not include the major sources of union revenues, and that most itemized receipts will be reported on the new dues, per capita tax and investment schedules. As one example, a labor organization stated that it receives more than $5,000 in annual withheld dues from more than 10,000 employers, and that the schedule will require it to enter a line item for each of those 10,000 employers. A certified public accounting firm noted that depending on a labor organization's investment

activities, the potential volume of itemized transactions is tremendous. An international labor organization estimated that it would spend 120 to 240 hours per year putting together its investment records to comply with the reporting requirements. Another international labor organization noted that it receives over $5,000 from over 750 affiliates. This labor organization estimated that the additional itemization schedules will add 1,000 pages to its Form LM–2. An accountant with experience in filling out LM–2s believed that the reporting time required is 5 to 10 times what was estimated in the NPRM, employer contributions could take 20 to 25 hours alone.

As discussed elsewhere in this preamble, the Department has created exceptions in the final rule to itemized receipt reporting that responds to these and other commenters, and will significantly reduce the recordkeeping and reporting burden proposed in the NPRM, and the Department has revised its burden analysis accordingly. First, as discussed above, dues and agency fees, which make up approximately 70% of all receipts, received directly from an employer need not be itemized by transaction. The labor organization need only report the aggregate dues and agency fees received from each employer over the year. As a result, however, it is axiomatic that those labor organizations that receive payments of dues and agency fees from many employers will have a greater reporting responsibility on this schedule than those labor organizations that receive dues and agency fees from relatively fewer employers. Second, as discussed above, investment transactions made over a registered market exchange need not be itemized. Finally, as discussed above, per capita taxes received directly from an affiliate should not be itemized by transaction. The labor organization need only report the aggregate per capita taxes received from each affiliate over the year. These exceptions should alleviate many of the concerns raised by the commenters and significantly reduce the overall burden. In addition to these new itemization exceptions and as discussed further below, the Department has improved the burden estimates associated with the new receipts schedules by using the aggregates currently reported on Summary Schedule B, which were divided by $5,000 to estimate the number of itemized receipts per schedule.

Regarding reporting obligations for disbursements to officers and employees, a number of commenters stated that they could not breakdown benefits by officer and employee, nor could they breakdown indirect disbursements to officers and employees for travel and lodging, without extensive changes to their recordkeeping system. A number of labor organizations explained that they frequently make single credit card payments that cover the hotel and transportation expenses of more than one officer or employee. As a result, several labor organizations estimated that they would need between 40 and 120 hours per year to comply with the new officer and employee reporting requirements.

In response to concerns raised regarding the reporting of officer benefits, the Department reiterates, as noted in the NPRM, that there should be no increased recordkeeping burden associated with the report of officer benefits because labor organizations are currently required to track each officer's benefits to complete the IRS Form 990.

In response to concerns raised regarding the reporting of indirect disbursements to officers and employees, the Department's final rule has created an exception for certain indirect disbursements to decrease the overall burden, and has improved the methodology to improve indirect disbursement burden estimates. To reduce the overall burden, the Department will now allow labor organizations to distribute indirect disbursements equally between multiple officers and employees if they meet the exception discussed elsewhere in this preamble. In the NPRM, the Department accounted for the increase burden for indirect disbursements by applying the same burden to this change as it would apply to a new schedule in 2003, and estimated that, on average, each officer and employee will have one reportable indirect disbursement. As explained further below, to improve the burden estimates for indirect disbursements for travel and lodging, the Department adopted a new methodology for calculating the number of reportable indirect disbursements. The number of indirect disbursements is now based on the number of disbursements currently reported on the LM–2. These changes should reduce the burden hours and significantly improve the overall burden estimates.

Several commenters stated the overall cost conclusions reached in the NPRM were flawed because the salary estimates employed in the calculations were artificially low. First, some asserted that the Department incorrectly used general Bureau of Labor Statistics (''BLS'') salary data rather than labor organization-specific data. Second, some asserted that the Department incorrectly used an average salary for an in-house and outside accountant when labor organizations must only use outside accountants in order to comply with their fiduciary duties. Some commenters noted that outside accountants frequently charge $100 or more an hour. Finally, some commenters noted that the salary estimates did not account for fringe benefits, which constitute approximately 30% of total compensation costs.

The Department has improved the compensation cost estimates in response to these comments. First, instead of employing BLS salary data, the Department has estimated the average salary of the president and secretary using the e.Lors database and a stratified random sample. Second, unlike the NPRM, the Department did not average the in-house and outside accountants' and bookkeepers' salaries, and instead derived them exclusively from the BLS survey. Finally, based on BLS data and explained further below, all of the salaries were increased by 30.2% to account for the costs of benefits, resulting in a more accurate total compensation cost for each employee identified. The same method was used to estimate the LM–3 compensation costs, and these changes will improve the accuracy of the cost estimates for the final rule.

Given the costs associated with implementation, some commenters questioned whether the benefits of this final rule outweigh the costs. The Department has not conducted a formal cost/benefit analysis of this rule. However, as outlined above, labor organization members will benefit from greater transparency and accountability. For the first time, members will have a nearly complete accounting of all receipts and disbursements. These benefits are difficult to quantify, but we believe members have benefited greatly from the 2003 revisions to the Form LM–2. The revisions adopted in this final rule and those adopted in the 2003 final rule have created the most functional and informative Form LM–2 in Department history.

Regarding the LM–3 revocation burden analysis, several commenters suggested that the analysis was flawed in many aspects. First, some commenters questioned the means by which the Department estimated that 96 LM–3 filers will have their privilege revoked. Second, some commenters argued that the Department failed to fully account for the reporting burden by not including the computer hardware and software costs in the analysis. Third, some commenters argued that the Department did not use actual data from

Form LM–2 reports to estimate the total burden hours and costs, and instead of using actual data available on the e.LORS database, the Department merely reduced the total LM–2 burden hours by 69% and used the Tier I LM–2 filers' salary data.[24] Critics suggested that such a blanket reduction does not take into account the time needed to review the LM–2 rules and requirements, review each disbursement and receipt, record the necessary information, place the disbursements into the appropriate functional categories, and prepare the form.

The Department has revised its methodology to determine the LM–3 revocation burden and cost. As explained further below, where possible, the Department has based the LM–3 revocation burden on actual data taken from LM–3s. The information that could not be drawn from the LM–3s was estimated from LM–2 filers with between $250,000 and $500,000 in annual receipts. These additions will improve both the burden and cost estimates.

In sum, based upon careful consideration of all the comments regarding the burden analysis in the NPRM, the Department has made adjustments to its quantitative methods and therefore to its burden estimates. As reflected in the analysis that follows, the Department has, among other things:

- Calculated salary data for labor organizations presidents and treasurers from LM–2 data using a proportionate stratified random sample;
- Revised the compensation cost for each individual, accountant, president, treasurer, etc., by increasing wages by 30.2% to account for total compensation, including compensation received in the form of benefits;
- Employed publicly available data from the Department's e.LORS database and the Federal Mediation and Conciliation Service to determine the number of employers that will make dues payments;
- Employed data from the Department's e.LORS database to determine the number of labor organizations that will pay and receive per capita taxes;
- Employed the aggregate receipts reported on Summary Schedule B to estimate the number of itemized receipts on Schedules 16–22;
- Calculated the number of indirect disbursements to officers and employees for lodging or travel by employing the total number of disbursements for official business currently reported on the LM–2;
- Replaced the overall percentage reduction for computing the burden associated with LM–3 revocation with discrete analyses of the burden for each schedule, summary schedule, and item using the same assumptions as used in the LM–2 analysis; and
- Where possible, employed LM–3 data to estimate the number of itemized receipts and disbursements, and if LM–3 data was not available, employing Tier I LM–2 data.

As a result of these improvements to the Department's methodological approach, the estimates of costs to labor organizations for compliance with this rule have been revised upward.[25] Those figures are reported in the analyses that follow. Pursuant to the PRA, the information collection requirements contained in this final rule were submitted to OMB, and received approval on January 8, 2009, under an OMB control number 1215–0188, which will expire on September 30, 2011. The Form LM–2 and its instructions, which are modified to reflect the new filing criteria, are published as an appendix to this final rule. The instructions to the Form LM–3, which have been modified to reflect the new revocation procedure, are also published as an appendix to this final rule.

B. Summary of the Rule: Need and Economic Impact

This final rule has improved the usefulness and accessibility of information to members of labor organizations subject to the LMRDA. The LMRDA reporting provisions were devised to protect the basic rights of labor organization members and to guarantee the democratic procedures and financial integrity of labor organizations. The 1959 Senate report on the version of the bill later enacted as the LMRDA stated clearly that ''[t]he members who are the real owners of the money and property of the organization are entitled to a full accounting of all transactions involving their property.'' S. Rep. No. 187 (1959), at 8, *reprinted in 1 NLRB Legislative History of the Labor-Management Reporting and Disclosure Act of 1959,* at 404. A full accounting included ''full reporting and public disclosure of union internal processes [and] financial operations.'' *Id.* at 2.

As labor organizations have become more multifaceted and have created hybrid structures for their various activities, the form used to report financial information with respect to these activities had until recently remained relatively unchanged and had become a barrier to the complete and transparent reporting of labor organizations' financial information intended by the LMRDA. By providing members of labor organizations with more complete, understandable information about their labor organizations' financial transactions, investments, and solvency, this final rule will put them in a much better position than they are today to protect their personal financial interests and to exercise their rights of self-governance. The information collection achieved by this rule is integral to this purpose. The paperwork requirements associated with the final rule are necessary to enable workers to be responsible, informed, and effective participants in the governance of their labor organizations; discourage embezzlement and financial mismanagement; prevent the circumvention or evasion of the statutory reporting requirements; and strengthen the effective and efficient enforcement of the LMRDA by the Department.

The Department's NPRM in this rulemaking contained an initial PRA analysis, which was also submitted to OMB. The initial PRA analysis was based largely on the PRA analysis prepared by the Department in connection with its 2003 final rule that substantially revised the Form LM–2.[26] The PRA analysis employed in 2003 was approved by the Office of Management and Budget. Based upon careful consideration of comments received regarding the Department's estimate of costs in the NPRM, the Department made methodological revisions which resulted in adjustments to its burden estimates in this final rule. The costs to the Department also were adjusted. Federal annualized costs are discussed following the consideration of the burden on the reporting labor organizations.

Based upon the analysis presented below, the Department estimates that the total first year burden to comply

[24] As indicated in the NPRM, the Department's analysis has segregated labor organizations into three ''tiers,'' based on size of annual receipts. Tier I labor organizations are those with annual receipts between $250,000 and $499,999; Tier II labor organizations are those with annual receipts between $500,000 and $6.5 million; and Tier III labor organizations are those with annual receipts over $6.5 million.

[25] This upward revision was modest, and occurred despite the fact that overall compliance costs to labor organizations were reduced as a result of changes made in the final rule, in particular, to reporting requirements for the two largest receipt itemization schedules, dues and per capita taxes. These modifications from the NPRM realized a reduction in overall compliance costs for covered labor organizations, but the methodological improvements in the cost analysis offset those savings.

[26] The PRA analysis for the revisions to Form LM–2 in 2003 is set forth at 68 FR 58436–42.

with revised Form LM–2 will be 685,924 hours for all covered labor organizations. The total first year compliance costs associated with this burden is estimated to be $22,143,880 for all covered labor organizations. Both the burden hours and the compliance costs associated with Form LM–2 decline in subsequent years. The Department estimates that the total burden averaged over the first three years for all covered labor organizations to comply with the Form LM–2 to be 274,539 hours per year. The total compliance costs associated with this burden averaged over the first three years are estimated to be $8,863,038 for all covered labor organizations.[27]

C. Background on Current Form LM–2

Every labor organization whose total annual receipts are $250,000 or more and those organizations that are in trusteeship must currently file an annual financial report using the current Form LM–2, Labor Organization Annual Report, within 90 days after the end of the labor organization's fiscal year, to disclose its financial condition and operations for the preceding fiscal year. The current Form LM–2 is also used by covered labor organizations with total annual receipts of $250,000 or more to file a terminal report upon losing their identity by merger, consolidation, or other reason.

The current Form LM–2 consists of 21 questions that identify the labor organization and provide basic information (in primarily a yes/no format); a statement of 11 financial items on different assets and liabilities; a statement of receipts and disbursements; and 20 supporting schedules. The information that is reported includes: whether the labor organization has any trusts; whether the labor organization has a political action committee; whether the labor organization discovered any loss or shortage of funds; the number of members; rates of dues and fees; the dollar amount for seven asset categories, such as accounts receivable, cash, and investments; the dollar amount for four liability categories, such as accounts payable and mortgages payable; the dollar amount for 13 categories of receipts such as dues and interest; and the dollar amount for 16 categories of disbursements such as payments to officers and repayment of loans obtained. Four of the supporting schedules include a detailed itemization of loans receivable and payable and the sale and purchase of investments and fixed assets. There are also 10 supporting schedules for receipts and disbursements that provide members of labor organizations with more detailed information by general groupings or bookkeeping categories to identify their purpose. Labor organizations are required to track their receipts and disbursements in order to correctly group them into the categories on the current form.

The Department also has developed an electronic reporting system for labor organizations, e.LORS, which uses information technology to perform some of the administrative functions for the current forms. The objectives of the e.LORS system include the electronic filing of current Forms LM–2, LM–3, and LM–4, as well as other LMRDA disclosure documents; disclosure of reports via a searchable Internet database; improving the accuracy, completeness and timeliness of reports; and creating efficiency gains in the reporting system. Effective use of the system reduces the burden on reporting organizations, provides increased information to members of labor organizations, and enhances LMRDA enforcement by OLMS. The OLMS Online Public Disclosure site is available for public use at *http://www.unionreports.gov.* The site contains a copy of each labor organization's annual financial report for reporting year 2000 and thereafter as well as an indexed computer database of the information in each report.

Filing labor organizations have several advantages with the current electronic filing system. With e.LORS, information from previously filed reports and officer or employee information can be directly imported into Form LM–2. Not only is entry of the information eased, the software also makes mathematical calculations and checks for errors or discrepancies.

D. Overview of Changes to Form LM–2

The revised Form LM–2 includes: the same number of questions (21) as the current form that identify the labor organization and provide basic information (in the same general yes/no format); the same (11) financial items on assets and liabilities in Statement A; an updated Statement B that asks for information in the same categories of receipts (13) as the current Form LM–2 and ten additional supporting schedules (for a total of 23 instead of 13).

Under this final rule, several of the current supporting schedules will change. The schedules for ''Sale of Investments and Fixed Assets'' and ''Purchase of Investments and Fixed Assets'' will be modified by the inclusion of the name of the party transacting with the labor organization in the purchase or sale. The schedule for ''Benefits'' will be modified and the disbursements for benefits to labor organization officers and employees will be reported in the schedules for disbursements to officers and employees.

Under the final rule, the Form LM–2 will be revised to require labor organizations to individually identify receipts within supporting schedules for all of the current categories of receipts.

E. Methodology for the Burden Estimates

As an initial matter, it should be noted, as was noted in the NPRM, that some of the numbers included in both this PRA analysis and the preceding regulatory flexibility analysis will not add perfectly due to rounding.

In reaching its estimates, the Department considered both the one time and recurring costs associated with the final rule. Separate estimates are included for the initial year of implementation as well as the second and third years. For filers, the Department included separate estimates, based on the relative size of labor organizations as measured by the amount of their annual receipts. The size of a labor organization, as measured by the amount of its annual receipts, will affect the burden on reporting labor organizations. For example, larger labor organizations have more receipts and disbursements to itemize and more employees who have to estimate their time allocation.

In 2006, there were approximately 4,571 labor organizations that were required to file Form LM–2 reports under the LMRDA (approximately 19.11 percent of all labor organizations covered by the LMRDA).[28] Although these estimates may not be predictive of the exact number of labor organizations that will be impacted by this rule in the future, the Department believes these estimates to be sound and derived from the best available information.

The Department's estimates include costs incurred by the labor organization for both labor and equipment. The labor costs reflect the Department's assumption that the labor organizations will rely upon the services of some or

[27] The compliance costs for all covered labor organizations for the first year, and the compliance costs averaged over the first three years—$22.14 million and $8.86 million, respectively—are well below the $100,000,000 threshold that would make this rule economically significant under Executive Order 12866. Therefore, as noted above, this rule is not an ''economically significant'' regulatory action under section 3(f)(1) of Executive Order 12866.

[28] The Department has updated these figures from the NPRM, which relied on 205 LM–2 reports.

all of the following positions (either internal or external staff, including the labor organization's president, secretary-treasurer, accountant, bookkeeper, and computer programmer) and the compensation costs for these positions, as measured by wage rates and employer costs published by the Bureau of Labor Statistics or derived from data reported in e.LORS.

The Department also made assumptions relating to the amount of time that particular tasks or activities would take. The activities occur during the distinct ''operational'' phases of the rule: first, tasks associated with modifying bookkeeping and accounting practices, including the modification or purchase of software, to capture data needed to prepare the required reports; second, tasks associated with recordkeeping; and third, tasks associated with sending or exporting the data in an electronic format that can be processed by the Department's import software. Since the analysis is designed to provide estimates for a ''representative'' labor organization the Department's estimates largely reflect weighted averages. Where an estimate depends upon the number of labor organizations subject to the LMRDA or included in one of the tier groups, the Department has relied upon data in the e.LORS system (for the years stated for each example in the text or tables).

The following methodology and assumptions underlie the Department's burden estimates:

- The size of a labor organization, as measured by the amount of its annual receipts, will affect the burden on reporting labor organizations. Larger labor organizations have more receipts and disbursements to itemize and more employees who have to estimate their time allocation. Three tiers, based on annual receipts, have been constructed to differentiate the burdens among Form LM–2 filers.
- A labor organization's use of computer technology, or not, to maintain its financial accounts and prepare annual financial reports under the current rule, will affect the burden on reporting labor organizations. Although few Form LM–2 filers do not have computers, the larger the labor organization the greater likelihood that it will be using a specialized accounting program instead of commercial-off-the-shelf accounting software.
- Relative burden will correspond to the following predictable stages: review of the rule, instructions, and forms; adjustments to accounting software and computer hardware; installation, testing, and review of the Department's reporting software; changing accounting structures and developing, testing, reviewing, and documenting accounting software queries as well as designing query reports; training officers and employees involved in bookkeeping and accounting functions; training officers and employees to maintain information relating to transactions and estimating the amount of time they expend in prescribed categories; the actual recordkeeping of data under the revised procedures associated with itemizing receipts and disbursements and allocating them by functional categories; preparing a download methodology to either submit electronic reports using ''cut and paste'' methods or the import/export technology allowing for a more automated transfer of data to the Department; the development, testing, and review of any translator software that may be required between a labor organization's accounting software and the Department's reporting software; and completing a continuing hardship exemption request if necessary.
- Burden can be categorized as recurring or non-recurring, with the latter primarily associated with the initial implementation stages. Recordkeeping burden, as distinct from reporting burden, will predominate during the first months of implementation.
- Burden can be usefully reported as an overall total for all filers in terms of hours and cost. This burden, for most purposes, can be differentiated for each individual form. The Federal burden cannot be reasonably estimated by form.
- The estimated burden associated with the current Form LM–2 and Form LM–3 is the appropriate baseline for estimating the burden and cost associated with the final rule.

F. Baseline Adjustments: Current Form LM–2

Prior to the 2003 revision, the Department assumed that 5,038 local labor organizations would take 200 hours and 141 national and international labor organizations would take 1,500 hours to collect and report their information on the current Form LM–2 for a weighted average of approximately 240.0 hours for each of the 5,179 respondents. In addition, the Department assumed at that time that Form LM–2 filers would take an average 24.0 hours for accounting, 16.0 hours for programming, 8.0 hours for legal review, and 4.0 hours for consulting assistance to complete the current form for an average total burden of 292.0 hours per respondent. Further, the Department previously estimated that 160.0 hours of the total is for recordkeeping burden and 132.0 hours is for reporting burden. In 2003, the Department estimated that on average, labor organizations would spend 536.0 hours to comply with the recordkeeping and reporting requirements.

In 2003 the Department estimated that the average annual cost of complying with the current Form LM–2 recordkeeping and reporting requirements per respondent would be $24,271. The total annual cost for all respondents (based on the more recent estimate of 4,452 reporting labor organizations rather than the 5,038 estimate used in 2003) is estimated to be $116.0 million for the current Form LM–2.

G. Hours To Complete and File Form LM–2: Recurring and Nonrecurring Reporting and Recordkeeping

To estimate the burden hours and costs for revisions to Form LM–2, the Department, as it did in connection with the 2003 rule, divided the Form LM–2 filers into three groups or tiers, based on the amount of the labor organizations' annual receipts. As discussed, in 2006 there were 4,571 such filers. In Tier I, the Department estimates there are 1,325 labor organizations with annual receipts from $250,000 to $499,999.99. The Department assumes that labor organizations within this tier probably use some type of commercial off-the-shelf accounting software program and will most likely use the ''cut and paste'' feature of the reporting software (*see* Table 3). In Tier II, the Department estimates there are 3,194 labor organizations with annual receipts from $500,000 to $49.9 million. The Department assumes that labor organizations within this tier most likely use some type of commercial off-the-shelf accounting software program and will use all of the electronic filing features of the reporting software. *Id.* Finally, in Tier III, the Department estimates there are 52 labor organizations with annual receipts of $50.0 million or more. Id. The Department assumes that labor organizations within this tier most likely will use some type of specialized accounting software program and also will use all of the electronic filing features of the reporting software.

For each of the three tiers, the Department estimated burden hours for the additional nonrecurring (first year) recordkeeping and reporting requirements, the additional recurring recordkeeping and reporting burden hours, and a three-year annual average for the additional nonrecurring and recurring burden hours associated with the final rule.

The final rule will revise Form LM–2 to improve financial disclosure and clarity within categories of receipts and disbursements. Under the final rule, receipts will have to be disclosed in the same manner that disbursements are currently disclosed and certain disbursements (*e.g.*, benefit payments, travel reimbursements, and transactions involving investment and fixed assets) will be reported in greater detail. To accomplish this result, additional schedules will be required, which will add to the burden associated with each Form LM–2 filed.

For this analysis the Department has used an approach that largely replicates the approach used in 2003, *i.e.*, estimating the burden and costs by the size of labor organizations as measured by the amount of their annual receipts. However, the current approach differs somewhat from the 2003 approach. Since the basic information required on the new and revised schedules is already needed to complete the current Form LM–2, the Department assumes that most of the burden associated with the changes will occur in the first year due to needed changes to the accounting software and staff training. Like it did in 2003, the Department has estimated burden hours and costs for the additional nonrecurring (first year) recordkeeping and reporting requirements, the additional recurring recordkeeping and reporting burden hours, and a three-year annual average for the additional nonrecurring and recurring burden hours. As in 2003, the Department assumes that Tier I and Tier II labor organizations use commercial off-the-self accounting packages and Tier III labor organizations use customized accounting software.

1. Hours to Complete Schedules 3 and 4

For revised Schedules 3 and 4 (Sale of Investments and Fixed Assets and Purchase of Investments and Fixed Assets), the Department estimates that labor organizations will spend, on average, an additional, nonrecurring 10.38 hours per schedule to change their accounting structures; develop, test, review, and document accounting software queries; design query reports; and train accounting personnel. *See* Table 2 below. This estimated burden is derived from the 2003 Form LM–2 PRA estimate for the first year nonrecurring burden associated with Schedule 17 (Contributions, Gifts, and Grants). The changes to that schedule under the 2003 rule (the addition of date, name and address of payer or payee) are the same changes that are included for Schedules 3 and 4 in this final rule. In 2003, the Department determined that in order to provide this information it would take Tier I and II labor organizations 5.3 hours to change their accounting systems and Tier III labor organizations 13.3 hours. Again, as in 2003, the Department estimates that it will take Tier I, II and III labor organizations 1 hour to design the report, 1 hour to develop a query, .75 hours to test the query, .5 hours for management review, .75 hours to document the query process, and .25 hours to train staff. The Department estimates that Tier II and III labor organizations will spend an additional hour preparing download methodology. The average burden was computed by taking the burden in each tier and weighting it by the number of unions in each tier.

To record the date of the transaction and address of the payee on Schedule 4, the Department estimates, using a weighted average based on the number of labor organizations within each tier, that labor organizations will spend an additional (recurring) .03 hours on recordkeeping burden and .48 hours on reporting. To record the date of the transaction and address of the payer on Schedule 3, the Department estimates, using a weighted average based on the number of labor organizations within each tier, that labor organizations will spend and an additional (recurring) .01 hours on recordkeeping burden, and .49 hours on reporting burden. Based on extensive public comment and analysis, the Department in 2003 made the following underlying assumptions in determining its final burden numbers. First, that it would take the average Form LM–2 filer approximately .05 hours of additional recordkeeping time per receipt/disbursement to record the name and address of the payer/payee. Second, Tier I labor organizations would incur an additional recordkeeping burden from training (.25 hours) and preparing the report (.33 hours) to record the name and address of the payer/payee. Third, that approximately one-half of the Tier II labor organizations already kept these records, and all Tier III labor organizations kept these records. Therefore, all Tier I labor organizations would be subject to the additional recordkeeping burden, and one-half the Tier II labor organizations would be subject to the additional recordkeeping burden. The Department has adopted these underlying assumptions for its current analysis.

The number of receipts and disbursements on Schedules 3 and 4 for 2006 was compiled from the e.LORS database, which showed that Tier I labor organizations report, on average, less than 1 receipt in Schedule 3 and slightly more than 1 disbursement in Schedule 4. On average, Tier II labor organizations report 1.5 receipts in Schedule 3 and less than 3.4 disbursements in Schedule 4. Therefore, the additional recordkeeping burden for Tier I and Tier II filers is .06 hours and .13 hours respectively (average number of disbursements/receipts per tier on Schedules 3 and 4 times .05 hours; then divided by two for the Tier II estimate).[29] It should be noted that the newly adopted exception for purchases and sales over a registered market exchange will further reduce the recordkeeping and reporting burden on these schedules.

Based on the same assumptions underlying the Department's 2006 estimates, the Department assumes that 75% of Tier I filers will use the cut and paste method to enter their data on the Form LM–2 (.08 hour burden per schedule) and 25% will manually enter the data on the Form LM–2 (.016 hour burden per disbursement or receipt) and that all Tier II and III filers will import or attach their data to the Form LM–2 for an additional reporting burden of .42 hours per schedule. The average burden was computed by taking the burden in each tier and weighting it by the number of labor organizations in each tier.

2. Hours to Complete Schedules 11 and 12

For revised Schedules 11 (All Officers and Disbursements to Officers) and 12 (Disbursements to Employees), the Department estimates that labor organizations will spend, on average, 10.38 hours to change their accounting structures; develop, test, review, and document accounting software queries; design query reports; and train accounting personnel. As explained below, this estimated burden was reached by analyzing the 2003 burden estimates from the Form LM–2 final rule for Schedules 11 and 17 and applying that data to the Form LM–2 officer and employee entries on Form LM–2 reports filed with the Department in 2007. As in 2003, the Department assumes that the time required to add a column to one schedule is the same for any schedule. To download the relevant information from their records, programmers will only have to designate an appropriate location on their electronic filing system for collecting and reporting this information. Therefore, each labor

[29] The sum is divided for Tier II labor organizations because, as noted above, the Department estimated that one-half of these organizations already keep these records.

organization would require, on average, approximately 5.2 hours to add the benefits column to Schedules 11 and 12 (one-half the time required to add two columns to Schedules 3 and 4). The Department has applied the same nonrecurring burden to the Disbursements for Official Business revision as to the benefits revision, 5.2 hours.[30] The average burden was computed by taking the burden in each tier and weighting it by the number of labor organizations in each tier.

As explained below, the Department estimates that, on average, labor organizations will take an additional (recurring) hour on recordkeeping burden and half an hour on reporting burden to enter the amount officers receive in benefits on Schedule 11 and track the indirect disbursements for temporary lodging or transportation. Again, these estimates are calculated using the recurring burden estimates from 2003 for Schedules 11 and 17. The average burden was computed by taking the burden in each tier and weighting it by the number of labor organizations in each tier.

The changes to Schedule 11 involve individual columns, not entire schedules. Nevertheless, the Department has assumed that labor organizations will expend about the same amount of time keeping records and entering data required by the new columns on Schedule 11 (using the same methodology, as discussed above, for Schedules 3 and 4). To report the additional information required by the new schedule, labor organizations will have to report the amount each of its officers receives in benefits from the labor organization. The labor organization must keep records of the benefits each officer receives, like an itemized schedule, then aggregate the payments and report the aggregate amount next to the officer's name. Although the individual disbursements of $5,000 or more need not be entered on the Form LM–2, the labor organization must track all the disbursements for benefits so that a final lump sum total can be entered for each officer on Schedule 11. Currently, labor organizations are required to keep records of all benefits they provide to officers on the IRS Form 990. Therefore, there is no recurring *recordkeeping* burden associated with the new benefits column.

The Department assumes that Tier III labor organizations are already tracking the data required to report travel and lodging on Schedule 11. After weighting the averages based on the number of labor organizations in the two remaining tiers, the Department concludes that labor organizations in Tier I and Tier II will spend one hour a year tracking indirect disbursements for temporary lodging or transportation as a result of the following analysis. In 2007, 46% of Tier I officers, or approximately 4.53 officers per labor organization, reported $1,800 in disbursements for official business; 55% of Tier II officers, approximately or 7.27 officers per labor organization, reported $3,768 in disbursements for official business; and 84% of Tier III officers, or approximately 46.43 officers per labor organization, reported $9,354 in disbursements for official business. Based on institutional experience, the Department assumes that the average trip or hotel will cost $600. Dividing the average reported disbursements for official travel by $600 provides a reasonable estimate of the number of indirect disbursement for official travel or lodging. Therefore, on average, each Tier I labor organization will have 4.53 officers who receive slightly more than 3 indirect disbursements for travel or lodging and each Tier II labor organization will have 7.27 officers who receive approximately 6.28 indirect disbursements for travel or lodging. The Department again assumes that Tier I labor organizations will spend 3 minutes on recordkeeping per disbursement, half of the tier II labor organizations will spend 3 minutes on recordkeeping per disbursement.

There is a slight recurring *reporting* burden, on average, of .50 hours. The Department assumes that 75% of Tier I filers would use the cut and paste method to enter their data on the Form LM–2 (.08 hour burden per column entering data, .25 hours on training, .33 hours preparing the report), and 25% would manually enter the data on the Form LM–2 (.016 hour burden per officer, .25 hours on training, .33 hours preparing the report). Tier II and III filers will import or attach their data to the Form LM–2 for an additional reporting burden of .42 hours. Indirect disbursements for travel and lodging will be included in the aggregate reported in ''Disbursements for Official Business.'' Therefore, there is no new recurring reporting burden for indirect disbursements for temporary lodging or transportation. The average burden was computed by taking the burden in each tier and weighting it by the number of labor organizations in each tier.

Compared to revised Schedule 11, the Department estimates that, on average, labor organizations in Tiers I and II will spend slightly more time on revised Schedule 12, and that labor organizations in Tier III already keep records of benefits and indirect disbursements. Labor organizations in Tiers I and II, on average, will spend an additional (recurring) 1.91 hours of recordkeeping burden and .49 hours of reporting burden to track and enter the amount employees receive in benefits on Schedule 12 and track the indirect disbursements for temporary lodging or transportation. Unlike benefits to officers (which are reported on Schedule 11), labor organizations do not have to track benefits paid to employees for the IRS Form 990 unless those employees are ''key employees.'' Further, labor organizations have not had to track by individual employee the indirect disbursements to employees for lodging or travel under the current Form LM–2.

There is no way to determine the amount or number of benefits or indirect disbursement for lodging or travel being paid to employees from the current Form LM–2. To estimate the additional burden associated with these tasks, the Department assumes that labor organizations will expend the same amount of time keeping records of benefits and indirect disbursements for lodging or travel for data entry on Schedule 12 as they do on Schedules 3 and 4. The Department assumes that labor organizations already keep some records of benefits paid to employees and indirect disbursements for lodging and travel. However, it is unlikely that these benefits or disbursements appear next to the name of the person who received them. Therefore, like Schedules 3 and 4, the labor organizations will now have to track the name of the person to whom (or on whose behalf) the disbursement is made. As on Schedule 3 and 4, the Department assumes that Tier I labor organizations will spend 3 minutes (.05 hours) on keeping records per disbursement, one half of the Tier II labor organizations will already keep data on benefits and indirect disbursements for lodging or travel made to employees, but the other one half will spend approximately 3 minutes (.05 hours) per disbursement, and Tier III labor organizations already keep records of benefits and indirect disbursements.

The Department assumes that each employee will receive, on average, one reportable benefit. If each employee

[30] The Department suspects that it will take significantly less time to make the changes listed above to column F (Disbursements for Official Business) on Schedules 11 and 12, which will now include indirect disbursements for temporary lodging or transportation while on official business for the labor organization. However, this information has never been reported *by individuals* and there is no data upon which to reliably estimate the number of disbursements.

receives one reportable benefit, then Tier I labor organizations will spend approximately 3 minutes (.05 hours) per employee keeping records of benefits paid employees. On average, Tier I labor organizations have 2.79 employees listed on their Form LM–2 and Tier II labor organizations have 10.24 employees listed on their Form LM–2. Therefore, on average, labor organizations will spend .02 hours keeping records on benefits to employees each year.

Like Schedule 11, the Department calculated the schedule 12 indirect disbursements for travel and lodging recordkeeping burden using the aggregate currently reported in disbursements for official business. In 2007, 35% of Tier I employees, or approximately 1 employee per labor organization, reported $2,550.78 in disbursements for official business; 59% of Tier II employees, or approximately 6 employees per labor organization, reported $5,049.82 in disbursements for official business; and 74% of Tier III employees, or approximately 240.67 employees per labor organization, reported $9,022 in disbursements for official business. The Department assumes that the average trip or hotel will cost $600. Dividing the average reported disbursements for official travel by $600 provides a reasonable estimate of the number of indirect disbursement for official travel or lodging. Therefore, on average, each Tier I labor organization will have 1 employee who receives 4.25 indirect disbursements for travel or lodging and each Tier II labor organization will have 6 employees who receive approximately 8.42 indirect disbursements for travel or lodging. The Department again assumes that Tier I labor organizations will spend 3 minutes on recordkeeping per disbursement, half of the Tier II labor organizations will spend 3 minutes on recordkeeping per disbursement, and Tier III labor organizations will already track the data. Therefore, on average, labor organizations in Tier I and Tier II will spend 1.89 hours keeping records on indirect disbursements for travel and lodging to employees each year.

Labor organizations will spend an additional 1.91 hours keeping records of employee benefits and indirect disbursements to employees for lodging or travel. Like Schedules 3 and 4, the Department assumes it will take Tier I labor organizations .05 hours for recordkeeping burden per transaction to keep the new data. The Department, however, also assumes that one-half the Tier II labor organizations currently keep the records, and all the Tier III labor organizations keep the records. Additionally, the Department assumes that labor organizations will use the same method for reporting benefits as they use throughout the Form LM–2. Therefore, the Department estimates that labor organizations will spend an additional .49 hours per year reporting benefits on the Form LM–2. There is no additional reporting cost associated with the removal of the exemption for indirect disbursements to employees for lodging or travel. This information is now reported in Schedules 15 through 20, as appropriate, so only the reporting location on the form is changed. The average burden was computed by taking the burden in each tier and weighting it by the number of labor organizations in each tier.

3. Hours To Complete Schedule 14

On average, labor organizations will spend 10.38 hours in the first year changing the accounting structure; developing, testing, reviewing, and documenting accounting software queries; designing query reports; and training accounting personnel. As in 2003, the Department estimates that it will take Tier I and Tier II labor organizations 5.3 hours to change their accounting structures and 13.3 hours for Tier III labor organizations to change their accounting structures. Additionally, the Department estimates that each labor organization will spend approximately 4.95 hours setting up the reporting system. The smallest Form LM–2 filers, Tier I, will spend approximately 4.25 hours setting up their reporting schedules (1 hour to design report, 1 hour to develop query, .75 hours to test query, .5 hours for management review, .75 hours for document query process, and .25 hours to train new staff). The Tier II and III labor organizations will spend an additional hour setting up their systems as their systems are more complicated and will require a greater number of entries.

To reduce the overall recordkeeping and reporting burden, the Department amended the itemization rules for Schedule 14. The labor organization will never have to itemize dues and agency fees received directly from members; dues and agency fees received directly from an employer are reported as yearly totals.

Unlike the NPRM which used Schedule 14 data to estimate the number of itemized receipts on Schedule 14, this final rule used Federal Mediation and Conciliation Service (''FMCS'') data to estimate the number of dues and agency fees itemized on Schedule 14. To estimate the number of union employers, the Department relied on FMCS's Form F–7, which must be filed by a labor organization or employer with the FMCS thirty days after notification to the other party of the intent to terminate or modify a collective bargaining agreement. Typically, collective bargaining agreements are renegotiated every 3 years. Therefore, the Department can reasonably estimate the number of employers employing employees in bargaining units represented by labor organizations by determining the number of Form F–7s filed between 2004 and 2006, 54,884.[31] In 2006, the Department received 4,571 Form LM–2s out of 23,924 labor organization filings. The Department assumes that smaller labor organizations, those that do not file the LM–2, represent the employees of one employer. That leaves 30,960 (54,884 − 23,924) union employers who have collective bargaining agreements with LM–2 filers. Therefore, on average, each LM–2 filer receives dues from 6.77 employers.

In 2003 the Department made the underlying assumption that labor organizations will spend 3 minutes (.05 hours) on recordkeeping per disbursement or receipt. Further, the Department assumed that all the largest labor organizations, Tier III, and 10% of the Tier II labor organizations will already keep this data. The Department has adopted the above underlying assumptions in its current analysis. If it takes 3 minutes of recordkeeping per receipt or disbursement, then the average labor organization will spend .31 hours on recordkeeping each year. Further, as in 2003, the Department assumes that Tier I filers will spend .25 hours on training, .33 hours preparing the report and 1 minute (.02 hours) to manually enter each disbursement or receipt on the report and Tier II and III filers will spend 25 minutes (.42 hours) per schedule to cut and paste or import their data onto the Form LM–2.

[31] Because there is no publicly available source for obtaining the number of employers employing workers represented by labor organizations, the Department has relied instead on the number of Form 7s filed by labor organizations to estimate this figure. The Department recognizes that the filing of a Form 7 is a requirement of the National Labor Relations Act, 29 U.S.C. 158(d)(3), and, as a result, labor organizations and employers covered by the Railway Labor Act, 45 U.S.C. 151 *et seq.,* and public sector labor organizations not covered by the NLRA but that file LM reports as ''mixed'' unions, are not included in this figure. Further, the Department recognizes that because Form 7s represent contract disputes, more than one Form 7 may be filed by employers or labor organizations representing employees employed by that employer. Finally, the estimate assumes full compliance with the NLRA notice requirement. Although imperfect, the Department views this figure as a best estimate of the number of employers employing workers represented by labor organizations.

Therefore, the Department estimates the reporting burden per schedule to be .50 hours. The average burden was computed by taking the burden in each tier and weighting it by the number of labor organizations in each tier.

4. Hours To Complete Schedule 15

On average, labor organizations will spend 10.38 hours in the first year changing the accounting structure; developing, testing, reviewing, and documenting accounting software queries; designing query reports; and training accounting personnel. As in 2003, the Department estimates that it will take Tier I and Tier II labor organizations 5.3 hours to change their accounting structures and 13.3 hours for Tier III labor organizations to change their accounting structures. Additionally, the Department estimates that each labor organization will spend approximately 4.95 hours setting up the reporting system. The smallest Form LM–2 filers, Tier I, will spend approximately 4.25 hours setting up their reporting schedules (1 hour to design report, 1 hour to develop query, .75 hours to test query, .5 hours for management review, .75 hours for document query process, and .25 hours to train new staff). The Tier II and III labor organizations will spend an additional hour setting up their systems as their systems are more complicated and will require a greater number of entries.

To reduce the overall recordkeeping and reporting burden, the Department amended the itemization rules for Schedule 15. The labor organization will never have to itemize per capita taxes received direct from members and per capita taxes received directly from an affiliate are reported as yearly totals.

Unlike the NPRM, which used Schedule 14 data to estimate the number of itemized receipts on Schedule 15, this final rule used e.LORS data to estimate the number of per capita taxes itemized on Schedule 15. To determine the per capita tax recordkeeping burden the Department estimated the number of affiliates per LM–2. In 2006, 12,025 LM–3s were filed with OLMS, and of these 11,168 were designated locals. Labor organizations need only itemize per capita taxes from affiliates that exceed $5,000. Therefore, the Department limited its LM–4 search to those that had $5,000 or more in disbursements. OLMS received 1,332 LM–4s in 2006 from labor organizations that had greater than $5,000 in disbursements. Additionally, 1,325 Tier I LM–2 filers indicated that they were locals; 2,702 Tier II LM–2 filers indicated that they were locals; and 15 Tier III LM–2 filers indicated that they were locals. In sum, there were 16,592 local labor organizations and 650 intermediate and international LM–2 filers. Tier I has 121 intermediate and international LM–2 filers, Tier II has 492 intermediate and international LM–2 filers, and Tier III has 37 intermediate and international LM–2 filers. Without more precise data, the Department assumed that all intermediate and international LM–2 filers had the same number of affiliates, 25.53 itemized per capita taxes.

In 2003, the Department made the underlying assumption that labor organizations will spend 3 minutes (.05 hours) on recordkeeping per disbursement or receipt. Further, the Department assumed that all the largest labor organizations, Tier III, and 10% of the Tier II labor organizations will already keep this data. The Department has adopted the above underlying assumptions in its current analysis. If it takes 3 minutes of recordkeeping per receipt or disbursement, then the average labor organization will spend .16 hours on recordkeeping each year. Further, as in 2003, the Department assumes that Tier I filers will spend .25 hours on training, .33 hours preparing the report and 1 minute (.02 hours) to manually enter each disbursement or receipt on the report and Tier II and III filers will spend 25 minutes (.42 hours) per schedule to cut and paste or import their data onto the Form LM–2. Therefore, the Department estimates the reporting burden per schedule to be .48 hours. The average burden was computed by taking the burden in each tier and weighting it by the number of labor organizations in each tier.

5. Hours To Complete Schedules 16 Through 22

For revised Schedules 16 through 22, the Department estimates that labor organizations will spend, on average, 10.38 hours per schedule to change their accounting structures; develop, test, review, and document accounting software queries; design query reports; and train accounting personnel. This burden estimate is based largely on the 2003 burden estimates for Schedule 14. As in 2003, the Department estimates that it will take Tier I and Tier II labor organizations 5.3 hours to change their accounting structures, and 13.3 hours for Tier III labor organizations to change their accounting structures. Additionally, the Department estimates that each labor organization will spend approximately 4.95 hours setting up the reporting system. The smallest Form LM–2 filers, Tier I, will spend approximately 4.25 hours setting up their reporting schedules (1 hour to design report, 1 hour to develop query, .75 hours to test query, .5 hours for management review, .75 hours for document query process, and .25 hours to train new staff). The Tier II and Tier III labor organizations will spend an additional hour setting up their systems, as their systems are more complicated and will require a greater number of entries.

Unlike the NPRM, the burden estimate in this final rule used the aggregates reported on Statement B items 38 through 42 and 46 through 47 to estimate the number of itemized receipts reported on the new schedules 16 through 22. The aggregates reported in each item were divided by $5,000 to estimate the number of itemized receipts. For example, in 2006, on average, Tier I LM–2 filers report that they received $5,684.98 in interest. When the aggregate is divided by $5,000, we reach 1.14 itemized disbursements. These findings are summarized on Table 1.

TABLE 1—LM–2 RECEIPT ITEMIZATION SUMMARY

Schedule	Tier I	Tier II	Tier III
Fees, Fines, Assessments, Work Permits	4.72	39.44	235.64
Sale of Supplies	0.08	0.50	22.70
Interest	1.14	10.05	685.52
Dividends	0.22	2.88	146.74
Rents	0.56	4.86	272.42
On Behalf of Affiliates for Transmittal to Them	0.74	37.60	3,017.36
From Members for Disbursement on Their Behalf	1.02	9.35	644.38

In 2003, the Department made the underlying assumption that labor organizations will spend 3 minutes (.05 hours) on recordkeeping per disbursement or receipt. Further, the Department assumed that all the largest labor organizations, Tier III, and 10% of the Tier II labor organizations will already keep this data. The Department has adopted the above underlying assumptions in its current analysis. Further, as in 2003, the Department assumes that Tier I filers will spend .25 hours on training, .33 hours preparing the report and 1 minute (.02 hours) to manually enter each disbursement or receipt on the report and Tier II and III filers will spend 25 minutes (.42 hours) per schedule to cut and paste or import their data onto the Form LM–2. The burden estimates for Schedules 16 through 22 are summarized on Table 3. The average burden was computed by taking the burden in each tier and weighting it by the number of labor organizations in each tier.

Table 2: Average Burden Chart

Reporting or Recordkeeping Requirements	Nonrecurring Recordkeeping Burden Hours	Nonrecurring Reporting Burden Hours	Recurring Recordkeeping Burden Hours	Recurring Reporting Burden Hours	Total Nonrecurring Burden Hours	Total Recurring Burden Hours
Revised Schedules:						
Sale of Investments and Fixed Assets	5.42	4.96	0.01	0.48	10.38	0.50
Purchase of Investments and Fixed Assets	5.42	4.96	0.03	0.48	10.38	0.52
All Officers and Disbursements to Officers	5.42	4.96	1.00	0.50	10.38	1.49
Disbursements to Employees	5.42	4.96	1.91	0.49	10.38	2.40
New Schedules:						
Dues and Agency Fees	5.42	4.96	0.31	0.50	10.38	0.81
Per Capita Tax	5.42	4.96	0.16	0.48	10.38	0.63
Fees, Fines, Assessments, and Work Permits	5.42	4.96	1.31	0.49	10.38	1.80
Sale of Supplies	5.42	4.96	0.02	0.47	10.38	0.48
Interest	5.42	4.96	0.33	0.47	10.38	0.80
Dividends	5.42	4.96	0.09	0.47	10.38	0.56
Rents	5.42	4.96	0.16	0.47	10.38	0.63
Receipts on Behalf of Affiliates for Transmittal to Them	5.42	4.96	1.19	0.47	10.38	1.66
Receipts from Members for Disbursements on Their Behalf	5.42	4.96	0.31	0.47	10.38	0.78
Total Additional Burden	70.52	64.48	6.84	6.22	135.00	13.06

6. Hours to Review Instructions

Finally, the Department estimates that labor organizations will spend, on average, an additional, recurring 2.0 hours reviewing the revised Form LM–2 and instructions. In 2003, the Department estimated that, on average, labor organizations would spend 4.0 hours reviewing the current Form LM–2 and instructions. The 2003 instructions were 44 pages and the new instructions are 52 pages. The changes to the LM–2 have added only 6 pages. The Department views as sufficient an additional 2.0 hours for review of the instructions.

7. Subsequent Yearly Burden

Given the current widespread use of automated accounting packages and labor organizations' experience with the electronic filing, the Department is not making the assumption (that was made in 2003) that over time the recurring burden would be reduced due to efficiency gains as the accounting staff became familiar with the software. Rather, the Department assumes that the second and third year burden will be equal to the recurring first year burden.

8. Compensation Cost

The Department assumes that, on average, the completion by a labor organization of Form LM–2 will involve an accountant/auditor, computer software engineer, bookkeeper/clerk, labor organization president and labor organization treasurer. Based on the 2007 BLS wage data, accountants earn $30.37 per hour, computer engineers earn $41.18 per hour, and bookkeepers/clerks earn $15.76 per hour.[32] BLS estimates that the cost of an employee's total compensation is approximately 30.2% higher than the employee's wages alone. Therefore, in order to account for total compensation, the Department adjusted each of the BLS salaries upward to include the additional 30.2% attributed to benefit to estimate the total compensation cost for each of the individuals involved in completing the Form LM–2.

To estimate the average annual salaries of labor organization officers needed to complete tasks for compliance with this rule—the president and treasurer—the Department drew a proportionate stratified sample from the 4,571 LM–2 filers. A proportionate stratified sample ensured that neither large nor small labor organizations were over-represented in the sample and permitted the final cost figures to be reported without regard to ''tier'' or size, as was done with the NPRM.

The Department first calculated the appropriate sample size. Consistent with commonly accepted statistical practices, the Department determined that a level of precision or sample error of 6%, a confidence interval of 90%, and a degree of variability of 50% (maximum variability) was acceptable for the Form LM–2 final burden analysis. The sample size of 180 LM–2 filers was then increased by 20% to 217, in order to ensure an appropriate sample size was maintained throughout the analysis.

The population was arranged into three strata based on annual receipts:

- Strata I ($250,000—$499,999 receipts): 1,325 Form LM–2 filers
- Strata II ($500,000—$6.5 mil receipts): 2,895 Form LM–2 filers
- Strata III ($6.5 mil and higher receipts): 351 Form LM–2 filers

The proportion of each strata to the population was then determined:

- Strata I ($250,000—$499,999 receipts): 28.99%
- Strata II ($500,000—$6.5 mil receipts): 63.33%
- Strata III ($6.5 mil and higher receipts): 7.68%

Finally, the sample size from each strata was drawn proportionately to its representation in the population:

- Strata I ($250,000—$499,999 receipts): $217 \times 28.99\% = 63$
- Strata II ($500,000—$6.5 mil receipts): $217 \times 63.33\% = 137$
- Strata III ($6.5 mil and higher receipts): $217 \times 7.68\% = 17$

These average annual salary figures were then adjusted to include the additional 30.2% attributed to benefits to reflect total compensation cost for each officer, which the Department calculated as $35.15 per hour for labor organization president and $30.71 per hour for labor organization treasurer.

[32] The wage and salary data is based on information contained in Bureau of Labor Statistics, Occupational Employment Statistics Survey, 2007.

TABLE 3—COMPENSATION COST TABLE

Title	Salary hourly	Salary—yearly	Compensation—cost—hourly
Accountants/Auditors	$30.37	$63,180.00	$43.51
Computer software engineers, applications	41.18	85,660.00	59.00
Bookkeepers/Clerks	15.76	32,780.00	22.58
President	24.53	51,027.10	35.15
Treasurer	21.44	44,592.89	30.71
Weighted Average			32.28

The Department estimated the percentage of time the accountant, computer software engineer, bookkeeper, president, and treasurer would spend completing the LM–2. These percentages were used to calculate a weighted average compensation cost, $32.28.

9. Conclusion

The Department estimates the additional weighted average reporting and recordkeeping burden for the revised Form LM–2 to be 150.06 hours per respondent in the first year (including nonrecurring implementation costs) and 15.06 hours per respondent in the second and third years. *See* Table 3 below. The Department estimates the total additional annual burden hours for respondents for the revised Form LM–2 to be 685,924 hours in the first year and 68,847 hours in the second and third years.

The Department estimates the additional weighted average annual cost for the revised Form LM–2 to be $4,844 ($32.28 (weighted average cost per hour) × 150.06 (additional hours to complete the changes to Form LM–2 in first year) = $4,844) per respondent in the first year (including nonrecurring implementation costs) and $486 ($32.28 (weighted average cost per hour) × 15.06 (additional hours to complete the changes to Form LM–2 in second and third year) = $486) per respondent in the second year and third year. The Department also estimates the total additional annual cost to respondents for the revised Form LM–2 to be $22.14 million ($32.28 × 685,924 (total hours to complete changes to Form LM–2 in first year) = $22.14 million) in the first year and $2.22 million ($32.28 × 68,847 (total hours to complete changes to Form LM–2 in second and third year) = $2.22 million) in the second and third years.

Table 4: Reporting and Recordkeeping Burden Hours and Costs for Revised Form LM-2

Form	Number of Responses	Reporting Hours Per Respondent	Total Reporting Hours	Recordkeeping Hours Per Respondent	Total Recordkeeping Hours	Total Burden Hours Per Respondent	Total Burden Hours	Average Cost Per Respondent	Total Cost
Current Form LM-2	4,571	146.40	669,194.40	389.60	1,780,861.60	536	2,450,056	$17,304	$79,095,891
Additona Burden from Revised Form LM-2									
First Year	4,571	72.70	332,316.15	77.36	353,607.55	150.06	685,924	$4,844	$22,143,880
Second Year	4,571	8.22	37,570.40	6.84	31,276.88	15.06	68,847	$486	$2,222,617
Third Year	4,571	8.22	37,570.40	6.84	31,276.88	15.06	68,847	$486	$2,222,617
Three Year Average	4,571	29.71	135,818.98	30.35	138,720.44	60.06	274,539	$1,939	$8,863,038

The Department's estimates of the additional burden and costs associated with the revisions to the Form LM–2 are presented in Table 3. This table only presents the increases associated with the changes to the form. Neither the burden or costs associated with the current Form LM–2 nor the revocation of the privilege of some labor organizations to file the Form LM–3 is included in these estimates.

H. Form LM–3 Revocation Procedures Burden Estimates

The Department has established a procedure for revoking the simplified reports filing privilege, provided by 29 CFR 403.4(a)(1), for labor organizations that are delinquent in their Form LM–3 filing obligation, have failed to timely file an amended form after notification that the report is materially deficient, or those for which the Department otherwise finds that the purposes of section 208 of the LMRDA, 29 U.S.C. 438, would be served by such revocation. The Department's ultimate goal in revoking the filing privilege for such labor organizations is to promote greater financial transparency. As discussed above, the revised paperwork requirements are necessary to effectuate the purposes of the LMRDA by providing members of labor organizations with information about their labor organizations that will enable them to be responsible, informed, and effective participants in the governance of their labor organizations; discourage embezzlement and financial mismanagement; prevent the circumvention or evasion of the statutory reporting requirements; and strengthen the effective and efficient enforcement of the LMRDA by the Department. The manner in which the collected information will serve these purposes is discussed throughout the preamble to this final rule.

Rather than using a general burden reduction, the Department estimated the LM–3 revocation burden using the underlying assumptions in this rule and the 2003 LM–2 final rule. The number of receipts, disbursements, and officers was determined using a proportionate random sample of 2006 LM–3 data found on the e.LORS database. The distribution of receipts and disbursements was based on 2006 Tier I LM–2 filers.

The Department's proposal has sought to minimize the burden on the reporting labor organization by permitting it to submit the report manually. Upon its receipt of manual reports, the Department will enter the information electronically so that members of labor organizations, the public, and the Department's investigators will be able to access and fully search these reports through the OLMS Online Public Disclosure Room.

For the analysis below, recordkeeping burden is the amount of time the LM–3 filer will spend going through its records to identify the information needed to complete the LM–2. Reporting burden is the amount of time the LM–3 filer will spend transcribing the information onto the LM–2.

1. Review LM–2 Form and Instructions

The Department determined that LM–3 filers who have had their filing privilege revoked will spend 8.32 hours reviewing the Form LM–2 and instructions, which allows an LM–3 filer approximately .16 hours to review each page.

2. LM–2 Page 1 Burden Hours

There is no recordkeeping burden associated with the first page of the LM–2. The first page of the LM–2 reports the same information provided on the first page of the LM–3. The LM–3 filer need only copy the contents of the first page of its LM–3 onto the first page of its LM–2. This copying should take approximately 3 minutes per item. There are 16 items on the first page. Therefore, the reporting burden is estimated at .80 hours.

3. LM–2 Page 2 Burden Hours

The Department estimates that LM–3 filers will expend .33 hours on recordkeeping and .60 hours on reporting to complete the second page of the LM–2. The second page of the LM–3 asks 6 yes/no questions found on the second page of the LM–2 and includes the same 4 fillable items found on the LM–2. There is no additional recordkeeping burden associated with the 6 repeat questions or the 4 fillable items. However, two questions found on the LM–2 are not repeated on the LM–3. The LM–3 filer will spend .33 hours answering these questions. Once the LM–2 specific questions are answered, the LM–3 filer need only copy the information found on its LM–3 onto the LM–2. The Department estimates that LM–3 filers will spend 3 minutes per item copying the information from the LM–3 onto the LM–2 and answering the two additional questions.

4. LM–2 Itemization Schedules

It should be noted that LM–3 filers should already have the information necessary to itemize the receipts, disbursements, assets, and liabilities for the LM–2. The LMRDA requires labor organization to maintain records ''on matters required to be reported which will provide in sufficient detail the necessary basic information and data from which the documents filed with the Secretary may be verified, explained or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts, and applicable resolutions, and shall keep records available for examination for a period of not less than five years.'' 29 U.S.C. 436. However, it is unlikely that LM–3 filers keep the information in the detail or format necessary to complete the LM–2. Therefore, the Department has accounted for this detail and formatting change by adding a recordkeeping burden to itemized receipts, disbursements, assets, and liabilities.

In order to improve the LM–3 revocation burden estimates employed in the NPRM, the Department sampled a randomly selected subset of the 10,977 Form LM–3 filers in 2006. The Department first calculated the appropriate sample size. Consistent with commonly accepted statistical practices, the Department determined that a level of precision or sample error of 6%, a confidence interval of 90%, and a degree of variability of 50% (maximum variability) was acceptable for the Form LM–3 revocation final burden analysis. The sample size of 185 LM–3 filers was then increased by 20% to 222, in order to ensure an appropriate sample size was maintained throughout the analysis.

To improve estimates of means, the Department used a proportionate stratified sample, which ensured that neither large nor small labor organizations were over-represented in the sample and permitted the final cost figures to be reported without regard to ''tier'' or size, as was done with the NPRM. The population was arranged into three strata based on annual receipts:

- Strata I ($10,000–$49,999 receipts): 5,868 Form LM–3 filers
- Strata II ($50,000–$149,999 receipts): 3,782 Form LM–3 filers
- Strata III ($150,000–$249,999 receipts): 1,327 Form LM–3 filers

The proportion of each strata to the population was then determined:

- Strata I ($10,000–$49,999 receipts): 53.46%
- Strata II ($50,000–$149,999 mil receipts): 34.45%
- Strata III ($150,000–$249,999 receipts): 12.09%

Finally, the sample size from each strata was drawn proportionately to its representation in the population:

- Strata I ($10,000–$49,999 receipts): $222 \times 53.46\% = 119$
- Strata II ($50,000–$149,999 mil receipts): $222 \times 34.45\% = 76$
- Strata III ($150,000–$249,999 receipts): $222 \times 12.09\% = 27$

This sample indicated that the average 2006 LM–3 filer reports $68,585 in annual receipts, $67,459 in annual disbursements, $69,673 in assets, and $1,901 in liabilities. The Department divided the annual receipts, disbursements, assets, and liabilities by $5,000 to estimate the maximum number of itemized transactions, and based on this calculation has concluded that LM–3 filers will likely have13.71 itemized receipts, 13.49 itemized disbursements, 13.93 itemized assets, and .38 itemized liabilities reported on the LM–2.

The Department used Tier I LM–2 data to determine in which schedules these receipts, disbursements, assets, and liabilities would be reported. The Department assumes that the distribution of LM–3 itemized receipts, disbursements, assets and liabilities is similar to the distribution found in LM–2s of labor organizations with between $250,000 and $500,000 in receipts. For example, the Department found that 6.51% ($31,326,557/$481,289,983 = .0651 or 6.51%) of total receipts are attributed to fees, fines, assessments, etc. These findings are summarized on Tables 5 through 8.

TABLE 5—ITEMIZED RECEIPT DISTRIBUTION

Receipt functional category	Receipts	Percentage of all receipts
Dues and Agency Fees	$356,476,010.00	74.07
Per Capita Tax	22,574,114.00	4.69
Other Fees	31,326,557.00	6.51
Sales of Supplies	541,767.00	0.11
Interest	7,602,504.00	1.58
Dividends	1,495,909.00	0.31
Rents	3,781,903.00	0.79
On Behalf of Affiliates	4,912,381.00	1.02
From Members	6,877,831.00	1.43
Loan Repayments	518,391.00	0.11

TABLE 5—ITEMIZED RECEIPT DISTRIBUTION—Continued

Receipt functional category	Receipts	Percentage of all receipts
Loans Obtained	1,307,960.00	0.27
Sales of Investments and Assets	7,402,058.00	1.54
Other Receipts	36,472,598.00	7.58
Total Receipts	481,289,983.00	100.00

TABLE 6—ITEMIZED DISBURSEMENT DISTRIBUTION

Disbursement functional category	Disbursements	Percentage of all disbursements
Representational Activities	$106,498,651.00	22.30
Political Activities & Lobbying	8,034,914.00	1.68
Contributions, Gifts, & Grants	8,655,415.00	1.81
General Overhead	76,126,990.00	15.94
Union Administration	85,108,151.00	17.82
Benefits	37,836,304.00	7.92
Per Capita Tax	102,038,579.00	21.36
Strike Benefits	3,545,000.00	0.74
Fees, Fines, Assessments, etc.	4,203,835.00	0.88
Office & Administrative Expense	71,976.00	0.02
Professional Fees	1,075.00	0.00
Supplies for Resale	749,492.00	0.16
Purchase of Investments & Fixed Assets	14,954,159.00	3.13
Loans Made	326,659.00	0.07
Repayment of Loans Obtained	1,443,492.00	0.30
To Affiliates of Funds Collected on Their Behalf	6,957,774.00	1.46
On Behalf of Individual Members	6,556,628.00	1.37
Direct Tax	14,515,926.00	3.04
Total Disbursements	477,625,020.00	100.00

TABLE 7—ITEMIZED ASSET DISTRIBUTION

Asset functional category	Assets	Percentage of all assets
Cash	$218,193.74	57.55
Investments	235,122.64	14.25
Treasury Securities	120,077.14	1.41
Loans Receivable	12,850.12	0.66
Accounts Receivable	4,499.69	0.97
Fixed Assets	287,842.82	24.37
Other Assets	2,975.39	0.79
Total Assets	881,561.54	100.00

TABLE 8—ITEMIZED LIABILITY DISTRIBUTION

Liability functional category	Liabilities	Percentage of all liabilities
Accounts Payable	$5,400,228.00	20.06
Loans Payable	5,944,284.00	22.08
Mortgages Payable	7,249,483.00	26.92
Other Liabilities	8,332,886.00	30.95
Total Liabilities	26,926,881.00	100.00

The Department can estimate the number of receipts, disbursements, assets, and liabilities itemized on each schedule using the Tier I LM–2 distribution data and the LM–3 itemized transactions data. For example, if the LM–3 filing privilege is revoked, LM–3 filers will itemize approximately 13.71 receipts per year on the Form LM–2. Based on the Tier I LM–2 distribution, .89 (13.71 (total itemized receipts) × 6.51% = .89) of the 13.71 receipts will be itemized on Schedule 16 (''Fees, Fines, Assessments, etc.''). The Department used the same method to determine the number of itemized transactions on each of the itemization schedules. The results are summarized in Table 9.

It should be noted that the Department assumes that LM–3 filers

will receive dues payments from one employer. Consistent with the reporting requirements adopted in this rule, LM–3 filers will have one itemized dues receipt. Further, the Department estimates that like Tier I LM–2 filers, non-local LM–3 filers will receive 2.33 per capita receipts. Approximately 7.13% of LM–3 filers are non-locals. Therefore, on average each LM–3 filer will have .02 per capita itemizations.

TABLE 9—LM–3 ITEMIZATION SUMMARY

	Average number of entries
Total Itemized Receipts	13.71
Schedule 2: Loans Receivable	0.01
Schedule 3: Sale of Investments and Fixed Assets	0.21
Schedule 9: Loans Payable	0.04
Schedule 14: Dues and Agency Fees	1
Schedule 15: Per Capita Tax	.02
Schedule 16: Fees, Fines, Assessments, Work Permits	0.89
Schedule 17: Sale of Supplies	0.02
Schedule 18: Interest	0.22
Schedule 19: Dividends	0.04
Schedule 20: Rents	0.11
Schedule 21: On Behalf of Affiliates for Transmittal to Them	0
Schedule 22: From Members for Disbursement on Their Behalf	0.20
Schedule 23: Other Receipts	1.04
Total Itemized Disbursements	13.49
Schedule 24: Representational Activities	3.01
Schedule 25: Political Activities and Lobbying	0.23
Schedule 26: Contributions, Gifts, and Grants	0.24
Schedule 27: General Overhead	2.15
Schedule 28: Union Administration	2.41
Schedule 29: Benefits	1.07
Item 57: Per Capita Tax	1.00
Item 58: Strike Benefits	0.10
Item 59: Fees, Fines, Assessments, etc.	0.12
Item 60: Supplies for Resale	0.02
Schedule 4: Purchase of Investments and Fixed Assets	0.42
Schedule 2: Loans Made	0.01
Schedule 9: Repayment of Loans Obtained	0.04
Item 64: To Affiliates of Funds Collected on Their Behalf	0
Item 65: On Behalf of Individual Members	0.19
Item 66: Direct Taxes	0.41
Assets	13.93
Item 22: Cash	8.02
Schedule 1: Accounts Receivable	0.13
Schedule 2: Loans Receivable	0.09
Item 25: U.S. Treasury Securities	0.20
Schedule 5: Investments	1.99
Schedule 6: Fixed Assets	3.40
Schedule 7: Other Assets	0.11
Liabilities	0.38
Schedule 8: Accounts Payable	0.08
Schedule 9: Loans Payable	0.08
Item 32: Mortgages Payable	0.10
Schedule 10: Other Liabilities	0.12

The Department estimates that LM–3 filers will expend .25 hours on each schedule identifying those receipts that must be itemized, and .03 hours per column putting together the necessary information and inputting it onto the LM–2. For example, LM–3 filers who have had their filing privilege revoked will spend .32 hours on recordkeeping and .07 hours on reporting completing the fees, fines, assessment schedule. The average LM–3 filer will itemize .89 fees, fines, assessments, *etc.* on LM–2 schedule 16. The initial search and identification of itemized fees, fines, assessments, *etc.* will take .25 hours. Once the itemized fees, fines, assessments, etc. are identified, the labor organization must identify and enter the source, type, purpose, date, and amount of the fee, fine, assessment, etc. onto the Form LM–2, .15 hours or approximately .03 hours per item. The results are summarized in table 10.

Table 10: LM-3 Revocation Burden

Task	Category	Recordkeeping Burden	Reporting Burden	Total Burden
Review of Proposed LM-2 Form and Filing Instructions		0	8.32	8.32
President Review and Sign Off		0	0.17	0.17
Treasurer Review and Sign Off		0	0.17	0.17
Form LM-2 Page 1		0	0.80	0.80
Form LM-2 Page 2		0.33	0.60	0.93
Statement A		0	0.43	0.43
Statement B		0.42	0.48	0.90
Schedule 1: Accounts Receivable Aging Schedule		0.26	0.01	0.27
Schedule 2: Loans Receivable	Receipts/Disbursements	0.26	0.01	0.27
Schedule 3: Sale of Investments and Fixed Assets	Receipts	0.27	0.02	0.30
Schedule 4: Purchase of Investments and Fixed Assets	Disbursments	0.29	0.04	0.33
Schedule 5: Investments		0.42	0.17	0.58
Schedule 6: Fixed Assets		0.53	0.28	0.82
Schedule 7: Other Assets		0.26	0.01	0.27
Schedule 8: Accounts Payable Aging Schedule		0.26	0.01	0.26
Schedule 9: Loans Payable	Receipts/Disbursements	0.27	0.02	0.28
Schedule 10: Other Liabilities		0.26	0.01	0.27
Schedule 11: All Officers and Disbursements to Officers		69.53	2.08	71.61
Schedule 12: Disbursements to Employees		23.48	0.70	24.18
Schedule 13: Membership Status		0	0.25	0.25
Schedule 14:Dues and Agency Fees	Receipts	0.33	0.08	0.42
Schedule 15: Per Captia Tax	Receipts	0.25	0.00	0.25
Schedule 16: Fees, Fines, Assessments, Work Permits	Receipts	0.32	0.07	0.40
Schedule 17: Sale of Supplies	Receipts	0.25	0.00	0.25
Schedule 18: Interest	Receipts	0.27	0.02	0.29
Schedule 19: Dividends	Receipts	0.25	0.00	0.26
Schedule 20: Rents	Receipts	0.26	0.01	0.27
Schedule 21: On Behalf of Affiliates for Transmittal to Them	Receipts	0.25	0.00	0.25
Schedule 22: From Members for Disbursement on Their Behalf	Receipts	0.27	0.02	0.28
Schedule 23: Other Receipts	Receipts	0.34	0.09	0.42
Schedule 24: Representational Activities	Disbursments	0.50	0.25	0.75
Schedule 25: Political Activities and Lobbying	Disbursments	0.27	0.02	0.29
Schedule 26: Contributions, Gifts, and Grants	Disbursments	0.27	0.02	0.29
Schedule 27: General Overhead	Disbursments	0.43	0.18	0.61
Schedule 28: Union Administration	Disbursments	0.45	0.20	0.65
Schedule 29: Benefits	Disbursments	0.34	0.09	0.43
Detailed Summary Schedules 3&4		0.25	0.2	0.45
Detailed Summary Schedules 14-28		0.25	1	1.25
Total Burden		102.40	16.83	119.22

5. All Officers and Disbursement to Officers

There is no recordkeeping burden associated with identifying officers and their salaries. This information is reported on the LM–3 schedule ''All Officers and Disbursements to Officers.'' Labor organizations will have to break down the amount reported in column (E) of LM–3 schedule ''All Officers and Disbursements to Officers'' between columns (E), (G), and (H) of LM–2 Schedule 11, and report benefits next to each officer's name. Officers will have to estimate the time they spend on representational activities, political and lobbying activities, contributions, general overhead, and union administration.

LM–3 filers who have had their filing privileges revoked and their officers will spend 69.53 hours compiling the information necessary to complete the Form LM–2 Schedule 11. The labor organization will spend .25 hours compiling the records on disbursements and .08 hours per disbursement assigning the disbursements to a particular officer and disbursement category (allowances, official business or other). The LM–3 sample indicated that, on average, an LM–3 filer has 8.31 officers. The Department estimates that each officer will receive one benefit disbursement and one indirect disbursement for travel or lodging. Based on the LM–3 sample, approximately 43.70% of the officers listed on the LM–3, or 3.47 officers per LM–3 filer, receive allowances and other disbursements. On average, these officers receive $973.92 in allowances and other disbursements. Unlike the LM–2 analysis above, the Department estimates that the average LM–3 officer disbursement will be $200. The average disbursement amount was reduced to take into account the smaller size of LM–3 filers. Therefore, the 3.47 officers who receive allowances and other disbursements will receive, on average, 4.87 disbursements for allowances and other disbursements ($973.92/$200 = 4.87), 1 disbursement for benefits, and 1 indirect disbursement for lodging or travel. The remaining 4.84 officers who do not receive allowances or other disbursements will receive 1 disbursement for benefits and 1 indirect disbursement for lodging or travel. In sum, each LM–3 filer will make 33.51 disbursements to its officers. The labor organization will spend 2.93 hours compiling all disbursements to officers.

In addition to compiling the disbursement data, officers will have to estimate how much time they spent on each of the functional categories: representational activities, political and lobbying activities, contributions, general overhead, and union administration. In 2003, the Department estimated that officers will spend 1 hour at the beginning of the year reviewing the LM–2 instructions, .5 hours a month dividing up their time, 1 hour at the end of the year checking the distributions. In sum, each officer will spend 8 hours estimating the percentage of time spent on each functional category. If the average LM–3 filer has 8.31 officers, and it takes each officer 8 hours to estimate the percentage of time spent on each functional category, then officers will expend 66.48 hours on recordkeeping to complete Schedule 11.

The labor organization will spend 2.08 hours on reporting. Each officer row on the LM–2 Schedule 11 has 15 separate fillable items. The Department assumes that a labor organization can fill out an item in one minute. Therefore, the labor organization will spend .25 hours filling out each officer row. If the average LM–3 filer has 8.31 officers, and it takes .25 hours to fill out one row, then labor organizations will expend 2.08 hours completing Schedule 11.

6. Disbursements to Employees

There is no recordkeeping burden associated with identifying employees and their salaries. The LM–3 does not

include a separate schedule for reporting disbursements to employees, but LM–3 filers have to track disbursements to employees to complete LM–3 Statement B, item 46. Labor organizations will have to break down the amount reported on LM–3 Statement B, item 46, by employee and type of disbursement (allowance, official business, or other). Additionally, the labor organization will have to report the benefits each employee receives. Employees will have to estimate the time they spend on representational activities, political and lobbying activities, contributions, general overhead, and union administration.

LM–3 filers who have had their filing privileges revoked and their employees will spend 23.48 hours compiling the information necessary to complete the Form LM–2 Schedule 12. The labor organization will spend .25 hours compiling the records on disbursements and .08 hours per disbursement assigning the disbursements to a particular employee and disbursement category (allowances, official business or other).

The Department used the average number of employees listed on LM–2s with between $250,000 and $500,000 in annual receipts to estimate the number of employees employed by LM–3 filers. On average, LM–2 filers with between $250,000 and $500,000 in annual receipts list 2.79 employees on Schedule 12. The Department estimates that each employee will receive one benefit disbursement and one indirect disbursement for travel or lodging. Approximately 39.82% of the employees listed on LM–2s with between $250,000 and $500,000 in annual receipts, or 1.11 employees per LM–2 filer with between $250,000 and $500,000 in annual receipts, receive allowances and other disbursements. The Department cannot estimate the number of employee allowances and other disbursements from the LM–3. Therefore, the Department applied the estimated number of officer disbursements, 4.87, to employees. The 1.11 employees who receive allowances and other disbursements will receive, on average, 4.87 disbursements for allowances and other disbursements, 1 disbursement for benefits, and 1 indirect disbursement for lodging or travel. The remaining 1.68 employees who do not receive allowances or other disbursements will receive 1 disbursement for benefits and 1 indirect disbursement for lodging or travel. In sum, each LM–3 filer will make 10.99 disbursements to its employees.

In addition to compiling the disbursement data, employees will have to estimate how much time they spent on each of the functional categories: representational activities, political and lobbying activities, contributions, general overhead, and union administration. In 2003, the Department estimated that employees will spend 1 hour at the beginning of the year reviewing the LM–2 instructions, .5 hours a month dividing up their time, 1 hour at the end of the year checking the distributions. In sum, each employee will spend 8 hours estimating the percentage of time spent on each functional category. If the average LM–3 filer has 2.79 employees and it takes each employee 8 hours to estimate the percentage of time spent on each functional category, then employees will expend 22.32 hours on recordkeeping to complete Schedule 12.

The labor organization will spend .70 hours on reporting. Each employee row on the LM–2 Schedule 12 has 15 separate fillable items. The Department assumes that a labor organization can fill out an item in one minute. Therefore, the labor organization will spend .25 hours filling out each employee row. If the average LM–3 filer has 2.79 employees, and it takes .25 hours to fill out one row, then labor organizations will expend .70 hours completing Schedule 12.

7. Member Status Schedule

The Department estimates that LM–3 filers who have had their filing privilege revoked will spend .25 hours filling out Schedule 13 (''Membership Status''). All labor organizations already keep track of membership status. Therefore, there is no recordkeeping burden.

Most labor organizations have 3 types of membership: Active, retired, and journeyman. Each membership type will require an independent itemization on Schedule 13. The Department has determined that each itemized membership should require 5 minutes. If there are 3 itemized memberships, then LM–3 filers will expend .25 hours filling out the LM–2.

8. LM–2 Statement A Burden Hours

There is no recordkeeping burden associated with LM–2 Statement A. This information is already provided on the LM–3's Statement A. The LM–3 filer need only copy the information from the LM–3 onto the LM–2. The Department estimates that such copying should take approximately 1 minute per item. Statement A has 26 different items. At one minute each the LM–3 will spend .43 hours filling out Statement A.

9. LM–2 Statement B Burden Hours

The Department estimates that LM–3 filers will expend .42 hours on recordkeeping and .58 hours on reporting to complete LM–2 Statement B. Twenty-two out of the twenty-nine aggregates reported on Statement B either have a corresponding LM–2 itemization schedule or are already reported on the LM–3. The recordkeeping burden associated with these items is either included in the recordkeeping burden for its corresponding schedule or it is included in the LM–3 recordkeeping burden. There is no recordkeeping burden for these items associated with Statement B. The remaining seven items, strike benefits, fees, fines, assessments, etc., supplies for resale, repayment of loans obtained, to affiliates of funds collected on their behalf, on behalf of individual members, and direct taxes, are unique LM–2 functional categories with no corresponding itemization schedules. Using the distributions taken from LM–2s of labor organizations with between $250,000 and $500,000 in annual receipts and the LM–3 itemized receipt estimate, the Department has determined that LM–3 filers will have one per capita tax disbursement, .10 strike disbursement, .12 fees, fines, assessment, etc. disbursement, .02 supplies for resale disbursement, zero disbursements to affiliates on their behalf, .19 disbursement on members behalf, and .41 disbursement for direct taxes. Five out of the six items will have some amount of money reported in the item, approximately one transaction per item. The LM–3 filers will spend 5 minutes on recordkeeping per transaction or .42 hours total.

The LM–3 filers will copy twenty-two of the twenty-nine aggregates from the other itemization schedules on their LM–3. As discussed above, the remaining five items will have to be compiled by the LM–3 filer. LM–3 filers will spend one minute per item filling out Statement B, or .48 hours in total.

10. Detailed Summary Schedules 3 and 4

The Department estimates that LM–3 filers who have had their filing privilege revoked will spend .25 hours on recordkeeping and .2 hours on reporting to complete summary schedules 3 and 4. These summary schedules do not include any new information. They merely summarize the information itemized on Itemization Schedules 3 and 4. LM–3 filers will spend .25 minutes compiling the information from the itemization schedules for reporting here.

Once the information is compiled it must be transcribed onto the summary schedules. There are six items per summary schedule. LM–3 filers can transcribe the information into each item in 1 minute, .2 hours to completely transcribe all the information onto summary schedules 3 and 4.

11. Detailed Summary Schedules 14 through 28

The Department estimates that LM–3 filers who have had their filing privilege revoked will spend .25 hours on recordkeeping and 1 hour on reporting to complete summary schedules 14 through 28. These summary schedules do not include any new information. They merely summarize the information itemized on Itemization Schedules 14 through 28. LM–3 filers will spend .25 minutes compiling the information from the itemization schedules for reporting here.

Once the information is compiled it must be transcribed onto the summary schedules. There are four items per summary schedule. LM–3 filers should be able to transcribe the information into each item in 1 minute. There are 15 separate summary schedules and each has 4 items that must be filled. Therefore, LM–3 filers will spend 1 hour (15 itemization schedules × 4 items per schedule × 1 minute per item = 60 minutes) transcribing all the information onto summary schedules 14 through 28.

12. Compensation Cost

The Department assumes that, on average, the completion by a labor organization with between $10,000 and $250,000 in annual receipts of Form LM–2 will involve an accountant/auditor, bookkeeper/clerk, labor organization president and labor organization treasurer. Based on the 2007 BLS wage data, accountants earn $30.37 per hour, computer engineers earn $41.18 per hour, and bookkeepers/clerks earn $15.76 per hour.[33] BLS estimates that the cost of an employee's total compensation is approximately 30.2% higher than the employee's wages alone. Therefore, the Department adjusted upward each of the BLS salaries to include the additional 30.2% attributed to benefits to estimate the total compensation cost for each of the individuals involved in completing the Form LM–2.

The Department estimated the average annual salaries of labor organization officers needed to complete tasks for compliance with the LM–3 revocation—the president and treasurer—from responses to salary inquiries contained in the sample of 222 labor organizations that filed a Form LM–3 in 2006. The Department assumed that LM–3 part-time officers work approximately 200 hours per year. These average annual salary figures were then adjusted to include the additional 30.2% attributed to benefits to reflect total compensation cost for each officer. Accordingly, the Department calculated as total hourly compensation cost $21.68 per hour for labor organization president and $25.08 per hour for labor organization treasurer.

TABLE 11—COMPENSATION COST TABLE

Title	Salary—hourly	Salary—yearly	Compensation—cost—hourly
Accountants/Auditors	$30.37	$63,180.00	$43.51
Bookkeepers/Clerks	15.76	32,780.00	22.58
President	15.13	3,026.45	21.68
Treasurer	17.51	3,501.73	25.08

The Department estimated the percentage of time the accountant, bookkeeper, president, and treasurer would spend completing the LM–2. These percentages were used to calculate a weighted average compensation cost, $25.40.

13. Conclusion

The Department estimates that Form LM–2 filers with total annual receipts under $250,000 (LM–3 Filers that have had the privileged revoked) will spend 102.40 hours fulfilling recordkeeping requirements and 16.83 hours completing the form, which corresponds to $3,028.23 in costs.

[33] The wage and salary data is based on information contained in Bureau of Labor Statistics, Occupational Employment Statistics Survey, 2007.

Table 12: Reporting and Recordkeeping Burden Hours and Costs for LM-3 Filers Who Have Had Their Privilege Revoked

Form	Number of Responses	Reporting Hours Per Respondent	Total Reporting Hours	Recordkeeping Hours Per Respondent	Total Recordkeeping Hours	Total Burden Hours Per Respondent	Total Burden Hours	Average Cost Per Respondent	Total Cost
Current Form LM-3	96	52.00	4,992.00	64.00	6,144.00	116.00	11,136.00	$1,404.00	$134,784.00
Revised Form LM-2	96	16.83	1,615.32	102.40	9,829.97	119.22	11,445.30	$3,028.23	$290,710.27

14. Annualized Federal Costs

The estimated annualized Federal cost of this rule is $231,924.52 This represents estimated operational expenses such as computer programming to amend the Form LM–2 and staff time to draft documents and review materials in cases where a labor organization's privilege to file the Form LM–3 is revoked.

Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.,* requires agencies to prepare regulatory flexibility analyses, and to develop alternatives wherever possible, in drafting regulations that will have a significant economic impact on a substantial number of small entities. The Department certifies that the final rule will not have a significant economic impact on a substantial number of small entities. To evaluate whether this final rule would have a significant economic impact on a substantial number of small entities, the Department conducted a Final Regulatory Flexibility Analysis (''FRFA'') as a component of this final rule.

In the 2003 Form LM–2 rule, the Department's regulatory flexibility analysis utilized the Small Business Administration's (''SBA'') ''small business'' standard for ''Labor Unions and Similar Labor Organizations.'' Specifically, the Department used the $5 million standard established in 2000 (as updated in 2005 to $6.5 million) for purposes of its regulatory flexibility analyses. *See* 65 FR 30836 (May 15, 2000); 70 FR 72577 (Dec. 6, 2005). This same standard, which has also been used in rulemakings involving the Form T–1, 73 FR 57412 (October 2, 2008), has been used in developing the final regulatory flexibility analysis for this rule.

The Department recognizes that the SBA has not established fixed, financial thresholds for ''organizations,'' as distinct from other entities. *See A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act,* Office of Advocacy, U.S. Small Business Administration at 12–13, available at *http://www.sba.gov.* The Department further recognizes that under SBA guidelines, the relationship of an entity to a larger entity with greater receipts is a factor to be considered in determining the necessity of conducting a regulatory flexibility analysis. Thus, the affiliation between a local labor organization and a national or international labor organization, a widespread practice among labor organizations subject to the LMRDA, may have an impact on the number of organizations that should be counted as ''small organizations'' under section 601(4) of the RFA, 5 U.S.C. 601(4).[34] However, for purposes of analysis here, and for ready comparison with the RFA analysis in its earlier Form LM–2 rulemaking, the Department has used the $6.5 million receipts test for ''small businesses.'' rather than the ''independently owned and operated and not dominant'' test for ''small organizations.'' Application of the latter test likely would reduce the number of labor organizations that would be counted as small entities under the RFA. It is the Department's view, however, that it would be inappropriate, given the past rulemaking concerning the Form T–1 and the Form LM–2, to depart from the $6.5 million receipts standard in preparing this final regulatory flexibility analysis. Accordingly, the following analysis assesses the impact of these regulations on small entities as defined by the applicable SBA size standards.

All numbers used in this analysis are based on 2006 data taken from the OLMS electronic labor organization reporting (''e.LORS'') database, which includes all records of labor organizations that have filed LMRDA reports with the Department.

A. Statement of the Need for, and Objectives of, the Final Rule

The following is a summary of the need for and objectives of the final rule. A more complete discussion is found earlier in this preamble.

The objective of this final rule is to increase the transparency of financial reporting by revising the current LMRDA disclosure Form LM–2 to enable workers to be responsible, informed, and effective participants in the governance of their labor organizations; discourage embezzlement and financial mismanagement; prevent the circumvention or evasion of the statutory reporting requirements; and strengthen the effective and efficient enforcement of the Act by the Department. Form LM–2 is filed by the largest reporting labor organizations, *i.e.,* those with $250,000 or more in total annual receipts.

The revisions to the Form LM–2 made by the Department in 2003 have helped to fulfill the mandate of full reporting set forth in the LMRDA. However, based upon the Department's experience since 2003, and after reviewing data from reports filed on the revised form, the Department has determined that further enhancements to the Form LM–2 are necessary. These enhancements will ensure that information is reported in such a way as to meet the objectives of the LMRDA by providing labor organization members with useful data that will enable them to be responsible and effective participants in the democratic governance of their labor organizations. The changes are designed to provide members of labor organizations with additional and more detailed information about the financial activities of their labor organization that is not currently available through the Form LM–2 reporting.

The enhancements provide additional information in Schedule 3 (Sale of Investments and Fixed Assets) and Schedule 4 (Purchase of Investments and Fixed Assets) that will allow verification that these transactions are performed at arm's length and without conflicts of interest. Schedules 11 and 12 will be revised to include the value of benefits paid to and on behalf of officers and employees. This will provide a more accurate picture of total compensation received by these labor organization officials. In addition, the changes will require the reporting in Schedules 11 and 12 of travel reimbursements indirectly paid these officials. This change will provide more accurate information on travel disbursements made to them by their labor organizations. The enhancements also include additional schedules corresponding to categories of receipts, which will provide additional information, by receipt category, of aggregated receipts of $5,000 or more. This change is consistent with the information currently provided on disbursements.

The Department's enforcement experience has shown that the failure of small labor organizations to file the annual Form LM–3 on time and the filing of reports with material deficiencies are often indicators of larger problems associated with the ways in which such organizations maintain their financial records, and may be an indicator of more serious financial mismanagement. The Department's enforcement experience reveals various reasons for delinquent filings, including a labor organization's failure to maintain the records required by the LMRDA; inadequate office procedures; frequent turnover of labor organization officials, who often serve on a part-time basis; uncertainty of first-time officers about their reporting responsibilities under the LMRDA and their inexperience with bookkeeping, recordkeeping, or both; an inattention generally to ''paperwork;'' overworked or under-trained officers; an officer's unwillingness to question or report apparent irregularities due to the officer's own inexperience or concern about the repercussions of reporting such matters; or a conscious effort to hide embezzlement or the misappropriation of funds by the officers, other members of the organization, or third parties associated

[34] Section 601(4) provides in part: ''the term 'small organization' means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. * * *''

with the labor organization. Many of these causes of delinquency, including pre-existing bookkeeping problems, inattention, overwork, insufficient training, and an unwillingness to confront or report financial irregularities, demonstrate that the labor organization members and the public would benefit from a more detailed accounting of the organization's financial conditions and operations. Moreover, OLMS experience indicates that labor organizations that are repeatedly delinquent are more likely than other labor organizations to suffer embezzlement, or related crime. Many of the reasons that contribute to delinquent filings also result in the filing of reports that omit or misstate material information about the labor organization's finances. The members of a labor organization that fails to correct a material reporting deficiency after being notified by the Department and being given an opportunity to address the error would benefit from the increased transparency of the Form LM–2.

As explained previously in the preamble, additional reporting by labor organizations is necessary to ensure, as intended by Congress, the full and comprehensive reporting of a labor organization's financial condition and operations, including a full accounting to members from whose work the payments were earned. 67 FR 79282–83. This final rule will prevent circumvention and evasion of these reporting requirements by providing members of labor organizations with financial information concerning their labor organization.

The legal authority for the final rule is provided by sections 201 and 208 of the LMRDA, 29 U.S.C. 431, 438. Section 201 requires labor organizations to file annual financial reports and to disclose certain financial information, including all assets, receipts, liabilities, and disbursements of the labor organization. Section 208 provides that the Secretary of Labor shall have authority to issue, amend, and rescind rules and regulations prescribing the form and publication of reports required to be filed under Title II of the Act, including rules prescribing reports concerning trusts in which a labor organization is interested, and such other reasonable rules and regulations as she may find necessary to prevent the circumvention or evasion of the reporting requirements. Section 208 also authorizes the Secretary to establish ''simplified reports for labor organizations and employers for whom [s]he finds by virtue of their size a detailed report would be unduly burdensome.'' 29 U.S.C. 438. Section 208 authorizes the Secretary to revoke this privilege for any labor organization or employer if the Secretary determines, after such investigation as she deems proper and due notice and opportunity for a hearing, that the purposes of section 208 would be served by revocation.

B. Summary of the Significant Issues Raised by Public Comments

The Department's NPRM in this rulemaking contained an Initial Regulatory Flexibility Analysis and Paperwork Reduction Act analyses. As noted above in the introduction to the Department's PRA analysis, because of the overlapping nature of costs for the purposes of both the RFA and PRA analyses, the Department construed all comments received related to the Department's assessment of costs to the regulated community as comments addressing both the PRA and the RFA analyses. The Department's discussion of significant issues raised in comments related to cost estimates, the agency's response thereto, and adjustments made to the methodology as a result of comments is found in the PRA section of this preamble. *See, supra,* Paperwork Reduction Act, Sec. A. As explained in that section, based upon careful consideration of the comments, the Department made adjustments to the methodology employed to assess costs, and those adjustments resulted in modifications to conclusions on costs, which have been employed in the following final RFA analysis. Thus, the statutory requirement that the Department provide in its final RFA analysis ''a summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments[,]'' 5 U.S.C. 604(a)(2), has been satisfied. Moreover, the Department received no comments addressing or challenging the specific conclusion in the NPRM that the rule does not have a significant economic impact on a substantial number of small entities.

C. Number of Small Entities Covered Under the Rule

The primary impact of this final rule will be on those labor organizations that have $250,000 or more in annual receipts. There are approximately 4,571 labor organizations of this size that are required to file Form LM–2 reports under the LMRDA. *See* Table 13 below. The Department estimates that 4,220 of these labor organizations, or 92.32%, are considered small under the current SBA standard (annual receipts less than $6.5 million). These labor organizations have annual average receipts of $1.30 million.[35] *See* Table 13. The Department estimates that about 96 labor organizations with annual receipts of less than $250,000 will be affected by the final rule. These 96 labor organizations have annual average receipts of $68,468. *See* Table 13. Although these estimates may not be predictive of the exact number of small labor organizations that will be impacted by this final rule in the future, the Department believes these estimates to be sound and they are derived from the best available information.

D. Reporting, Recording and Other Compliance Requirements of the Rule[36]

This final rule is not expected to have a significant economic impact on a substantial number of small entities. The LMRDA is primarily a reporting and disclosure statute. Accordingly, the primary economic impact will be the cost of obtaining and reporting required information.

For the estimated 4,220 Form LM–2 filers with between $250,000 and $6,500,000 in annual receipts, the estimated average annual reporting and recordkeeping burden for the current Form LM–2 is $16,328.22 or 1.26% of their average annual receipts. See Table 13, which provides a more complete list of the burden estimates.[37] The average additional first year cost (including first year non-recurring implementation costs) to these organizations is estimated at $4,717.39, or .36% of average annual receipts. *Id.* The average total first year cost of the revised Form LM–2 on these labor organizations is estimated at $21,045.61, or 1.62% of total annual receipts. *Id.* The Department views as unlikely that the smallest subset of these labor organizations (those with between

[35] In the 2003 Form LM–2 rule, the Department estimated the burden for each of three categories of reporting labor organizations as measured by their range of annual receipts: Tier I ($250,000 to less than $500,000); Tier II ($500,000 to less than $50,000,000) and Tier III ($50,000,000 or more).

[36] The estimated burden on labor organizations is discussed in detail in the previous section concerning the Paperwork Reduction Act. The figures discussed above are derived from the figures explained in that section.

[37] The estimates reported in this paragraph do not include labor organizations that voluntarily filed the Form LM–2 nor an estimate of the number of labor organizations (with annual receipts less than $250,000) that would have to file the Form LM–2 under the proposed Form LM–3 revocation procedures. The number of such labor organizations (158) represents only a small fraction of the total number of reporting labor organizations and thus their inclusion would not have a material effect on the burden estimates.

$250,000 and $499,999 in annual receipts) would incur many of the costs incurred by the typical Form LM–2 filer (those with receipts between $500,000 and $6.5 million). The labor organizations with the smallest annual receipts are likely to have less complicated accounts covering fewer transactions than the typical, larger Form LM–2 filer. However, to assess the ''maximum'' or ''worst-case'' impact on this subset of labor organizations, the Department considered the unlikely event that the labor organizations in this subset could incur the same compliance burden as the average for labor organizations with annual receipts of $500,000 to $49.9 million. Under this unlikely scenario, the total additional cost of the final rule on such labor organizations is estimated at $4,891.21 in the first year, or .38% of the annual receipts of all organizations with receipts of $250,000 to $6.5 million, and $462.88 in the second year, or .04% of annual receipts. *Id.* For a small labor organization with $250,000 to $499,999 in annual receipts, the estimated maximum additional cost of the final rule would be 1.26% of receipts in the first year and .12% in the second year.[38] *Id.*

The average annual reporting and recordkeeping burden for the current Form LM–3 is estimated at $1,404.00 or 2.08% of average annual receipts for Form LM–3 filers. See Table 1. The Department assumes that Form LM–3 filers will spend approximately $23.13 per hour to complete the form. See Table 11. The additional cost of filing a Form LM–2 is $3,028.23 or 4.49% of average annual receipts for Form LM–3 filers. The Department estimates that on average, 96 Form LM–3 filers annually will have their Form LM–3 filing privilege revoked and thus will incur this additional burden. The Department arrived at this figure by examining the number of deficiency and delinquency cases processed by the Department. In the latest fiscal year, the Department processed 684 deficiency cases for Form LM–3 filers and 1,187 cases for delinquent Form LM–3 filers. The Department assumes that it will examine one half of the deficiency and delinquency cases for possible revocation (935.5 per year) and that 10% of the cases examined will ultimately lead to revocation of the Form LM–3 filing privilege (93.55). Further the Department assumes that in another 2 cases per year it will find ''other circumstances exist that warrant revocation,'' for a total of 96 revocations per year (rounded up).

TABLE 13—SUMMARY OF REGULATORY FLEXIBILITY ANALYSIS[39]

For unions that meet the SBA small entities standard	Total burden hours per respondent	Total cost per respondent
Weighted Average Cost of Current Form LM–2	507.62	$16,382.22
Percentage of Average Annual Receipts	n.a.	1.26%
Average Cost of Current Form LM–3	116.00	1,404.00
Percentage of Average Annual Receipts	n.a.	2.08%
Weighted Average First Year Cost of Revised Form LM–2	653.86	21,045.61
Percent of Average Annual Receipts	n.a.	1.62%
Weighted Average Second Year Cost	520.36	16,748.65
Percent of Average Annual Receipts	n.a.	1.29%
Weighted Average Increase in Cost of Final Rule, First Year	146.56	4,717.39
Percent of Average Annual Receipts	n.a.	0.36%
Weighted Average Increase in Cost of Final Rule, Second Year	13.06	420.44
Percent of Average Annual Receipts	n.a.	0.03%
Maximum First Year Cost of Revised Form LM–2 for Unions with $250,000 to $499,999 in Annual Receipts	659.26	19,677.27
Percentage of Average Annual Receipts	n.a.	5.47%
Maximum Second Year Cost	521.68	15,570.78
Percentage of Average Annual Receipts	n.a.	4.33%
Maximum Increase in Cost of Final Rule, First Year	151.96	4,891.21
Percent of Annual Receipts for $250,000 to $499,999 Union	n.a.	1.26%
Percent of Annual Receipts for $500,000 to $6,500,000 Union	n.a.	0.29%
Percent of Annual Receipts for $250K to $6.5M Union	n.a.	0.38%
Maximum Increase in Cost of Final Rule, Second Year	14.38	462.88
Percent of Annual Receipts for $250,000 to $499,999 Union	n.a.	0.12%
Percent of Annual Receipts for $500,000 to $6,500,000 Union	n.a.	0.03%
Percent of Annual Receipts for $250K to $6.5M Union	n.a.	0.04%
Average Cost of Revised Form LM–2	119.22	3,028.23
Union with between $10K and $249,999 in Annual Receipts	n.a.	4.49%

Total 2006 Filers between $250K & $6.5M	4,220
Total 2006 Filers between $250K & $499,999	1,325
Total 2006 Filers between $500K & $6.5	2,895
Total 2006 Filers between $500K & $49.9M	3,194
Number of Form LM–2 Filers with Annual Receipts between $250K & $2M	3,401
Total 2006 Form LM–3 Filers	10,977
Total 2006 Form LM–2 Filers	4,571
Total 2006 Union Filers	23,924
Percentage of All Union Filers that File Form LM–2	19.11%
Percentage of all Union Filers with Annual Receipts between $250K & $6.5M	18.1%
Percentage of Union Filers with Annual Receipts between $250K & $499,999	5.5%
Percentage of Form LM–2 Filers with Annual Receipts between $250K & $6.5M	92.32%

[38] The several magnitude difference in percentages is accountable to the much smaller number of labor organizations with $250,000 to $499,999 in annual receipts (1,325) compared to the number of labor organizations with $500,000 to $6.5 million in annual receipts (2,895) and the three and one half-fold difference in average receipts between labor organizations with $250,000 to $499,999 in annual receipts and labor organizations with $500,000 to $6.5 million in annual receipts.

[39] Note: Some of the figures used in this table and other figures mentioned in this document may not add due to rounding.

Percentage between $250K & $499,999	31.40%
Percentage between $500K & $6.5M	68.60%
Percentage of Form LM–3 Filers that will File Form LM–2	.87%
2006 Average Annual Receipts for Unions between $250K & $6.5M	$1,296,219.27
2006 Average Annual Receipts for Unions between $250K & $499,999	$359,925.03
2006 Average Annual Receipts for Unions between $500K & $6.5M	$1,724,895.80
2006 Average Annual Receipts for Unions between $10K and $249,999	$67,468.14

OLMS will update the e.LORS system to coincide with all changes embodied in this final rule. OLMS will provide compliance assistance for any questions or difficulties that may arise from using the reporting software. A help desk is staffed during normal business hours and can be reached by telephone toll free at 1–866–401–1109.

The use of electronic forms makes it possible to download information from previously filed reports directly into the form; enables officer and employee information to be imported onto the form; makes it easier to enter information; and automatically performs calculations and checks for typographical and mathematical errors and other discrepancies, which reduces the likelihood of having to file an amended report. The error summaries provided by the software, combined with the speed and ease of electronic filing, will also make it easier for both the reporting labor organization and OLMS to identify errors in both current and previously filed reports and to file amended reports to correct them.

As discussed previously in the preamble, labor organizations that are required to file a Form LM–2 because their Form LM–3 filing privilege has been revoked are not required to comply with the electronic submission requirement.

E. Description of the Steps the Agency Has Taken To Minimize the Economic Impact on Small Entities

The Department considered a number of alternatives to the final rule that could minimize the economic impact on small entities. One alternative would be not to change the existing Form LM–2. This alternative was rejected because OLMS experience demonstrates that the goals of the Act are not being fully met. As explained further in the preamble, members of labor organizations cannot accurately determine from the current Form LM–2 important information regarding their union's finances, including the parties to whom it sells, and from whom it purchases, investments and fixed assets; the identity of parties from whom the union receives major amounts of funds; and the benefits and indirect disbursements received by officials and employees of the labor organization. Members need this information to make informed decisions on the governance of their labor organizations.

Another alternative would be to limit the new reporting requirements to national and international parent labor organizations. However, the Department has concluded that such a limitation would eliminate the availability of meaningful information from local and intermediate labor organizations, which may have far greater impact on and relevance to members of labor organizations, particularly since such lower levels of labor organizations generally set and collect dues and provide representational and other services for their members. Such a limitation would reduce the utility of the information to a significant number of members. Of the 4,571 labor organizations that are required to file Form LM–2, just 101 are national or international labor organizations. Requiring only national and international organizations to file more detailed reports would not provide any deterrent to fraud and embezzlement by local and intermediate body officials nor would it increase transparency in local and intermediate bodies.

Another alternative would be to phase-in the effective date for the Form LM–2 changes and provide smaller Form LM–2 filers with additional lead time to modify their recordkeeping systems to comply with the new reporting requirements. The Department has concluded that a three-month period for all Form LM–2 filers to adapt to the new reporting requirements should provide sufficient time to make the necessary adjustments. OLMS also plans to provide compliance assistance to any labor organization that requests it.

A review of the revisions was undertaken to reduce paperwork burden for all Form LM–2 filers and an effort was made during the review to identify ways to reduce the impact on small entities. The Department concludes that it has minimized the economic impact of the form revision on small labor organizations to the extent possible, while recognizing workers' and the Department's need for information to protect the rights of members of labor organizations under the LMRDA.

F. Conclusion

The Regulatory Flexibility Act does not define either ''significant economic impact'' or ''substantial'' as it relates to the number of regulated entities. 5 U.S.C. 601. In the absence of specific definitions, ''what is 'significant' or 'substantial' will vary depending on the problem that needs to be addressed, the rule's requirements, and the preliminary assessment of the rule's impact.'' *A Guide for Government Agencies, supra,* at 17. As to economic impact, one important indicator is the cost of compliance in relation to revenue of the entity. *Id.*

As noted above, the final rule will apply to 4,220 Form LM–2 filers and approximately 96 Form LM–3 filers that meet the SBA standard for small entities, about 18% of all labor organizations that must file an annual financial report under the LMRDA. Further, the Department estimates that just 1,325 labor organizations with annual receipts from $250,000 to $499,999, or 5.5% of all labor organizations covered by the LMRDA, would be affected by this rule. Even less (5.5% of the total) would incur the maximum additional costs of the final rule described above. Finally, the Department estimates that approximately 96 Form LM–3 filers, or .87% of all Form LM–3 labor organizations covered by the LMRDA, would be affected by this rule.

For the estimated 4,220 Form LM–2 filers with between $250,000 and $6,500,000 in annual receipts, the estimated average annual reporting and recordkeeping burden for the current Form LM–2 is $16,328.22 or 1.26% of their average annual receipts. The average additional first year cost (including first year non-recurring implementation costs) to these organizations is estimated at less than $4,717.39, or 0.36% of average annual receipts. The average total first year cost of the revised Form LM–2 on these labor organizations is estimated at $21,045.61, or 1.62% of total annual receipts. The Department believes that it is unlikely that the smallest subset of these labor organizations (those with between $250,000 and $499,999 in annual receipts) would incur many of the costs incurred by the typical Form LM–2 filer (those with receipts between $500,000

and $6.5 million). Under this ''worst case'' scenario for these organizations, the total additional cost of the final rule on such labor organizations is estimated at $4,891.21 in the first year, or 0.38% of the annual receipts of all organizations with receipts of $250,000 to $6.5 million, and $462.88 in the second year, or .04% of annual receipts.

The average annual reporting and recordkeeping burden for the current Form LM–3 is estimated at $1,404.00 or 2.08% of average annual receipts for Form LM–3 filers. For the estimated 96 Form LM–3 filers that would have their privilege to file Form LM–3 revoked (all of which meet the SBA standard for small entities), the additional cost of filing a Form LM–2 will be $3,028.23 or 4.49% of average annual receipts

Given the relatively small costs of compliance in relation to the revenues of the affected labor organizations, the Department concludes that the economic impact of this rule is not significant. As to the number of labor organizations affected by this rule, the Department has determined by examining e.LORS data that in 2006, the Department received 4,228 Form LM–2s from labor organizations with receipts between $250,000 and $6,500,000, or just 17.6% of the 24,065 labor organizations that must file any of the annual financial reports required under the LMRDA (Forms LM–2, LM–3, or LM–4). The Department concludes that the rule does *not* impact a substantial number of small entities. Therefore, under 5 U.S.C. 605, the Department certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

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

In accordance with Executive Order 13045, the Department has evaluated the environmental safety and health effects of the final rule on children. The Department has determined that the final rule will have no effect on children.

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

The Department has reviewed this final rule in accordance with Executive Order 13175, and has determined that it does not have ''tribal implications.'' The final rule does not ''have substantial direct effects 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.''

Executive Order 12630 (Governmental Actions and Interference With Constitutionally Protected Property Rights)

This final rule is not subject to Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it does not involve implementation of a policy with takings implications.

Executive Order 12988 (Civil Justice Reform)

This final rule has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform, and will not unduly burden the federal court system. The final rule has been written so as to minimize litigation and provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

Environmental Impact Assessment

The Department has reviewed the final rule in accordance with the requirements of the National Environmental Policy Act (''NEPA'') of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 U.S.C. part 1500), and the Department's NEPA procedures (29 CFR part 11). The final rule will not have a significant impact on the quality of the human environment, and, thus, the Department has not conducted an environmental assessment or an environmental impact statement.

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)

This final rule is not subject to Executive Order 13211, because it will not have a significant adverse effect on the supply, distribution, or use of energy.

Electronic Filing of Forms and Availability of Collected Data

Appropriate information technology is used to reduce burden and improve efficiency and responsiveness. The current forms can be downloaded from the OLMS Web site. OLMS has also implemented a system to require Form LM–2 filers and permit Form LM–3 and Form LM–4 filers to submit forms electronically with digital signatures. Labor organizations are currently required to pay a minimal fee to obtain electronic signature capability for the two officers who sign the form. These digital signatures ensure the authenticity of the reports. Information about this system can be obtained on the OLMS Web site at *http://www.olms.dol.gov.*

The OLMS Online Public Disclosure Room is available for public use at *http://www.unionreports.gov.* The site contains a copy of each labor organization's annual financial report for reporting year 2000 and thereafter as well as an indexed computer database on the information in each report that is searchable through the Internet.

OLMS includes e.LORS information in its outreach program, including compliance assistance information on the OLMS Web site, individual guidance provided through responses to e-mail, written, or telephone inquiries, and formal group sessions conducted for labor organization officials regarding compliance.

List of Subjects in 29 CFR Part 403

Labor unions, Reporting and recordkeeping requirements.

Text of Final Rule

■ In consideration of the foregoing, the Department amends part 403 of 29 CFR Chapter IV as set forth below:

PART 403—LABOR ORGANIZATION ANNUAL FINANCIAL REPORTS

■ 1. The authority citation for Part 403 is revised to read as follows:

Authority: Secs. 202, 207, 208, 73 Stat. 525, 529 (29 U.S.C. 432, 437, 438); Secretary's Order No. 4–2007, May 2, 2007, 72 FR 26159.

■ 2. Amend 29 CFR 403.4 by:
■ a. Revising paragraph 403.4(a)(1) to read as set forth below:
■ b. Redesignating paragraph (b) as paragraph (f).
■ c. Adding new paragraphs (b), (c), (d), and (e) to read as set forth below.

§ 403.4 Simplified annual reports for smaller labor organizations.

(a)(1) If a labor organization, not in trusteeship, has gross annual receipts totaling less than $250,000 for its fiscal year, it may elect, subject to revocation of the privilege as provided in section 208 of the LMRDA, to file the annual financial report called for in section 201(b) of the LMRDA and § 403.3 of this part on United States Department of Labor Form LM–3 entitled ''Labor Organization Annual Report,'' in accordance with the instructions accompanying such form and constituting a part thereof.

* * * * *

(b) The Secretary may revoke a labor organization's privilege to file the Form LM–3 simplified annual report described in § 403.4(a)(1) and require

the labor organization to file the Form LM–2 as provided in § 403.3, if the following conditions are met:

(1) The Secretary has provided notice to the labor organization that revocation is possible if conditions warranting revocation are not remedied;

(2) The Secretary has undertaken such investigation as the Secretary deems proper revealing:

(i) The date the labor organization's Form LM–3 was due has passed and no Form LM–3 has been received; or

(ii) The labor organization filed the Form LM–3 with a material deficiency and failed to remedy this deficiency after notification by the Secretary that the report was deficient; or

(iii) Other circumstances exist that warrant revocation of the labor organization's privilege to file the Form LM–3.

(3) The Secretary has provided notice to the labor organization of a proposed decision to revoke the filing privilege, the reason for such revocation, and an opportunity for the labor organization to submit in writing a position statement with relevant factual information and argument regarding:

(i) The existence of the delinquency or the deficiency (including whether a deficiency is material) or other circumstances alleged in the notice;

(ii) The reason for the delinquency, deficiency or other cited circumstance and whether it was caused by factors reasonably outside the control of the labor organization; and

(iii) Any other factors, including those in mitigation, the Secretary should consider in making a determination regarding whether the labor organization's privilege to file the Form LM–3 should be revoked.

(4) The Secretary (or a designee who has not participated in the investigation), after review of all the information collected and provided, shall issue a determination in writing to the labor organization. If the Secretary determines that the privilege shall be revoked, the Secretary will inform the labor organization of the reasons for the determination and order it to file the Form LM–2 for such reporting periods as the Secretary finds appropriate.

(c) A labor organization that receives a notice as set forth in § 403.4(b)(3) must submit its written statement of position and any supporting facts, evidence, and argument by mail, hand delivery, or by alternative means specified in the notice to the Office of Labor-Management Standards (OLMS) at the address provided in the notice within 30 days after the date of the letter proposing revocation. If the 30th day falls on a Saturday, Sunday, or Federal holiday, the submission will be timely if received by OLMS on the first business day after the 30th day. Absent a timely submission to OLMS, the proposed revocation shall take effect automatically unless the Secretary in his or her discretion determines otherwise.

(d) The Secretary's determination shall be the Department's final agency action on the revocation.

(e) For purposes of this section, a deficiency is ''material'' if in the light of surrounding circumstances the inclusion or correction of the item in the report is such that it is probable that the judgment of a reasonable person relying upon the report would have been changed or influenced.

Signed in Washington, DC, this 8th day of January 2009.

Don Todd,

Deputy Assistant Secretary for Labor-Management Programs.

Appendix

Note: This appendix, which will not appear in the Code of Federal Regulations, contains the revised Form LM–2 and the revised instructions to that form. The appendix also contains the revised instructions to the Form LM–3. The form itself is not included because no changes have been made to the current version.

BILLING CODE 4510–CM–P

U.S. Department of Labor
Employment Standards Administration
Office of Labor-Management Standards
Washington, DC 20210

FORM LM-2 LABOR ORGANIZATION ANNUAL REPORT

Form Approved
Office of Management and Budget
No. 0000-0000
Expires: 00-00-0000

MUST BE USED BY LABOR ORGANIZATIONS WITH $250,000 OR MORE IN TOTAL ANNUAL RECEIPTS AND LABOR ORGANIZATIONS IN TRUSTEESHIP

This report is mandatory under P.L. 86-257, as amended. Failure to comply may result in criminal prosecution, fines, or civil penalties as provided by 29 U.S.C. 439 or 440.

READ THE INSTRUCTIONS CAREFULLY BEFORE PREPARING THIS REPORT.

For Official Use Only	1. FILE NUMBER	2. PERIOD COVERED MO DAY YEAR	3. (a) AMENDED - If this is an amended report, check here: ☐ (b) HARDSHIP - If filing under the hardship procedures, check here: ☐ (c) TERMINAL - If this is a terminal report, check here: ☐
E	000-000	From Through	

4. AFFILIATION OR ORGANIZATION NAME	8. MAILING ADDRESS (Type or print in capital letters)
5. DESIGNATION (Local, Lodge, etc.) / 6. DESIGNATION NUMBER	First Name / Last Name
7. UNIT NAME (if any)	P.O. Box - Building and Room Number
	Number and Street
9. Are your organization's records kept at its mailing address? (If "No," provide address in Item 69.) Yes ☐ No ☐	City
	State / ZIP Code + 4

69. ADDITIONAL INFORMATION (Text entered will appear on last page of form. To enter comments, press the "General Additional Information" button.)

Each of the undersigned, duly authorized officers of the above labor organization, declares, under penalty of perjury and other applicable penalties of law, that all of the information submitted in this report (including the information contained in any accompanying documents) has been examined by the signatory and is, to the best of the undersigned's knowledge and belief, true, correct, and complete. (See Section VI on penalties in the instructions.)

70. SIGNED: _____ PRESIDENT (If other title, see instructions.)
Date _____ Telephone Number _____

71. SIGNED: _____ TREASURER (If other title, see instructions.)
Date _____ Telephone Number _____

Form LM- 2 (Revised 2008)

COMPLETE ITEMS 10 THROUGH 21

FILE NUMBER: 000-000

10. During the reporting period did the labor organization create or participate in the administration of a trust or other fund or organization, as defined in the instructions, which provides benefits for members or their beneficiaries? Yes ☐ No ☐

11. During the reporting period did the labor organization have a political action committee (PAC) fund? Yes ☐ No ☐

12. During the reporting period did the labor organization have an audit or review of its books and records by an outside accountant or by a parent body auditor/representative? Yes ☐ No ☐

13. During the reporting period did the labor organization discover any loss or shortage of funds or other assets? (Answer "Yes" even if there has been repayment or recovery.) Yes ☐ No ☐

14. What is the maximum amount recoverable under the labor organization's fidelity bond for a loss caused by any officer, employee or agent of the labor organization who handled union funds? ☐

15. During the reporting period did the labor organization acquire or dispose of any assets in any manner other than by purchase or sale? Yes ☐ No ☐

16. Were any of the labor organization's assets pledged as security or encumbered in any other way at the end of the reporting period? Yes ☐ No ☐

17. Did the labor organization have any contingent liabilities at the end of the reporting period? Yes ☐ No ☐

18. During the reporting period did the labor organization have any changes in its constitution and bylaws, other than rates of dues and fees, or in practices/procedures listed in the instructions? Yes ☐ No ☐

19. What is the date of the labor organization's next regular election of officers? ☐

20. How many members did the labor organization have at the end of the reporting period? (Total from Line 6 of Schedule 13) ☐

21. What are the labor organization's rates of dues and fees? (Enter a minimum and maximum if more than one rate applies for any line.)

Rates of Dues and Fees

Dues/Fees	Amount		Unit	Minimum	Maximum
(a) Regular		per			
(b) Working		per			
(c) Initiation Fees		per			
(d) Transfer Fees		per			
(e) Work Permits		per			

If the answer to any of the above questions is "Yes," provide details in Item 69 (Additional Information) as explained in the instructions for each item.

Form LM- 2 (Revised 2008)

STATEMENT A - ASSETS AND LIABILITIES

FILE NUMBER: 000-000

Complete Schedules 1 Through 29 Before Completing Statement A

Assets

ASSETS	Schedule Number	Start of Reporting Period (A)	End of Reporting Period (B)
22 Cash			
23 Accounts Receivable	1		
24. Loans Receivable	2		
25. U.S. Treasury Securities			
26. Investments	5		
27. Fixed Assets	6		
28 Other Assets	7		
29 TOTAL ASSETS			

Liabilities

LIABILITIES	Schedule Number	Start of Reporting Period (C)	End of Reporting Period (D)
30. Accounts Payable	8		
31. Loans Payable	9		
32. Mortgages Payable			
33. Other Liabilities	10		
34. TOTAL LIABILITIES			

35. NET ASSETS (Item 29 Less Item 34)		

Form LM- 2 (Revised 2008)

STATEMENT B – RECEIPTS AND DISBURSEMENTS

Complete Schedules 1 Through 29 Before Completing Statement B

FILE NUMBER: 000-000

Item CASH RECEIPTS	SCH #	AMOUNT
36. Dues and Agency Fees	14	
37. Per Capita Tax	15	
38. Fees, Fines, Assessments, Work Permits	16	
39. Sale of Supplies	17	
40. Interest	18	
41. Dividends	19	
42. Rents	20	
43. Sale of Investments and Fixed Assets	3	
44. Loans Obtained	9	
45. Repayments of Loans Made	2	
46. On Behalf of Affiliates for Transmittal to Them	21	
47. From Members for Disbursement on Their Behalf	22	
48. Other Receipts	23	
49. TOTAL RECEIPTS		

Item CASH DISBURSEMENTS	SCH #	AMOUNT
50. Representational Activities	24	
51. Political Activities and Lobbying	25	
52. Contributions, Gifts, and Grants	26	
53. General Overhead	27	
54. Union Administration	28	
55. Benefits	29	
56. Per Capita Tax		
57. Strike Benefits		
58. Fees, Fines, Assessments, etc.		
59. Supplies for Resale		
60. Purchase of Investments and Fixed Assets	4	
61. Loans Made	2	
62. Repayment of Loans Obtained	9	
63. To Affiliates of Funds Collected on Their Behalf		
64. On Behalf of Individual Members		
65. Direct Taxes		
66. Subtotal		
67. Withholding Taxes and Other Payroll Deductions		
67a. Total Withheld		
67b. Less Total Disbursed		
67c. Total Withheld But Not Disbursed		
68. TOTAL DISBURSEMENTS (Line 66-Line 67c)		

Form LM-2 (Revised 2008)

DETAILED SUMMARY PAGE – SALES & PURCHASES SCHEDULES 3 & 4

FILE NUMBER: 000-000

Complete Schedules 3 and 4 Before Completing Statement B

SCHEDULE 3 - SALE OF INVESTMENTS AND FIXED ASSETS		
(1) Total of All Itemized Transactions With All Named Purchasers		
(2) Total of All Non-Itemized Transactions With All Named Purchasers		
(3) Total of All Other Sales of Investments and Fixed Assets		
(4) Total		
	(5) Less Reinvestments	
	(6) Net Received from Sales	

SCHEDULE 4 - PURCHASE OF INVESTMENTS AND FIXED ASSETS		
(1) Total of All Itemized Transactions With All Named Sellers		
(2) Total of All Non-Itemized Transactions With All Named Sellers		
(3) Total of All Other Sales of Investments and Fixed Assets		
(4) Total		
	(5) Less Reinvestments	
	(6) Net Purchases	

Form LM- 2 (Revised 2008)

DETAILED SUMMARY PAGE – RECEIPT SCHEDULES 14 – 23

FILE NUMBER: 000-000

Complete Schedules 14 Through 23 Before Completing Statement B

SCHEDULE 14 Dues and Agency Fees	1. Named Payer Receipts	$0	
	2. All Other Receipts	$0	
	3. **Total Receipts** *(add Lines 1 through 2)*	$0	ITEM 36
SCHEDULE 15 Per Capita Tax	1. Named Payer Receipts	$0	
	2. All Other Receipts	$0	
	3. **Total Receipts** *(add Lines 1 through 2)*	$0	ITEM 37
SCHEDULE 16 Fees, Fines, Permits	1. Named Payer Itemized Receipts	$0	
	2. Named Payer Non-itemized Receipts	$0	
	3. All Other Receipts		
	4. **Total Receipts** *(add Lines 1 through 3)*	$0	ITEM 38
SCHEDULE 17 Sales of Supplies	1. Named Payer Itemized Receipts	$0	
	2. Named Payer Non-itemized Receipts	$0	
	3. All Other Receipts		
	4. **Total Receipts** *(add Lines 1 through 3)*	$0	ITEM 39
SCHEDULE 18 Interest	1. Named Payer Itemized Receipts	$0	
	2. Named Payer Non-itemized Receipts	$0	
	3. All Other Receipts		
	4. **Total Receipts** *(add Lines 1 through 3)*	$0	ITEM 40
SCHEDULE 19 Dividends	1. Named Payer Itemized Receipts	$0	
	2. Named Payer Non-itemized Receipts	$0	
	3. All Other Receipts		
	4. **Total Receipts** *(add Lines 1 through 3)*	$0	ITEM 41
SCHEDULE 20 Rents	1. Named Payer Itemized Receipts	$0	
	2. Named Payer Non-itemized Receipts	$0	
	3. All Other Receipts		
	4. **Total Receipts** *(add Lines 1 through 3)*	$0	ITEM 42
SCHEDULE 21 Behalf of Affiliates	1. Named Payer Itemized Receipts	$0	
	2. Named Payer Non-itemized Receipts	$0	
	3. All Other Receipts		
	4. **Total Receipts** *(add Lines 1 through 3)*	$0	ITEM 46
SCHEDULE 22 Members Behalf	1. Named Payer Itemized Receipts	$0	
	2. Named Payer Non-itemized Receipts	$0	
	3. All Other Receipts		
	4. **Total Receipts** *(add Lines 1 through 3)*	$0	ITEM 47
SCHEDULE 23 Other Receipts	1. Named Payer Itemized Receipts	$0	
	2. Named Payer Non-itemized Receipts	$0	
	3. All Other Receipts		
	4. **Total Receipts** *(add Lines 1 through 3)*	$0	ITEM 48

Form LM- 2 (Revised 2008)

DETAILED SUMMARY PAGE – DISBURSEMENTS SCHEDULES 24 – 29

FILE NUMBER: 000-000

Complete Schedules 24 Through 29 Before Completing Statement B

SCHEDULE 24	1. Named Payee Itemized Disbursements		
	2. Named Payee Non-itemized Disbursements		
	3. To Officers		
	4. To Employees		
	5. All Other Disbursements		
Representational Activities	6. **Total Disbursements** (*add lines 1 through 5*)		Item 50

SCHEDULE 25	1. Named Payee Itemized Disbursements		
	2. Named Payee Non-itemized Disbursements		
	3. To Officers		
	4. To Employees		
	5. All Other Disbursements		
Political Activities and Lobbying	6. **Total Disbursements** (*add lines 1 through 5*)		Item 51

SCHEDULE 26	1. Named Payee Itemized Disbursements		
	2. Named Payee Non-itemized Disbursements		
	3. To Officers		
	4. To Employees		
	5. All Other Disbursements		
Contributions, Gifts, and Grants	6. **Total Disbursements** (*add lines 1 through 5*)		Item 52

SCHEDULE 27	1. Named Payee Itemized Disbursements		
	2. Named Payee Non-itemized Disbursements		
	3. To Officers		
	4. To Employees		
	5. All Other Disbursements		
General Overhead	6. **Total Disbursements** (*add lines 1 through 5*)		Item 53

SCHEDULE 28	1. Named Payee Itemized Disbursements		
	2. Named Payee Non-itemized Disbursements		
	3. To Officers		
	4. To Employees		
	5. All Other Disbursements		
Union Administration	6. **Total Disbursements** (*add lines 1 through 5*)		Item 54

SCHEDULE 29	1. Named Payee Itemized Disbursements		
	2. Named Payee Non-itemized Disbursements		
	3. To Officers		
	4. To Employees		
	5. All Other Disbursements		
Benefits	6. **Total Disbursements** (*add lines 1 through 5*)		Item 55

Form LM- 2 (Revised 2008)

SCHEDULE 1 – ACCOUNTS RECEIVABLE AGING SCHEDULE

FILE NUMBER: 000-000

Entity or Individual Name (A)	Total Account Receivable (B)	90-180 Days Past Due (C)	180+ Days Past Due (D)	Liquidated Account Receivable (E)
1.				
2.				
3				
4.				
5.				
6				
7.				
8				
9.				
10.				
11.				
12.				
13.				
14.				
15				
16.				
17				
18.				
19.				
20.				
21				
22.				
23.				
24				
25. Totals from Continuation pages (if any)				
26. Totals of Lines 1 through 25				
27. Totals from all other accounts receivable				
28. Totals of Lines 26 and 27				

Form LM- 2 (Revised 2008)

SCHEDULE 2 – LOANS RECEIVABLE

FILE NUMBER: 000-000

List below loans to officers, employees, or members which at any time during the reporting period exceeded $250 and list all loans to business enterprises regardless of amount. (A)	Loans Outstanding at Start of Period (B)	Loans Made During Period (C)	Repayments Received During Period		Loans Outstanding at End of Period (E)
			Cash (D)(1)	Other Than Cash (D)(2)	
1. Name- Purpose- Security: Terms of Repayment-					
2. Name- Purpose: Security- Terms of Repayment-					
3. Name- Purpose: Security: Terms of Repayment-					
4. Totals from Continuation pages (if any)	$	$0			
5. Totals of loans not listed above					
6. Totals of Lines 1 through 5	$	$0			

The Totals from Line 6 will be automatically entered in ..... Item 24 Column (A) ..... Item 61 ..... Item 45 ..... Item 69 with Explanation _____ Item 24 Column (B)

Form LM- 2 (Revised 2008)

SCHEDULE 3 – SALE OF INVESTMENTS AND FIXED ASSETS

FILE NUMBER: 000-000

Complete Itemization Pages BEFORE the Detailed Summary Page

Name and Address (A)	Description (if land or building give location) (B)	Date (C)	Cost (D)	Book Value (E)	Gross Sales Price (F)	Amount Received (G)
	(H) Total of Transactions Listed Above					
	(I) Total of All Transactions from Continuation Pages with this Purchaser					
	(J) Total of All Itemized Transactions with this Purchaser (Sum of (H) and (I))					
	(K) Total of All Non-Itemized Transactions with this Purchaser					
	(L) Total of All Transactions with This Purchaser for this Schedule (Sum of (J) and (K))					

Form LM- 2 (Revised 2008)

SCHEDULE 4 – PURCHASE OF INVESTMENTS AND FIXED ASSETS

FILE NUMBER: 000-000

Complete Itemization Pages BEFORE the Detailed Summary Page

Name and Address (A)	Description (If land or building give location) (B)	Date (C)	Cost (D)	Book Value (E)	Amount Paid (F)
	(G) Total of Transactions Listed Above				
	(H) Total of All Transactions from Continuation Pages with this Seller				
	(I) Total of All Itemized Transactions with this Seller (Sum of (G) and (H))				
	(J) Total of All Non-Itemized Transactions with this Seller				
	(K) Total of All Transactions with this Seller for this Schedule (Sum of (I) and (J))				

Form LM- 2 (Revised 2008)

SCHEDULE 5 – INVESTMENTS

FILE NUMBER: 000-000

Description (A)	Amount (B)
Marketable Securities	
1. Total Cost	
2. Total Book Value	
3. List each marketable security which has a book value over $5,000 and exceeds 5% of Line 2.	
(a)	
(b)	
(c)	
(d) Total from Continuation pages (if any)	
Other Investments	
4. Total Cost	
5. Total Book Value	
6. List each other investment which has a book value over $5,000 and exceeds 5% of Line 5. Also, list each Trust which is an investment.	
(a)	
(b)	
(c)	
(d)	
(e) Total from Continuation pages (if any)	
7. Total of Lines 2 and 5	

Form LM- 2 (Revised 2008)

SCHEDULE 6 - FIXED ASSETS

FILE NUMBER: 000-000

Description (A)	Cost or Other Basis (B)	Total Depreciation or Amount Expensed (C)	Book Value (D)	Value (E)
1. Land (give location)				
2. Totals from Continuation pages (if any)				
3. Buildings (give location)				
4. Totals from Continuation pages (if any)				
5. Automobiles and Other Vehicles				
6. Office Furniture and Equipment				
7. Other Fixed Assets				
8. Totals of Lines 1 through 7				

SCHEDULE 7 – OTHER ASSETS

FILE NUMBER: 000-000

Description (A)	Book Value (B)
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	
11.	
12.	
13	
14. Total from Continuation pages (if any)	
15. Total of Lines 1 through 14	

Form LM- 2 (Revised 2008)

SCHEDULE 8 – ACCOUNTS PAYABLE AGING SCHEDULE

FILE NUMBER: 000-000

Entity or Individual Name (A)	Total Account Payable (B)	90-180 Days Past Due (C)	180+ Days Past Due (D)	Liquidated Account Payable (E)
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				
14.				
15.				
16.				
17.				
18.				
19.				
20.				
21.				
22.				
23.				
24.				
25. Totals from Continuation pages (if any)				
26. Totals of Lines 1 through 25				
27. Totals from all other accounts payable				
28. Totals of Lines 26 and 27				

Form LM- 2 (Revised 2008)

SCHEDULE 9 – LOANS PAYABLE

FILE NUMBER: 000-000

Source of Loans Payable at Any Time During the Reporting Period (A)	Loans Owed at Start of Period (B)	Loans Obtained During Period (C)	Repayment Made During Period		Loans Owed at End of Period (E)
			Cash (D)(1)	Other Than Cash (D)(2)	
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					
11.					
12. Totals from Continuation pages (if any)					
13. Totals of Lines 1 through 12					

The totals from Line 13 will be automatically entered in _____ Item 31 Column (C) _____ Item 44 _____ Item 62 _____ Item 69 with Explanation _____ Item 31 Column (D)

Form LM- 2 (Revised 2008)

SCHEDULE 10 - OTHER LIABILITIES

FILE NUMBER: 000-000

Description (A)	Amount at End of Period (B)
1	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	
11.	
12.	
13. Total from Continuation pages (if any)	
14. Total of Lines 1 through 13	

Form LM-2 (Revised 2008)

SCHEDULE 11 - ALL OFFICERS AND DISBURSEMENTS TO OFFICERS

FILE NUMBER: 000-000

(A)* Name	(B)* Title	(C)* Status	Gross Salary Disbursements (before any deductions) (D)	Allowances Disbursed (E)	Benefits (F)	Disbursements for Official Business (G)	Other Disbursements not Reported in (D) through (G) (H)	Total (I)
1 A*								
B*								
C*								
J*			Schedule 24 Representational Activities ___%	Schedule 25 Political Activities and Lobbying ___%		Schedule 26 Contributions ___%	Schedule 27 General Overhead ___%	Schedule 28 Union Administration ___%
2 A*								
B*								
C*								
J*			Schedule 24 Representational Activities ___%	Schedule 25 Political Activities and Lobbying ___%		Schedule 26 Contributions ___%	Schedule 27 General Overhead ___%	Schedule 28 Union Administration ___%
3 A*								
B*								
C*								
J*			Schedule 24 Representational Activities ___%	Schedule 25 Political Activities and Lobbying ___%		Schedule 26 Contributions ___%	Schedule 27 General Overhead ___%	Schedule 28 Union Administration ___%
4 A*								
B*								
C*								
J*			Schedule 24 Representational Activities ___%	Schedule 25 Political Activities and Lobbying ___%		Schedule 26 Contributions ___%	Schedule 27 General Overhead ___%	Schedule 28 Union Administration ___%
5 A*								
B*								
C*								
J*			Schedule 24 Representational Activities ___%	Schedule 25 Political Activities and Lobbying ___%		Schedule 26 Contributions ___%	Schedule 27 General Overhead ___%	Schedule 28 Union Administration ___%
6. Totals from continuation pages (if any)								
7. Total of Lines 1-6								
8. Less deductions								
9. Net disbursements								

*(A) Enter the full name in the following format: Last Name, First Name, Middle Initial. List all persons who held office during the reporting period even if they received no salary or other disbursements. *(B) Enter officer title, e.g., PRESIDENT or TREASURER. *(C) Code for Status: past officer - P; continuing officer - C; new officer during reporting period - N. (If any officer was not elected at a regular election in accordance with the labor organization's constitution and bylaws, explain in Item 69.) *(J) Enter the PERCENTAGE (A%) of time officer worked on activities covered in the corresponding Schedules 24-28.

Form LM- 2 (Revised 2008)

SCHEDULE 12 - DISBURSEMENTS TO EMPLOYEES

FILE NUMBER: 000-000

(A) Name	(B) Title	(C) Other Payer	(D) Gross Salary Disbursements (before any deductions)	(E) Allowances Disbursed	(F) Benefits	(G) Disbursements for Official Business	(H) Other Disbursements not Reported in (D) through (G)	(I) Total
1 A*								
B*								
C*								
J*			Schedule 24 Representational Activities ___%	Schedule 25 Political Activities and Lobbying ___%		Schedule 26 Contributions ___%	Schedule 27 General Overhead ___%	Schedule 28 Union Administration ___%
2 A*								
B*								
C*								
J*			Schedule 24 Representational Activities ___%	Schedule 25 Political Activities and Lobbying ___%		Schedule 26 Contributions ___%	Schedule 27 General Overhead ___%	Schedule 28 Union Administration ___%
3 A*								
B*								
C*								
J*			Schedule 24 Representational Activities ___%	Schedule 25 Political Activities and Lobbying ___%		Schedule 26 Contributions ___%	Schedule 27 General Overhead ___%	Schedule 28 Union Administration ___%
4 A*								
B*								
C*								
J*			Schedule 24 Representational Activities ___%	Schedule 25 Political Activities and Lobbying ___%		Schedule 26 Contributions ___%	Schedule 27 General Overhead ___%	Schedule 28 Union Administration ___%
5 A*								
B*								
C*								
J*			Schedule 24 Representational Activities ___%	Schedule 25 Political Activities and Lobbying ___%		Schedule 26 Contributions ___%	Schedule 27 General Overhead ___%	Schedule 28 Union Administration ___%
6 A*	ALL OTHER EMPLOYEES							
J*			Schedule 24 Representational Activities ___%	Schedule 25 Political Activities and Lobbying ___%		Schedule 26 Contributions ___%	Schedule 27 General Overhead ___%	Schedule 28 Union Administration ___%
7. Totals from continuation pages (if any)								
8. Total of Lines 1-6								
9. Less deductions								
10. Net disbursements								

Form LM- 2 (Revised 2008)

SCHEDULE 13 – MEMBERSHIP STATUS

FILE NUMBER: 000-000

Category of Membership (A)	Number (B)	Voting Eligibility (C)
1.		Yes ☐
2.		Yes ☐
3.		Yes ☐
4.		Yes ☐
5.		Yes ☐
6.		Yes ☐
7. Total from Continuation page(s)		
8. Members (Total of Lines 1 through 7)		
9. Agency Fee Payers*		
10. Total Members/Fee Payers (Total of Lines 8 and 9)		

*Agency Fee Payers are not considered members of the labor organization.

Form LM- 2 (Revised 2008)

FILE NUMBER 000-000

SCHEDULE 14 - DUES AND AGENCY FEES

Name (A)	Address (B)	Type or Classification (C)	Purpose (D)	Amount (E)
F. Total Receipts Listed Above				
G. Total of All Receipts from Continuation Pages				
H. Total of All Payer Identified Receipts				
I. Total of All Other Receipts				
J. Total of All Receipts				

Form LM- 2 (Revised 2008)

SCHEDULE 15 – PER CAPITA TAX

Name (A)	Address (B)	Type or Classification (C)	Purpose (D)	Amount (E)
F. Total Receipts Listed Above				
G. Total of All Receipts from Continuation Pages				
H. Total of All Payer Identified Receipts				
I. Total of All Other Receipts				
J. Total of All Receipts				

Form LM- 2 (Revised 2008)

SCHEDULE 16 - FEES, FINES, ASSESSMENTS, WORK PERMIT

FILE NUMBER: 000-000

Complete Itemization Pages BEFORE the Detailed Summary Page

Name and Address (A)	Purpose (C)	Date (D)	Amount (E)
(B) Type or Classification			
	(F) Total of Transactions Listed Above		
	(G) Total of All Transactions from Continuation Pages with this Payee/Payer		
	(H) Total of All Itemized Transactions with this Payee/Payer (Sum of (F) and (G))		
	(I) Total of All Non-Itemized Transactions with this Payee/Payer		
	(J) Total of All Transactions with This Payee/Payer for This Schedule (Sum of (H) and (I))		

Form LM- 2 (Revised 2008)

SCHEDULE 17 – SALES OF SUPPLIES

FILE NUMBER: 000-000

Complete Itemization Pages BEFORE the Detailed Summary Page

Name and Address (A)	Purpose (C)	Date (D)	Amount (E)
(B) Type or Classification			
	(F) Total of Transactions Listed Above		
	(G) Total of All Transactions from Continuation Pages with this Payee/Payer		
	(H) Total of All Itemized Transactions with this Payee/Payer (Sum of (F) and (G))		
	(I) Total of All Non-Itemized Transactions with this Payee/Payer		
	(J) Total of All Transactions with This Payee/Payer for This Schedule (Sum of (H) and (I))		

Form LM- 2 (Revised 2008)

FILE NUMBER: 000-000

SCHEDULE 18 – INTEREST

Complete Itemization Pages BEFORE the Detailed Summary Page

Name and Address (A)	Purpose (C)	Date (D)	Amount (E)
(B) Type or Classification			
	(F) Total of Transactions Listed Above		
	(G) Total of All Transactions from Continuation Pages with this Payee/Payer		
	(H) Total of All Itemized Transactions with this Payee/Payer (Sum of (F) and (G))		
	(I) Total of All Non-Itemized Transactions with this Payee/Payer		
	(J) Total of All Transactions with This Payee/Payer for This Schedule (Sum of (H) and (I))		

Form LM- 2 (Revised 2008)

FILE NUMBER: 000-000

SCHEDULE 19 – DIVIDENDS

Complete Itemization Pages BEFORE the Detailed Summary Page

Name and Address (A)	Purpose (C)	Date (D)	Amount (E)
(B) Type or Classification			
	(F) Total of Transactions Listed Above		
	(G) Total of All Transactions from Continuation Pages with this Payee/Payer		
	(H) Total of All Itemized Transactions with this Payee/Payer (Sum of (F) and (G))		
	(I) Total of All Non-Itemized Transactions with this Payee/Payer		
	(J) Total of All Transactions with This Payee/Payer for This Schedule (Sum of (H) and (I))		

Form LM- 2 (Revised 2008)

SCHEDULE 20 – RENTS

FILE NUMBER: 000-000

Complete Itemization Pages BEFORE the Detailed Summary Page

Name and Address (A)	Purpose (C)	Date (D)	Amount (E)
(B) Type or Classification			
	(F) Total of Transactions Listed Above		
	(G) Total of All Transactions from Continuation Pages with this Payee/Payer		
	(H) Total of All Itemized Transactions with this Payee/Payer (Sum of (F) and (G))		
	(I) Total of All Non-Itemized Transactions with this Payee/Payer		
	(J) Total of All Transactions with This Payee/Payer for This Schedule (Sum of (H) and (I))		

Form LM- 2 (Revised 2008)

SCHEDULE 21 – ON BEHALF OF AFFILIATES FOR TRANSMITTAL TO THEM

FILE NUMBER: 000-000

Complete Itemization Pages BEFORE the Detailed Summary Page

Name and Address (A)	Purpose (C)	Date (D)	Amount (E)
(B) Type or Classification			
	(F) Total of Transactions Listed Above		
	(G) Total of All Transactions from Continuation Pages with this Payee/Payer		
	(H) Total of All Itemized Transactions with this Payee/Payer (Sum of (F) and (G))		
	(I) Total of All Non-Itemized Transactions with this Payee/Payer		
	(J) Total of All Transactions with This Payee/Payer for This Schedule (Sum of (H) and (I))		

Form LM- 2 (Revised 2008)

SCHEDULE 22 – FROM MEMBERS FOR DISBURSEMENT ON THEIR BEHALF

FILE NUMBER: 000-000

Complete Itemization Pages BEFORE the Detailed Summary Page

Name and Address (A)	Purpose (C)	Date (D)	Amount (E)
(B) Type or Classification			
	(F) Total of Transactions Listed Above		
	(G) Total of All Transactions from Continuation Pages with this Payee/Payer		
	(H) Total of All Itemized Transactions with this Payee/Payer (Sum of (F) and (G))		
	(I) Total of All Non-Itemized Transactions with this Payee/Payer		
	(J) Total of All Transactions with This Payee/Payer for This Schedule (Sum of (H) and (I))		

Form LM- 2 (Revised 2008)

SCHEDULE 23 – OTHER RECEIPTS

FILE NUMBER: 000-000

Complete Itemization Pages BEFORE the Detailed Summary Page

Name and Address (A)	Purpose (C)	Date (D)	Amount (E)
(B) Type or Classification			
	(F) Total of Transactions Listed Above		
	(G) Total of All Transactions from Continuation Pages with this Payee/Payer		
	(H) Total of All Itemized Transactions with this Payee/Payer (Sum of (F) and (G))		
	(I) Total of All Non-Itemized Transactions with this Payee/Payer		
	(J) Total of All Transactions with This Payee/Payer for This Schedule (Sum of (H) and (I))		

Form LM- 2 (Revised 2008)

SCHEDULE 24 – REPRESENTATIONAL ACTIVITIES

FILE NUMBER: 000-000

Complete Itemization Pages BEFORE the Detailed Summary Page

Name and Address (A)	Purpose (C)	Date (D)	Amount (E)
(B) Type or Classification			
	(F) Total of Transactions Listed Above		
	(G) Total of All Transactions from Continuation Pages with this Payee/Payer		
	(H) Total of All Itemized Transactions with this Payee/Payer (Sum of (F) and (G))		
	(I) Total of All Non-Itemized Transactions with this Payee/Payer		
	(J) Total of All Transactions with This Payee/Payer for This Schedule (Sum of (H) and (I))		

Form LM- 2 (Revised 2008)

SCHEDULE 25 – POLITICAL AND LOBBYING ACTIVITIES

FILE NUMBER: 000-000

Complete Itemization Pages BEFORE the Detailed Summary Page

Name and Address (A)	Purpose (C)	Date (D)	Amount (E)
(B) Type or Classification			
	(F) Total of Transactions Listed Above		
	(G) Total of All Transactions from Continuation Pages with this Payee/Payer		
	(H) Total of All Itemized Transactions with this Payee/Payer (Sum of (F) and (G))		
	(I) Total of All Non-Itemized Transactions with this Payee/Payer		
	(J) Total of All Transactions with This Payee/Payer for This Schedule (Sum of (H) and (I))		

Form LM- 2 (Revised 2008)

FILE NUMBER: 000-000

SCHEDULE 26 – CONTRIBUTIONS, GIFTS, AND GRANTS

Complete Itemization Pages BEFORE the Detailed Summary Page

Name and Address (A)	Purpose (C)	Date (D)	Amount (E)
(B) Type or Classification			
	(F) Total of Transactions Listed Above		
	(G) Total of All Transactions from Continuation Pages with this Payee/Payer		
	(H) Total of All Itemized Transactions with this Payee/Payer (Sum of (F) and (G))		
	(I) Total of All Non-Itemized Transactions with this Payee/Payer		
	(J) Total of All Transactions with This Payee/Payer for This Schedule (Sum of (H) and (I))		

Form LM- 2 (Revised 2008)

FILE NUMBER: 000-000

SCHEDULE 27 – GENERAL OVERHEAD

Complete Itemization Pages BEFORE the Detailed Summary Page

Name and Address (A)	Purpose (C)	Date (D)	Amount (E)
(B) Type or Classification			
	(F) Total of Transactions Listed Above		
	(G) Total of All Transactions from Continuation Pages with this Payee/Payer		
	(H) Total of All Itemized Transactions with this Payee/Payer (Sum of (F) and (G))		
	(I) Total of All Non-Itemized Transactions with this Payee/Payer		
	(J) Total of All Transactions with This Payee/Payer for This Schedule (Sum of (H) and (I))		

Form LM- 2 (Revised 2008)

SCHEDULE 28 – UNION ADMINISTRATION

FILE NUMBER: 000-000

Complete Itemization Pages BEFORE the Detailed Summary Page

Name and Address (A)	Purpose (C)	Date (D)	Amount (E)
(B) Type or Classification			
	(F) Total of Transactions Listed Above		
	(G) Total of All Transactions from Continuation Pages with this Payee/Payer		
	(H) Total of All Itemized Transactions with this Payee/Payer (Sum of (F) and (G))		
	(I) Total of All Non-Itemized Transactions with this Payee/Payer		
	(J) Total of All Transactions with This Payee/Payer for This Schedule (Sum of (H) and (I))		

Form LM- 2 (Revised 2008)

SCHEDULE 29 – BENEFITS

FILE NUMBER: 000-000

Description (A)	To Whom Paid (B)	Amount (C)
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		
14.		
15.		
16.		
17.		
18.		
19.		
20.		
21.		
22. Total of Continuation pages (if any)		
23. Total of Lines 1 through 22		

Form LM- 2 (Revised 2008)

FILE NUMBER: 000-000

ITEMIZATION PAGE FOR RECEIPTS/DISBURSEMENT SCHEDULES 16 -28

Complete Itemization Pages BEFORE the Detailed Summary Page

Name and Address (A)	Purpose (C)	Date (D)	Amount (E)
(B) Type or Classification			
	(F) Total of Transactions Listed Above		
	(G) Total of All Transactions from Continuation pages with this Payee/Payer		
	(H) Total of All Itemized Transactions with this Payee/Payer (Sum of (F) and (G))		
	(I) Total of All Non-Itemized Transactions with this Payee/Payer		
	(J) Total of All Transactions with This Payee/Payer for This Schedule (Sum of (H) and (I))		

Form LM- 2 (Revised 2008)

Public reporting burden for this collection of information is estimated to average 653.86 hours per response in the first year and 520.36 hours per response in the second and third years. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. Reporting of this information is mandatory and is required by the Labor-Management Reporting and Disclosure Act of 1959, as amended, for the purpose of public disclosure. As this is public information, there are no assurances of confidentiality. If you have any comments regarding this estimate or any other aspect of this information collection, including suggestions for reducing this burden, please send them to the U.S. Department of Labor, Employment Standards Administration, Office of Labor-Management Standards, Division of Interpretations and Standards, Room N-5609, 200 Constitution Avenue, NW, Washington, DC 20210.

INSTRUCTIONS FOR ELECTRONIC FORM LM-2 LABOR ORGANIZATION ANNUAL REPORT

GENERAL INSTRUCTIONS

I. Who Must File

Every labor organization subject to the Labor-Management Reporting and Disclosure Act, as amended (LMRDA), the Civil Service Reform Act (CSRA), or the Foreign Service Act (FSA) must file a financial report, Form LM-2, LM-3, or LM-4, each year with the Office of Labor-Management Standards (OLMS) of the U.S. Department of Labor's (Department) Employment Standards Administration. These laws cover labor organizations that represent employees who work in private industry, employees of the U.S. Postal Service, and most Federal government employees. Labor organizations that represent only state, county, or municipal government employees are not covered by these laws and, therefore, are not required to file, except that any "conference, general committee, joint or system board, or joint council" that is subordinate to a national or international labor organization is a labor organization under the LMRDA and is required to file a financial report if the national or international labor organization is a labor organization engaged in an industry affecting commerce within the meaning of section 3(j) of the LMRDA. If you have a question about whether the labor organization is required to file, contact the nearest OLMS field office listed at the end of these instructions.

II. What Form to File

Every labor organization subject to the LMRDA, CSRA, or FSA with total annual receipts of $250,000 or more must file Form LM-2. The term "total annual receipts" means all financial receipts of the labor organization during its fiscal year, regardless of the source, including receipts of any special funds and "subsidiaries" as described in Section VIII (Funds To Be Reported) of these instructions.

A labor organization with total annual receipts of less than $250,000 may file the simplified annual report Form LM-3, if its privilege to file the Form LM-3 has not been revoked by order of the Secretary of Labor or it is not in trusteeship as defined in Section IX (Labor Organizations In Trusteeship) of these instructions. Labor organizations with total annual receipts of less than $10,000 may file the abbreviated annual report Form LM-4, if not in trusteeship.

NOTE: Certain labor organizations are required to file Form 990, Return of Organization Exempt from Income Tax, with the Internal Revenue Service (IRS). The IRS has accepted a copy of the labor organization's Form LM-2 in the past to provide some of the information required by Form 990. See the instructions for the

current Form 990 for details. Filing Form LM-2 with the IRS does not satisfy the labor organization's reporting requirement with the U.S. Department of Labor.

III. When to File

Form LM-2 must be filed within 90 days after the end of the labor organization's fiscal year (12-month reporting period). The law does not authorize the Department to grant an extension of time for filing reports. The penalties for delinquency are described in Section VI (Officer Responsibilities and Penalties) of these instructions.

If the labor organization went out of existence during its fiscal year, a terminal financial report must be filed within 30 days after the date it ceased to exist. See Section XII (Labor Organizations That Have Ceased to Exist) of these instructions for information on filing a terminal financial report.

IV. How to File

Form LM-2, and Form T-1 Trust Annual Report as described in Section X (Trusts in Which a Labor Organization is Interested) of these instructions, must be submitted electronically to the Department. A Form LM-2 and T-1 filer will be able to file a report in paper format only if it asserts a temporary hardship exemption or applies for and is granted a continuing hardship exemption. Forms LM-3 and LM-4 may be prepared and submitted electronically but it is not required. A labor organization whose privilege to file a Form LM-3 has been revoked by order of the Secretary may submit the Form LM-2 in paper format.

HARDSHIP EXEMPTIONS

A labor organization that must file Form LM-2 or T-1 may assert a temporary hardship exemption or apply for a continuing hardship exemption to prepare and submit the report in paper format. If a labor organization files both Form LM-2 and Form T-1, the exemption must be separately asserted for each report, although in appropriate circumstances the same reasons may be used to support both exemptions. If it is possible to file Form LM-2, or one or more Form T-1s electronically, no exemption should be claimed for those reports, even though an exemption is warranted for a related report.

TEMPORARY HARDSHIP EXEMPTION:

If a labor organization experiences unanticipated technical difficulties that prevent the timely preparation and submission of an electronic filing, the organization may file Form LM-2 or T-1 in paper format by the required due date. An electronic format copy of the filed paper format document shall be submitted to the Department within ten business days after the required due date. Indicate in Item 3 (Amended, Hardship Exempted, or Terminal Report) that the labor organization is filing under the hardship exemption procedures. Unanticipated technical difficulties that may result in additional delays should be brought to the attention of the OLMS Division of Interpretations and Standards, which can be reached at the address below, by email at OLMS-Public@dol.gov, by phone at 202-693-0123, or by fax at 202-693-1340.

NOTE: If either the paper filing or the electronic filing is not received in the timeframe specified above, the report will be considered delinquent.

CONTINUING HARDSHIP EXEMPTION:

(a) A labor organization may apply in writing for a continuing hardship exemption if Form LM-2 or T-1 cannot be filed electronically without undue burden or expense. Such written application shall be received at least 30 days prior to the required due date of the report(s). The written application shall contain the information set forth in paragraph (b). The application must be mailed to the following address:

U.S. Department of Labor
Employment Standards Administration
Office of Labor-Management Standards
200 Constitution Avenue, NW
Room N-5609
Washington, DC 20210-0001

Questions regarding the application should be directed to the OLMS Division of Interpretations and Standards, which can be reached at the above address, by e-mail at OLMS-Public@dol.gov, by phone at 202-693-0123, or by fax at 202-693-1340.

(b) The request for the continuing hardship exemption shall include, but not be limited to, the following: (1) the justification for the requested time period of the exemption; (2) the burden and expense that the labor organization would incur if it was required to make an electronic submission; and (3) the reasons for not submitting the report(s) electronically. The applicant must specify a time period not to exceed one year.

(c) The continuing hardship exemption shall not be deemed granted until the Department notifies the applicant in writing. If the Department denies the application for an exemption, the labor organization shall file the report(s) in electronic format by the required due date. If the Department determines that the grant of the exemption is appropriate and consistent with the public interest and the protection of union members and so notifies the applicant, the labor organization shall follow the procedures set forth in paragraph (d).

(d) If the request is granted, the labor organization shall submit the report(s) in paper format by the required due date. The filer may be required to submit Form LM-2 or T-1 in electronic format upon the expiration of the period for which the exemption is granted. Indicate in Item 3 (Amended, Hardship Exempted, or Terminal Report) that the labor organization is filing under the hardship exemption procedures.

NOTE: If either the paper filing or the electronic filing is not received in the timeframe specified above, the report will be considered delinquent.

V. Public Disclosure

The LMRDA requires that the Department make labor organization financial reports available for inspection by the public. Reports may be viewed and downloaded from the OLMS Web site at http://www.unionreports.gov. Copies of reports and union constitutions and bylaws can also be ordered at the same Web site. Reports may also be examined and copies purchased at the OLMS Public Disclosure Room at the following address:

U.S. Department of Labor
Employment Standards Administration
Office of Labor-Management Standards
200 Constitution Avenue, NW
Room N-1519
Washington, DC 20210-0001

VI. Officer Responsibilities and Penalties

The president and treasurer or the corresponding principal officers of the labor organization required to sign Form LM-2 are personally responsible for its filing and accuracy. Under the LMRDA, officers are subject to criminal penalties for willful failure to file a required report and for false reporting. False reporting includes making any false statement or misrepresentation of a material fact while knowing it to be false, or for knowingly failing to disclose a material fact in a required report or in the information required to be contained in it or in any information required to be submitted with it.

The reporting labor organization and the officers required to sign Form LM-2 are also subject to civil prosecution for violations of the filing requirements.

Section 210 of the LMRDA (29 U.S.C. 440) provides that "whenever it shall appear that any person has violated or is about to violate any of the provisions of this title, the Secretary may bring a civil action for such relief (including injunctions) as may be appropriate."

Under the CSRA and FSA and implementing regulations, false reporting and failure to report may result in administrative enforcement action and litigation. The officers responsible for signing Form LM-2 are also subject to criminal penalties for false reporting and perjury under Sections 1001 of Title 18 and 1746 of Title 28 of the United States Code.

VII. Recordkeeping

The officers required to file Form LM-2 are responsible for maintaining records that will provide in sufficient detail the information and data necessary to verify the accuracy and completeness of the report. The records must be kept for at least 5 years after the date the report is filed. Any record necessary to verify, explain or clarify the report must be retained, including, but not limited to, vouchers, worksheets, receipts, applicable resolutions, and any electronic documents, including recordkeeping software, used to complete, read, and file the report.

VIII. Funds To Be Reported

The labor organization must report financial information on Form LM-2 for all funds of the labor organization. Include any special purpose funds or accounts, such as strike funds, vacation funds, and scholarship funds even if they are not part of the labor organization's general treasury. The labor organization must report financial information on Form LM-2 for all trusts in which the labor organization is interested when the trust is a subsidiary organization. A subsidiary organization is any separate organization of which the ownership is wholly vested in the reporting labor organization or its officers or its membership, which is governed or controlled by the officers, employees, or members of the reporting labor organization, and which is wholly financed by the reporting labor organization. A subsidiary organization is considered to be wholly financed if the initial financing was provided by the reporting labor organization even if the subsidiary organization is currently wholly or partially self-sustaining.

The labor organization is required to report information about trusts in which it is interested on the Form T-1. See Section X (Trusts In Which A Labor Organization Is Interested).

SPECIAL INSTRUCTIONS FOR CERTAIN ORGANIZATIONS

IX. Labor Organizations in Trusteeship

Any labor organization that has placed a subordinate labor organization in trusteeship is responsible for filing the subordinate's annual financial report. A trusteeship is defined in section 3(h) of the LMRDA (29 U.S.C. 402) as "any receivership, trusteeship, or other method of supervision or control whereby a labor organization suspends the autonomy otherwise available to a subordinate body under its constitution or bylaws."

Annual financial reports filed for any labor organization in trusteeship must be filed on Form LM-2. The report must be signed by the president and treasurer or corresponding principal officers of the labor organization that imposed the trusteeship. The trustees of the subordinate labor organization must also sign and date Form LM-2. To do so, click on the "Add Signature Block" button on page 1 to open a signature page near the end of the form.

X. Trusts In Which A Labor Organization Is Interested

The labor organization must disclose assets, liabilities, receipts, and disbursements of a trust in which the labor organization is interested if the labor organization, alone or in combination with other labor organizations, either (1) appoints or selects a majority of the members of the trust's governing board or (2) contributes to the trust greater than 50% of the trust's receipts during the one-year reporting period. Any contributions made pursuant to a collective bargaining agreement shall be considered the labor organization's contribution.

A trust in which a labor organization is interested is defined in Section 3(l) of the LMRDA (29 U.S.C. 402(l)) as

> ...a trust or other fund or organization (1) which was created or established by a labor organization, or one or more of the trustees or one or more members of the governing body of which is selected or appointed by a labor organization, and (2) a primary purpose of which is to provide benefits for the members of such labor organization or their beneficiaries.

The definition of a trust in which a labor organization is interested may include, but is not limited to, joint funds administered by a union and an employer pursuant to a collective bargaining agreement, educational or training institutions, credit unions created for the benefit of union members, and redevelopment or investment groups established by the union for the benefit of its members. The determination whether a particular entity is a trust in which a labor organization is interested must be based on the facts in each case.

No Form T-1 should be filed for any trust

(i) that meets the statutory definition of a labor organization and already files a Form LM-2, Form LM-3, or Form LM-4,

(ii) that the LMRDA exempts from reporting, such as an organization composed entirely of state or local government employees or a state or local central body,

(iii) established as a Political Action Committee (PAC) if timely, complete and publicly available reports on the PAC are filed with a Federal or state agency,

(iv) established as a political organization under 26 U.S.C. 527 if timely, complete, and publicly available reports are filed with the Internal Revenue Service,

(v) constituting a federal employee health benefit plan subject to the provisions of the Federal Employees Health Benefits Act (FEHBA), or

(vi) required to file a Form 5500. For purposes of these instructions only, a trust is "required to file a Form 5500" if a plan administrator is required to file an annual report on behalf of the trust under 29 U.S.C. section 1021 and/or 1024.[40] A trust on whose behalf such annual report is required to be filed that is eligible for an exemption from filing the annual report, the Form 5500 or the Form 5500-SF, is not included within this exemption and is deemed for purposes of this section only not to be a trust "required to file a Form 5500," even if a Form 5500 is filed on behalf of that trust. A trust eligible to file a notice or statement with the Secretary of

[40] The following sections of title 29 of the Code of Federal Regulations identify for purposes of these instructions, the types of ERISA plans that are not *required* to file a Form 5500: section 2520.104-20 (small unfunded, insured, or combination welfare plans), section 2520.104-22 (apprenticeship and training plans), section 2520.104-23 (unfunded or insured management and highly compensated employee pension plans), section 2520.104-24 (unfunded or insured management and highly compensated employee welfare plans), section 2520.104-25 (day care center plans), section 2520.104-26 (unfunded dues financed welfare plans maintained by employee organizations), section 2520.104-27 (unfunded dues financed pension plans maintained by employee organizations), section 2520.104-43 (certain small welfare plans participating in group insurance arrangements), and section 2520.104-44 (large unfunded, insured, or combination welfare plans; certain fully insured pension plans). *Labor organizations must file a Form T-1 for these types of plans.*

Labor in lieu of an annual report pursuant to an exemption from, or as an alternative method of complying with, the annual reporting obligation is not included within this exemption, even if it does file a Form 5500 or Form 5500-SF.

No report need be filed for federal employee health benefit plans subject to the provisions of the Federal Employees Health Benefits Act (FEHBA), nor for any for-profit commercial bank established or operating pursuant to the Bank Holding Act of 1956, 12 U.S.C. 1843.

A labor organization may complete only Items 1 through 15 and Items 26-27 (Signatures) of Form T-1 if annual audits prepared according to standards set forth in the Form T-1 instructions are freely available on demand under § 302(c)(5)(B) of the Labor Management Relations Act, 1947 (LMRA), 29 U.S.C. 186(c)(5)(B), and a copy of the audit is filed with the Form T-1.

Form T-1, or a qualifying audit, must be filed within 90 days after the end of the union's fiscal year. If the trust's fiscal year is not the same as the labor organization's fiscal year, state when the trust's fiscal year ends in Item 69 as required by the instructions for Item 10. See Instructions for Form T-1, Trust Annual Report.

Questions regarding these reporting requirements should be directed to the OLMS Division of Interpretations and Standards, which can be reached at the above address, by email at OLMS-Public@dol.gov, by phone at 202-693-0123 or by fax at 202-693-1340.

Examples of a trust in which a labor organization is interested may include, but are not limited to, the following entities:

Example A: The Building Corporation – A labor organization creates a corporation which owns the building where the union has its offices. The building corporation must be reported as a trust in which the labor organization is interested.

Example B: The Redevelopment Corporation – A labor organization creates an entity named the Redevelopment Corporation, or appoints one or more of the members of the governing board of the Corporation, which is established primarily to enable members of the labor organization to obtain low cost housing constructed with Federal Housing and Urban Development (HUD) grants. The Redevelopment Corporation must be reported as a trust in which it is interested. A labor organization that neither participated in the creation of the Corporation, nor appointed members of its governing board, but loaned money to the Corporation to use as matching money for HUD grants need not report the Corporation as a trust in which it is interested.

Example C: The Educational Institute – Five reporting labor organizations form the Educational Institute to provide educational services primarily for the benefit of their members. Similar services are also provided to the general public. Each labor organization contributes funds to start the Educational Institute, which will then offer various educational programs that will generate revenue. Each labor organization that participated in forming the Institute, or that appoints a member to its governing body, must report the Educational Institute as a trust in which it is interested.

Example D: Joint Funds – A reporting labor organization that forms a "joint fund" with a large national manufacturer to offer a variety of training and jobs skills programs for members of the labor organization, or appoints a member to the governing body of such a fund, must report the joint fund as a trust in which the labor organization has an interest.

Example E: Job Targeting Fund – A reporting labor organization creates an entity for the purpose of making targeted disbursements to increase employment opportunities for its members. The fund

must be reported as a trust in which the labor organization is interested.

XI. Completing Form LM-2

INTRODUCTION

Upon opening the Form LM-2, a Document Status dialog box displays to briefly explain the special features of this document. Click on the "close" button to proceed.

Items 1, 2, and 4-7 are "pre-filled" items. These fields were filled in by the software based on information you entered when you accessed and downloaded the form from our Web site. You cannot edit these fields.

Most pages have a "Perform Calculations" button to total and transfer data to fields in various parts of the form. You may click on one or more of these buttons as you fill out the form at any time.

Be sure to click on the "Validate Form" button after you have completed the form but before you sign it. This action will generate an "Errors Page" listing any errors that must be corrected before you sign the form.

INFORMATION ITEMS 1–21

Answer Items 1 through 21 as instructed. Select the appropriate box for those questions requiring a "Yes" or "No" answer; do not leave both boxes blank. Enter a single "0" in the boxes for items requiring a number or dollar amount if there is nothing to report.

1. FILE NUMBER — The software will enter the labor organization's 6-digit file number here and at the top of each page of Form LM-2. This is the number you entered when you downloaded Form LM-2. If the number is incorrect, you must download another copy of the form using the correct number. If the labor organization does not have the number on file and cannot obtain the number from prior reports filed with the Department, the number can be obtained from the OLMS Web site at http://www.unionreports.gov, or by contacting the nearest OLMS field office listed at the end of these instructions.

2. PERIOD COVERED — The software will enter the beginning and ending dates of the period covered by this report. These are the dates you entered when you downloaded Form LM-2. If the dates are incorrect, you must download another form using the correct dates.

If the labor organization changed its fiscal year, the ending date in Item 2 should be the labor organization's new fiscal year ending date and the labor organization should indicate in Item 69 (Additional Information) that the report is for a period of less than 12 months because its fiscal year has changed. For example, if the labor organization's fiscal year ending date changes from June 30 to December 31, a report must be filed for the partial year from July 1 to December 31. Thereafter, the labor organization's annual report should cover a full 12-month period from January 1 to December 31.

3. AMENDED, HARDSHIP EXEMPTED, OR TERMINAL REPORT — Do not complete this item unless this report is an amended, hardship exempted, or terminal report. Select Item 3(a) if the labor organization is filing an amended report correcting a previously filed report. Select Item 3(b) if the labor organization is filing under the hardship exemption procedures defined in Section IV. Select Item 3(c) if the labor organization has gone out of business by disbanding, merging into another labor organization, or being merged and consolidated with one or more labor organizations to form a new labor organization, and this is the labor organization's terminal report. Be sure the date the labor organization ceased to exist is entered in Item 2 (Period Covered) after the word "Through." See Section XII (Labor Organizations That Have Ceased to Exist) of these instructions for more

information on filing a terminal report.

4. AFFILIATION OR ORGANIZATION NAME — The software will access this information from the OLMS database and enter the name of the national or international labor organization or if the labor organization is a subordinate entity of such organization the name of the national or international labor organization, that granted the labor organization a charter. "Affiliates," within the meaning of these instructions, are labor organizations chartered by the same parent body, governed by the same constitution and bylaws, or having the relationship of parent and subordinate. For example, a parent body is an affiliate of all of its subordinate bodies, and all subordinate bodies of the same parent body are affiliates of each other.

If the labor organization has not reported such an affiliation, the software will enter the name of the labor organization as currently identified in the labor organization's constitution and bylaws or other organizational documents.

This item cannot be edited. If the labor organization needs to change this information or Item 5, 6, or 7, contact the OLMS Division of Reports, Disclosure, and Audits by telephone at 202-693-0124, by e-mail at OLMS-Public@dol.gov, or by fax at 202-693-1345. Indicate that the subject of the inquiry is the pre-filled identifying information.

5. DESIGNATION — The software will enter the specific designation that is used to identify the labor organization, such as Local, Lodge, Branch, Joint Board, Joint Council, District Council, etc. This field cannot be edited.

6. DESIGNATION NUMBER — The software will enter the number or other identifier, if any, by which the labor organization is known. This field cannot be edited.

7. UNIT NAME — The software will enter any additional or alternate name by which the labor organization is known, such as "Chicago Area Local." This field cannot be edited.

8. MAILING ADDRESS — The software will enter the current address where mail is most likely to reach the labor organization as quickly as possible. The first and last name of the person, if any, to whom such mail should be sent and any building and room number should be included. These fields are pre-filled from the OLMS database but can be edited by the filer.

9. PLACE WHERE RECORDS ARE KEPT — If the records required to be kept by the labor organization to verify this report are kept at the address reported in Item 8 (Mailing Address), answer "Yes." If not, answer "No" and provide in Item 69 (Additional Information) the address where the labor organization's records are kept.

10. TRUSTS OR FUNDS — Answer "Yes" to Item 10, if the labor organization has an interest in a trust as defined in 29 U.S.C. 402(l) (see Section X of these Instructions). Provide in Item 69 (Additional Information) the full name, mailing address, and purpose of each trust. Also include in Item 69 the fiscal year ending date for any trust for which a Form T-1 is filed if the trust's fiscal year is different from that of the labor organization. See Instructions for Form T-1, Trust Annual Report, for guidance on trust reporting. If no Form T-1 is filed because a trust established as a political organization under 26 U.S.C. 527 (other than a Political Action Committee (PAC)), has filed timely, complete, and publicly available reports with appropriate Federal or state agencies, list the name of the government agency where the reports have been filed, such as the Internal Revenue Service (IRS), the relevant file number of the trust, or otherwise indicate where the report may be viewed. Political action committees, whether or not they are trusts, must be reported in Item 11.

11. POLITICAL ACTION COMMITTEE FUNDS — If the labor organization answered "Yes" to Item 11, provide in Item 69 (Additional Information) the full name of each separate PAC and list the name of any government agency, such as the Federal Election Commission or a state agency, with which the PAC has filed a publicly available report, and the relevant file number of the PAC. (PAC funds not kept separate from the labor organization's treasury must be included in the labor organization's Form LM-2, unless publicly available reports on the PAC funds are filed with a Federal or state agency.)

12. AUDIT OR REVIEW OF BOOKS AND RECORDS — If the labor organization answered "Yes" to Item 12, indicate in Item 69 (Additional Information) whether the audit or review was performed by an outside accountant or a parent body auditor/representative. If an outside accountant performed the audit or review, provide the name of the accountant or accounting firm. Report any audit or review by an outside accountant or a parent body auditor/representative in which the labor organization's books and records were examined to verify their accuracy and validity. The term "audit or review" does not include providing assistance in developing a bookkeeping system, providing routine bookkeeping services, or merely compiling information from the labor organization's books and records to prepare Form LM-2 or other financial reports. Also, do not answer "Yes" to Item 12 if an audit committee or trustees of the labor organization performed the audit or review.

13. LOSSES OR SHORTAGES — Answer "Yes" to Item 13 if the labor organization experienced a loss, shortage, or other discrepancy in its finances during the period covered. Describe the loss or shortage in detail in Item 69 (Additional Information), including such information as the amount of the loss or shortage of funds or a description of the property that was lost, how it was lost, and to what extent, if any, there has been an agreement to make restitution or any recovery by means of repayment, fidelity bond, insurance, or other means.

14. FIDELITY BOND — Enter the maximum amount recoverable for a loss caused by any officer, employee, or agent of the labor organization who handled the labor organization's funds. Enter "0" if the labor organization was not covered by a fidelity bond during the reporting period.

NOTE: If a labor organization has property and annual financial receipts that totaled $5,000 or more, each of the labor organization's officers, employees, and agents who handles funds or other property of the labor organization must be bonded. The amount of the bond must be at least 10% of the value of the funds handled by the individual during the last reporting period, up to a maximum bond of $500,000. The bond must be obtained from a surety company approved by the Secretary of the Treasury. If you have any questions or need more information about bonding requirements, contact the nearest OLMS field office listed at the end of these instructions.

15. ACQUISITION OR DISPOSITION OF ASSETS — If the labor organization answered "Yes" to Item 15, describe in Item 69 (Additional Information) the manner in which the labor organization acquired or disposed of the asset(s), such as donating office furniture or equipment to charitable organizations, trading in assets, writing off a receivable, or giving away other tangible or intangible property of the labor organization. Include the type of asset, its value, and the identity of the recipient or donor, if any. Also report in Item 69 the cost or other basis at which any acquired assets were entered on the labor organization's books or the cost or other basis at which any assets disposed of were carried on the labor organization's books. For example, assets may be entered on the labor organization's books at cost and carried at that value; carried at cost less accumulated depreciation; or

carried at scrap value or other nominal value because the assets were fully depreciated or were expensed when purchased (that is, the cost was charged to current expenses rather than entered on the books and periodically depreciated).

For assets that were traded in, enter in Item 69 the cost, book value, and trade-in allowance.

16. PLEDGED OR ENCUMBERED ASSETS — If the labor organization answered "Yes" to Item 16, identify in Item 69 (Additional Information) all of the labor organization's assets pledged or encumbered in any way (such as those pledged as collateral for a loan) at the end of the reporting period. Also report in Item 69 their fair market value, and provide details of transactions related to the encumbrance.

17. CONTINGENT LIABILITIES — If the labor organization answered "Yes" to Item 17, describe in Item 69 (Additional Information) the transactions or events resulting in the contingent liabilities and include the identity of the claimant or creditor. Contingent liabilities are potential obligations that may or may not develop into actual liabilities in the future. Examples of a contingent liability are a loan co-signed by the labor organization, or a pending lawsuit that could result in the labor organization being ordered to pay damages or make other payments.

A pending administrative or judicial action is considered a contingent liability that must be reported in Item 17 if, in the opinion of legal counsel, it is reasonably possible that the labor organization will be required to make some payment. Such administrative or judicial actions must be reported as contingent liabilities regardless of whether or not the possible losses would have a materially adverse effect on the labor organization's financial condition. List in Item 69 each administrative or judicial action, including the case number, court, and caption.

18. CHANGES IN CONSTITUTION AND BYLAWS OR PRACTICES AND PROCEDURES — If the labor organization answered "Yes" to Item 18 because the labor organization's constitution and bylaws were changed during the reporting period (other than rates of dues and fees), a dated copy of the new constitution and bylaws must be submitted to OLMS as an electronic attachment to the Form LM-2.

If the labor organization is governed by a uniform or model constitution and bylaws prescribed by the labor organization's parent national or international body, the labor organization's parent body may file the constitution and bylaws on the labor organization's behalf. If the parent body files a constitution and bylaws on the labor organization's behalf, answer "Yes" to Item 18 and state that fact in Item 69 (Additional Information). If the labor organization has any supplemental governing documents or has modified a model constitution and bylaws, the labor organization must file these documents.

If the labor organization answered "Yes" to Item 18 because the labor organization changed any of the practices/procedures listed below during the reporting period and the practices/procedures are not described in the labor organization's constitution or bylaws, the labor organization must file an amended Form LM-1 (Labor Organization Information Report) to update information on file with the Department:

- qualifications for or restrictions on membership;
- levying assessments;
- participating in insurance or other benefit plans;
- authorizing disbursement of labor organization funds;
- auditing financial transactions of the labor organization;
- calling regular and special meetings;
- authorizing bargaining demands;
- ratifying contract terms;

- authorizing strikes;
- disciplining or removing officers or agents for breaches of their trust;
- imposing fines and suspending or expelling members including the grounds for such action and any provision made for notice, hearing, judgment on the evidence, and appeal procedures;
- selecting officers and stewards and any representatives to other bodies composed of labor organizations' representatives;
- invoking procedures by which a member may protest a defect in the election of officers (including not only all procedures for initiating an election protest but also all procedures for subsequently appealing an adverse decision, e.g., procedures for appeals to superior or parent bodies, if any); and
- issuing work permits.

Form LM-1 is available on the OLMS Web site at http://www.olms.dol.gov or from any OLMS field office listed at the end of these instructions.

NOTE: Federal employee labor organizations subject solely to the Civil Service Reform Act or Foreign Service Act are not required to submit an amended Form LM-1 to describe revised or changed practices/procedures.

19. NEXT REGULAR ELECTION — Enter the month and year of the labor organization's next regular election of general officers (president, vice president, treasurer, secretary, etc.). Do not report the date of any interim election to fill vacancies.

20. NUMBER OF MEMBERS — After Schedule 13 is completed and the "Perform Calculations" button is clicked, the software will transfer the total in Line 8, Column (B) (Membership Status) to Item 20.

21. DUES AND FEES — Enter the dues and fees established by the labor organization. If more than one rate applies, enter the minimum and maximum rates. Enter "0" where appropriate.

Line (a): Enter the regular dues, fees or other periodic payments that a member must pay to be in good standing in the labor organization, including the calendar basis for the payment (per month, per year, etc.). Include only the dues or fees of regular members and not dues or fees of members with special rates, such as apprentices, retirees, or unemployed members.

Line (b) If individuals covered by your organization's collective bargaining agreement(s) pay "working" dues in addition to their regular dues, enter the amount or percent of "working" dues, including the basis for the payment (per hour, per month, etc.).

Line (c): Enter the initiation fees required from new members.

Line (d): Enter the fees other than dues required from transferred members. Such fees are those charged to persons applying for a transfer of membership to the labor organization from another labor organization with the same affiliation. Do not report fees charged to members transferring from one class of membership to another within the labor organization.

Line (e): If the labor organization issues work permits, enter the fees required and enter the calendar basis for the payment (per month, per year, etc.). Work permit fees are fees charged to nonmembers of the labor organization who work within its jurisdiction. Do not report as work permit fees those fees charged to nonmember applicants for membership pending acceptance of their membership application, or fees charged to persons applying for transfer of membership to the labor organization pending acceptance of their application for transfer.

FINANCIAL DETAILS

REPORT ONLY DOLLAR AMOUNTS

Report all amounts in dollars only. Round cents to the nearest dollar. Amounts ending in $.01 through $.49 should be rounded down. Amounts ending in $.50 through $.99 should be rounded up.

REPORTING CLASSIFICATIONS

Complete all items and lines on the form. Do not use different accounting classifications or change the wording of any item or line.

BEGINNING AND ENDING AMOUNTS

Entries in Statement A must report amounts for both the start and the end of the reporting period. The software will pre-fill the amount for the start of the year with the amount reported for the end of the previous fiscal year. These amounts should be identical. If the data is incorrect, however, it can be edited manually. The reason for the change must be fully explained in Item 69 (Additional Information).

COMPLETE SCHEDULES FIRST

Complete Schedules 1 through 29 before completing Statements A and B. Be sure to complete all applicable lines in Schedules 1 through 29. As you complete the schedules, the software will transfer some of the totals to the appropriate items in Statements A and B. You must enter the remaining totals manually.

COMPLETE ALL ITEMS 22 THROUGH 68

Complete all items in Statement A and Statement B. Enter "0" where appropriate.

SCHEDULES 1 THROUGH 12

SCHEDULE 1 – ACCOUNTS RECEIVABLE AGING SCHEDULE – The labor organization must report 1) all accounts with an entity or individual that aggregate to a value of $5,000 or more and that are 90 days or more past due at the end of the reporting period or were liquidated, reduced or written off during the reporting period; and 2) the total aggregated value of all other accounts receivable.

Column (A): Enter on Lines 1 through 24 the name of any entity or individual with which the labor organization has an account receivable of $5,000 or more that is 90 days or more past due at the end of the reporting period or that was liquidated, reduced or written off during the reporting period without the receipt of cash sufficient to cover the total value of the account receivable.

Column (B): Enter on Lines 1 through 24 the total amount of money owed to the labor organization by the entity or individual at the end of the reporting period. The software will enter on Line 25 the total from any continuation pages, add Lines 1 through 25, and enter the total on Line 26. Enter on Line 27 the total amount of money owed to the labor organization in all other accounts receivable not required to be reported above. The software will add Lines 26 and 27 and enter the total on Line 28. The total from Line 28, Column (B) will be forwarded to Item 23, Column (B) of Statement A.

Column (C): Enter on Lines 1 through 24 the total amount of money owed to the labor organization by the entity or individual at the end of the reporting period that is 90 to 180 days past due. The software will enter on Line 25 the total from any continuation pages, add Lines 1 through 25, and enter the total on Line 26. Enter on Line 27 the total amount of money owed to the labor organization in all other accounts receivable (those of less than $5,000) that are 90 to 180 days past due. The software will add Lines 26 and 27 and enter the total on Line 28.

Column (D): Enter on Lines 1 through 24 the total amount of money owed to the

labor organization by the entity or individual at the end of the reporting period that is more than 180 days past due. The software will enter on Line 25 the total from any continuation pages, add Lines 1 through 25, and enter the total on Line 26. Enter on Line 27 the total amount of money owed to the labor organization in all other accounts receivable (those of less than $5,000) that are more than 180 days past due. The software will add Lines 26 and 27 and enter the total on Line 28.

Column (E): Enter on Lines 1 through 24 the total amount of money owed to the labor organization by the entity or individual that was liquidated, reduced or written off during the reporting period by the reporting labor organization without the receipt of cash sufficient to cover the total value of the account receivable. The software will enter on Line 25 the total from any continuation pages, add Lines 1 through 25, and enter the total on Line 26. Enter on Line 27 the total amount of money owed to the labor organization in all other accounts receivable (those of less than $5,000) that was liquidated, reduced or written off during the reporting period by the reporting labor organization without the receipt of cash sufficient to cover the total value of the account receivable. The software will add Lines 26 and 27 and enter the total on Line 28.

Provide in Item 69 (Additional Information) all details and circumstances in connection with the liquidation, reduction or writing off of any account receivable, in accordance with the instructions for Item 15 (Acquisition or Disposition of Assets).

SCHEDULE 2 – LOANS RECEIVABLE — Report details of all direct and indirect loans (whether or not evidenced by promissory notes or secured by mortgages) owed to the labor organization at any time during the reporting period by individuals, business enterprises, benefit plans, and other entities including labor organizations. An example of an indirect loan is a disbursement by the labor organization to an educational institution for the tuition expense of an officer, employee, or member that must be repaid to the labor organization by that individual. Be sure to report all loans that were made and repaid in full during the reporting period. Do not include investments in corporate bonds or mortgages purchased on a block basis through a bank or similar institution that must be reported in Schedule 5 (Investments Other Than U.S. Treasury Securities).

NOTE: Advances, including salary advances, are considered loans and must be reported in Schedule 2 (Loans Receivable). However, advances to officers and employees of the labor organization for travel expenses necessary for conducting official business are not considered loans if the following conditions are met:

- The amount of an advance for a specific trip does not exceed the amount of expenses reasonably expected to be incurred for official travel in the near future, and the amount of the advance is fully repaid or fully accounted for by vouchers or paid receipts within 30 days after the completion or cancellation of the travel.

- The amount of a standing advance to an officer or employee who must frequently travel on official business does not unreasonably exceed the average monthly travel expenses for which the individual is separately reimbursed after submission of vouchers or paid receipts, and the individual does not exceed 60 days without engaging in official travel.

See the instructions for Schedules 7 (Other Assets), 11 (All Officers and Disbursements to Officers) and 12 (Disbursements to Employees) for reporting travel advances that meet these criteria.

Column (A): Enter the following information on Lines 1 through 3 (and on continuation pages if necessary):

- The name of each officer, employee, or member whose total loan indebtedness to the labor organization at any time during the reporting period exceeded $250, and the name of each business enterprise that had any loan indebtedness, regardless of amount, at any time during the reporting period;
- The purpose of each loan;
- The security given for each loan; and
- The terms of repayment for each loan.

For each officer or employee listed, indicate after each name either "O" (officer) or "E" (employee).

Column (B): Enter on Lines 1 through 3 the loan amounts outstanding at the start of the reporting period from each listed individual and business enterprise. The software will enter on Line 4 the total from any continuation pages. Enter on Line 5 the total of loans made to officers, employees, or members whose total individual loan indebtedness to the labor organization at any time during the reporting period did not exceed $250, and all loans, regardless of amount, made to other individuals and entities. The software will add Lines 1 through 5 and enter the total on Line 6 and in Item 24 (Loans Receivable), Column (A) of Statement A.

Column (C): Enter on Lines 1 through 3 the amount of loans made during the reporting period to each listed individual and business enterprise. The software will enter on Line 4 the total from any continuation pages. Enter on Line 5 the total of all other loans made during the reporting period. The software will add Lines 1 through 5 and enter the total on Line 6 and in Item 61 (Loans Made) of Statement B.

Columns (D)(1) and (D)(2): Enter on Lines 1 through 3 the amount of loan repayments during the reporting period from each listed individual and business enterprise. Report in these columns only the portion of the payments applied toward principal; interest received must be reported in Item 40 (Interest). Use Column (D)(1) to report repayments received in cash. Use Column (D)(2) to report repayments made in a manner other than cash, such as repayments made by officers or employees by means of deductions from their salaries. The software will enter on Line 4 the totals from any continuation pages. Enter on Line 5 the amount of loan repayments from all other loans. The software will add Lines 1 through 5, Columns (D)(1) and (D)(2), and enter the totals on Line 6. The software will enter the total from Line 6, Column (D)(1) in Item 45 (Repayments of Loans Made) of Statement B. Explain in Item 69 (Additional Information) any non-cash amounts reported in Column (D)(2).

Column (E): Enter on Lines 1 through 3 the loan amounts outstanding at the end of the reporting period for each listed individual and business enterprise. The software will enter on Line 4 the total from any continuation pages. Enter on Line 5 the total amount outstanding at the end of the reporting period for all other loans. The software will add Lines 1 through 5 and enter the total on Line 6 and in Item 24 (Loans Receivable), Column (B) of Statement A. If any loans receivable were liquidated, reduced or written off during the reporting period, the reason and the amount must be reported in Item 69 (Additional Information).

NOTE: Section 503(a) of the LMRDA (29 U.S.C. 503) prohibits labor organizations from making direct or indirect loans to any officer or employee of the labor organization which results in a total indebtedness on the part of such officer or employee to the labor organization in excess of $2,000 at any time.

SCHEDULE 3 – SALE OF INVESTMENTS AND FIXED ASSETS — Schedule 3 includes the sale or redemption by the labor organization of

U.S. Treasury securities, marketable securities, other investments, and fixed assets, including those fixed assets that were expensed (that is, the cost of the asset was charged to current expenses, rather than entered on the books and periodically depreciated). Include receipts from sales of mortgages that were purchased on a block basis through a bank or similar institution. Do not include the receipts from repayments by individual mortgagors, which must be reported in Schedule 2 (Loans Receivable) as loan repayments.

Complete a Schedule 3 Itemization Page for each purchaser who paid the labor organization $5,000 or more for investments or fixed assets before filling out the Schedule 3 Detailed Summary Page.

NOTE: Labor organizations need not itemize on Schedule 3 Itemization Page marketable securities when the purchaser is unknown. Marketable securities are those for which current market values can be obtained from published reports of transactions in listed securities or in securities traded "over the counter," such as corporate stocks and bonds, stock and bond mutual funds, state and municipal bonds, and foreign government securities. Instead enter on Line (3) of the Schedule 3 Detailed Summary Page the total amount from such sales.

Column (A): Enter the name and mailing address of the purchaser of $5,000 or more in investments or fixed assets from the labor organization.

Column (B): Enter a general description of the type of investment or fixed asset sold, such as U.S. Treasury securities, stocks, bonds, land, automobiles, etc. If land or buildings were sold, enter the location of the property, including the street address, if appropriate.

Column (C): Enter the date of the sale.

Column (D): Enter the total cost of each type of investment (including any transaction costs) or fixed asset described in Column (B).

Column (E): Enter the value at which the investment or fixed asset was shown on the labor organization's books.

Column (F): Enter the gross sales (or contract) price of the investment or fixed asset.

Column (G): Enter the net amount received from the sale of the investment or fixed asset. If the amount received during the reporting period is less than the amount due (gross sales price less any deductions for selling expenses and repayments of secured loans or mortgages), the additional amount due to the labor organization must be reported in Schedule 7 (Other Assets) with a description sufficient to identify the type of asset. However, if a mortgage or note is taken back, it must be reported as a new loan in Schedule 2 (Loans Receivable).

The software will enter on Line (H), Columns (D) through (G), the total amount from all transactions with the purchaser.

The software will enter on Line (I), Columns (D) through (G), the totals from any continuation pages with this purchaser.

The software will add Lines (H) and (I), Columns (F) and (G) and enter the totals on Line (J), Columns (F) and (G).

Enter on Line (K), Column (F) the total gross sales price and enter on Line (K), Column (G) enter the total amount received for all non-itemized transactions with this purchaser, that is, all individual receipts of less than $5,000 each.

The software will add Lines (J) and (K), Columns (F) and (G) and enter the total on Line (L), Columns (F) and (G).

The software will add the amounts in Line (J), Column (G) of each Schedule 3

Itemization Page and enter the total on Line (1) of the Schedule 3 Detailed Summary Page.

The software will add the amounts in Line (K), Column (G) of each Schedule 3 Itemization Page and enter the total on Line (2) of the Schedule 3 Detailed Summary Page.

Enter on Line (3) of the Schedule 3 Detailed Summary Page the total of all receipts from sales of investments and fixed assets to other purchasers. This is the total from your organization's books of all receipts from sales of investments and fixed assets that were made to a purchaser of less than $5,000.

The software will add Lines (1) through (3) and enter the total on Line (4).

Prompt Reinvestments: Enter on Line (5) of the Schedule 3 Detailed Summary Page the total amount from the sales or redemption of U.S. Treasury securities, marketable securities, or other investments that were promptly reinvested (i.e. "rolled over") in U.S. Treasury securities, marketable securities, or other investments during the reporting period. Calculate the total amount reinvested by adding, for each investment, the lower of each investment's original cost or the amount received from the sale or redemption that was actually reinvested. If only a portion of the amount received was reinvested, only the reinvested portion may be included on Line (5). Interest and dividends received during the reporting period must be reported in Items 40 (Interest) and 41 (Dividends).

The software will subtract Line (5) from Line (4) and enter the difference on Line (6) and in Item 43 (Sales of Investments and Fixed Assets) of Statement B.

SCHEDULE 4 – PURCHASE OF INVESTMENTS AND FIXED ASSETS — Schedule 4 includes the purchase by the labor organization of U.S. Treasury securities, marketable securities, other investments, and fixed assets, including those fixed assets that were expensed (that is, the cost of the asset was charged to current expenses, rather than entered on the books and periodically depreciated). Include disbursements for mortgages that were purchased on a block basis through a bank or similar institution.

Complete a Schedule 4 Itemization Page for each seller who received $5,000 or more from the labor organization before filling out the Schedule 4 Detailed Summary Page:

NOTE: Labor organizations need not itemize on Schedule 4 Itemization Page marketable securities when the seller is unknown. Marketable securities are those for which current market values can be obtained from published reports of transactions in listed securities or in securities traded "over the counter," such as corporate stocks and bonds, stock and bond mutual funds, state and municipal bonds, and foreign government securities. Instead enter on Line (3) of the Schedule 4 Detailed Summary Page the total amount from such purchases.

Column (A): Enter the name and mailing address of the seller of the investments or fixed assets to the labor organization.

Column (B): Enter a general description of the type of investment or fixed asset purchased, such as U.S. Treasury securities, stocks, bonds, land, automobiles, etc. If land or buildings were purchased, enter the location of the property, including the street address, if appropriate.

Column (C): Enter the date of the purchase.

Column (D): Enter the gross purchase price of each type of investment (including any transaction costs) or fixed asset described in Column (B).

Column (E): Enter the value at which the

investment or fixed asset was entered on the labor organization's books. If assets were traded in on assets purchased, answer Item 15 (Acquisition or Disposition of Assets) "Yes," and provide in Item 69 the cost, book value, and trade-in allowance in accordance with the instructions for Item 15.

Column (F): Enter the total amount disbursed for each type of investment or fixed asset purchased during the reporting period. Do not include any unpaid balance that must be reported in Schedule 9 (Loans Payable) or Item 32 (Mortgages Payable) of Statement A.

The software will enter on Line (G), Columns (D) through (F) the total of Columns (D) through (F).

The software will enter on Line (H), Columns (D) through (F), the totals from any continuation pages for this seller.

The software will add Lines (G) and (H), Columns (D) through (F) and enter the total on Line (I), Columns (D) through (F).

Enter on Line (J), Column (F), the total of all non-itemized transactions with this seller (that is, all individual disbursements of less than $5,000 each).

The software will add Lines (I) and (J), Column (F) and enter the total on Line (K).

The software will add the amounts in Line (I), Column (F) of each Schedule 4 Itemization Page, and enter the total on Line (1) of the Schedule 4 Detailed Summary Page.

.

The software will add the amounts in Line (J), Column (F) of each Schedule 4 Itemization Page, and enter the total on Line (2) of the Schedule 4 Detailed Summary Page.

Enter on Line (3) of the Schedule 4 Detailed Summary Page the total of all disbursements for purchases of investments and fixed assets from other sellers. This is the total from your organization's books of all disbursements to sellers of less than $5,000.

The software will add Lines (1) through (3) and enter the total on Line (4).

Prompt Reinvestments: Enter on Line (5) of the Schedule 4 Detailed Summary Page the total amount of the sale or redemption of U.S. Treasury securities, marketable securities, or other investments that was promptly reinvested (i.e. "rolled over") in U.S. Treasury securities, marketable securities, or other investments during the reporting period. Calculate the total amount reinvested by adding, for each investment, the lower of each investment's original cost or the amount received from the sale or redemption that was actually reinvested. If only a portion of the amount received was reinvested, only the reinvested portion may be included on Line (5). Interest and dividends received during the reporting period must be reported on Schedules 18 (Interest) and 19 (Dividends). The total on Line (5) must agree with the amount reported on Line (5) of Schedule 3 (Sale of Investments and Fixed Assets).

The software will subtract Line (5) from Line (4) and enter the difference on Line (6) and in Item 60 (Purchase of Investments and Fixed Assets) of Statement B.

SCHEDULE 5 – INVESTMENTS OTHER THAN U.S. TREASURY SECURITIES — Report details of all the labor organization's investments at the end of the reporting period, other than U.S. Treasury securities. Include mortgages purchased on a block basis and any investments in a trust as defined in Section X (Trusts in Which a Labor Organization is Interested) of these instructions. Do not include savings accounts, certificates of deposit, or money market accounts, which must be reported in Item 22 (Cash) of Statement A.

Line 1: Enter in Column (B) the total cost of all the labor organization's marketable securities including transaction costs such as brokerage commissions. Marketable securities are those for which current market values can be obtained from published reports of transactions in listed securities or in securities traded "over the counter," such as corporate stocks and bonds, stock and bond mutual funds, state and municipal bonds, and foreign government securities.

Line 2: Enter in Column (B) the total book value of all the labor organization's marketable securities. Book value is the lower of cost or market value.

Line 3: List in Column (A) each marketable security that has a book value over $5,000 and exceeds 5% of the total book value entered on Line 2 and enter its book value in Column (B).

The software will enter on Line 3(d) the total from any continuation pages.

Line 4: Enter the total cost, including any transaction costs, of all the labor organization's other investments (that is, those that are not U.S. Treasury securities or marketable securities). Include mortgages purchased on a block basis.

Line 5: Enter the total book value of such other investments. Book value is the lower of cost or market value.

Line 6: List in Column (A) each other investment that has a book value over $5,000 and exceeds 5% of the total book value entered on Line 5 and enter its book value in Column (B).

NOTE: All trusts in which the labor organization is interested which are investments of the labor organization (such as real estate trusts, building corporations, etc.) must be reported in Schedule 5. On Lines 6(a) through (d) enter the name of each trust in Column (A) and the labor organization's share of its book value in Column (B).

The software will enter on Line 6(e) the total from any continuation pages.

Line 7: The software will add Lines 2 and 5 and enter the total on Line 7 and in Item 26 (Investments), Column (B) of Statement A.

SCHEDULE 6 – FIXED ASSETS — Report details of all fixed assets, such as land, buildings, automobiles and other vehicles, and office furniture and equipment owned by the labor organization at the end of the reporting period. Land and buildings must be itemized, whereas automobiles and other vehicles, and office furniture and equipment should be aggregated. Include fixed assets that were expensed (that is, the cost of the asset was charged to current expenses, rather than entered on the books and periodically depreciated), fully depreciated, or carried on the labor organization's books at scrap value or other nominal value.

Column (A): Enter on Line 1 the location of any land and on Line 3 the location of any buildings owned by the labor organization. Use continuation pages if the labor organization owns multiple parcels or buildings.

Column (B): Enter the cost or other basis of the fixed assets listed in Column (A). The software will enter the totals from any continuation pages.

Column (C): Enter the accumulated depreciation, if any, of the fixed assets (except land) listed in Column (A) whose cost or other basis is reported in Column (B). The software will enter the totals from any continuation pages. If the labor organization "expenses" fixed assets, also include in Column (C) the amount that the labor organization charged to expenses when the assets were purchased.

Column (D): Enter the amount at which the fixed assets listed in Column (A) are carried on the labor organization's books.

The software will enter the totals from any continuation pages. Include the nominal amount, if any, at which fully depreciated assets are carried on the labor organization's books. The amount reported in Column (D) should be the difference between Columns (B) and (C).

Column (E): Enter the fair market value of land and of all assets listed in Column (A) that were expensed, fully depreciated, or depreciated to scrap value or nominal value, including totals from any continuation pages. It is not necessary to secure a formal appraisal of the assets; a good faith estimate is sufficient. The value used for insurance purposes or for tax appraisals, for example, will normally be acceptable as representing the fair market value. The software will enter the totals from any continuation pages.

The software will add Lines 1 through 7 for each of Columns (B) through (E), and enter the totals on Line 8. The software will enter the total from Line 8, Column (D) in Item 27 (Fixed Assets), Column (B) of Statement A.

SCHEDULE 7 – OTHER ASSETS — Report details of all the labor organization's assets at the end of the reporting period other than Item 22 (Cash), Item 23 (Accounts Receivable), Item 24 (Loans Receivable), Item 25 (U.S. Treasury Securities), Item 26 (Investments), and Item 27 (Fixed Assets).

The labor organization's other assets must be described in Column (A) and may be classified by general groupings or bookkeeping categories, such as utility deposits, inventory of supplies for resale, or travel advances that are not required to be reported as loans as explained in the instructions for Schedule 2 (Loans Receivable), if the description is sufficient to identify the type of assets. Enter in Column (B) the value as shown on the labor organization's books of each asset or group of assets described in Column (A).

NOTE: If the labor organization has an ownership interest of a non-investment nature in a trust in which it is interested the value of the labor organization's ownership interest in the entity as shown on the labor organization's books must be reported in Schedule 7 (Other Assets). Enter in Column (A) the name of any such entity. Enter in Column (B) the value as shown on the labor organization's books of its share of the net assets of any such entity.

The software will enter on Line 14 the total from any continuation pages, add Lines 1 through 14, and enter the total on Line 15 and in Item 28 (Other Assets), Column (B) of Statement A.

SCHEDULE 8 – ACCOUNTS PAYABLE AGING SCHEDULE – The labor organization must report 1) individual accounts that are valued at $5,000 or more and that are 90 days or more past due at the end of the reporting period <u>or</u> were liquidated, reduced or written off during the reporting period; and 2) the total aggregated value of all other accounts.

Column (A): Enter on Lines 1 through 24 the name of any entity or individual with which the labor organization has an account payable of $5,000 or more that is 90 days or more past due at the end of the reporting period <u>or</u> that was liquidated, reduced or written off during the reporting period without the disbursement of cash sufficient to cover the total value of the account payable.

Column (B): Enter on Lines 1 through 24 the total amount of money owed by the labor organization to the entity or individual at the end of the reporting period. The software will enter on Line 25 the total from any continuation pages, add Lines 1 through 25, and enter the total on Line 26. Enter on Line 27 the total amount of money owed by the labor organization in all other accounts payable not required to be reported above. The software will add Lines 26 and 27 and

enter the total on Line 28. The software will enter the total from Line 28, Column (B) in Item 30, Column (D) of Statement A.

Column (C): Enter on Lines 1 through 24 the total amount of money owed by the labor organization to the entity or individual at the end of the reporting period that is 90 to 180 days past due. The software will enter on Line 25 the total from any continuation pages, add Lines 1 through 25, and enter the total on Line 26. Enter on Line 27 the total amount of money owed by the labor organization in all other accounts payable (those of less than $5,000) that are 90 to 180 days past due. The software will add Lines 26 and 27 and enter the total on Line 28.

Column (D): Enter on Lines 1 through 24 the total amount of money owed by the labor organization to the entity or individual at the end of the reporting period that is more than 180 days past due. The software will enter on Line 25 the total from any continuation pages, add Lines 1 through 25, and enter the total on Line 26. Enter on Line 27 the total amount of money owed by the labor organization in all other accounts payable (those of less than $5,000) that are more than 180 days past due. The software will add Lines 26 and 27 and enter the total on Line 28.

Column (E): Enter on Lines 1 through 24 the total amount of money owed by the labor organization to the entity or individual that was written off during the reporting period by the reporting labor organization without the disbursement of cash sufficient to cover the total value of the account payable. The software will enter on Line 25 the total from any continuation pages, add Lines 1 through 25, and enter the total on Line 26. Enter on Line 27 the total amount of money owed by the labor organization in all other accounts payable (those of less than $5,000) that was written off during the reporting period by the reporting labor organization without the disbursement of cash sufficient to cover the total value of the account payable. The software will add Lines 26 and 27 and enter the total on Line 28.

Provide in Item 69 (Additional Information) all details and circumstances in connection with the writing off of the account payable, including the reason and amount.

SCHEDULE 9 – LOANS PAYABLE — Report details of all loans payable on which the labor organization owed money at any time during the reporting period except those secured by mortgages or similar liens on real property (land or buildings) that must be reported in Item 32 (Mortgages Payable) of Statement A.

Column (A): Enter on Lines 1 through 11 (and on continuation pages, if necessary) the name of each business enterprise to which a loan was payable. Also list the source of all other loans by general categories, such as labor organizations, individuals, etc.

Column (B): For each loan source listed in Column (A), enter the amount, if any, owed by the labor organization at the start of the reporting period. The software will enter on Line 12 the total from any continuation pages, add Lines 1 through 12, and enter the total on Line 13 and in Item 31 (Loans Payable), Column (C) of Statement A.

Column (C): For each loan source listed in Column (A), enter the amount, if any, obtained by the labor organization during the reporting period. The software will enter on Line 12 the total from any continuation pages. If, due to discounting by a bank or for any other reason, the amount received from a loan was less than the face value of the note or the amount repayable, enter the amount actually received and explain in Item 69 (Additional Information). The software will add Lines 1 through 12 and enter the total on Line 13 and in Item 44 (Loans Obtained) of Statement B.

Columns (D)(1) and (D)(2): For each loan source listed in Column (A), enter the amount, if any, that the labor organization repaid to the lender during the reporting period. Report only repayments of principal; interest paid must be reported in Schedule 18 (General Overhead). Use Column (D)(1) to report repayments made in cash. Use Column (D)(2) to report repayments made in a manner other than by cash, such as repayments made to a creditor by offsetting an amount owed by the creditor to the labor organization. The software will enter on Line 12 the totals from any continuation pages; add Lines 1 through 12, Columns (D)(1) and (D)(2); and enter the totals on Line 13. The software will enter the total from Line 13, Column (D)(1) in Item 62 (Repayment of Loans Obtained) of Statement B. Explain in Item 69 (Additional Information) any non-cash amounts reported in Column (D)(2).

Column (E): For each loan source listed in Column (A), enter the balance, if any, that the labor organization owed the listed lender at the end of the reporting period. The software will enter on Line 12 the total from any continuation pages. If any loans payable were written off during the reporting period, the reason and amount must be reported in Item 69 (Additional Information). The software will add Lines 1 through 12 and enter the total on Line 13 and in Item 31 (Loans Payable), Column (D) of Statement A.

SCHEDULE 10 – OTHER LIABILITIES — Report details of all the labor organization's liabilities at the end of the reporting period other than Item 30 (Accounts Payable), Item 31 (Loans Payable), and Item 32 (Mortgages Payable) of Statement A.

Any portion of withheld taxes or any other payroll or other deductions, which have not been transmitted at the end of the reporting period, are liabilities of the labor organization and must be reported in Schedule 10. Payroll or other deductions that are retained by the labor organization (such as repayments of loans to officers or employees) must be fully explained in Item 69 (Additional Information).

The labor organization's other liabilities must be described in Column (A) and may be classified by general groupings or bookkeeping categories if the description is sufficient to identify the type of liability. List separately any payroll taxes withheld but not yet paid, other unpaid payroll taxes of the labor organization, such as FICA taxes, and any funds collected on behalf of affiliates or members and not disbursed by the end of the reporting period. Do not include reserves for special purposes (for example, "Reserve for Building Fund") that are actually an allocation of certain assets for specific purposes rather than a liability.

Enter in Column (B) the amount of each liability described in Column (A). The software will enter on Line 13 the total from any continuation pages, add Lines 1 through 13, and enter the total on Line 14 and in Item 33 (Other Liabilities), Column (D) of Statement A.

SCHEDULE 11 – ALL OFFICERS AND DISBURSEMENTS TO OFFICERS — List all the labor organization's officers and report all salaries and other direct and indirect disbursements to officers during the reporting period. Also report the percentage of time spent by each officer in the categories provided.

NOTE: A "direct disbursement" to an officer is a payment made by the labor organization to the officer in the form of cash, property, goods, services, or other things of value.

An "indirect disbursement" to an officer is a payment made by the labor organization to another party for cash, property, goods, services, or other things of value received by or on behalf of the officer. "On behalf of the officer" refers to a payment received by a party other than the officer or the labor organization for the personal interest or benefit of the officer. Such payments

include those made through a credit arrangement under which charges are made to the account of the labor organization and are paid by the labor organization. For example, when a union, through its credit arrangements, is billed directly and pays the hotel bills of an officer who, during his workweek, resides at a hotel in the city where the union headquarters is located away from his legal residence in another city, the payments must be reported as disbursements to the officer.

Column (A): Enter in (A) the last name, first name, and middle initial of each person who held office in the labor organization at any time during the reporting period. Include all the labor organization's officers whether or not any salary or other disbursements were made to them or on their behalf by the labor organization. "Officer" is defined in section 3(n) of the LMRDA (29 U.S.C. 402) as "any constitutional officer, any person authorized to perform the functions of president, vice president, secretary, treasurer, or other executive functions of a labor organization, and any member of its executive board or similar governing body."

Column (B): Enter in (B) the title of the position each officer listed held during the reporting period. If an officer held more than one position during the reporting period, list each additional position and the dates on which the officer held the position in Item 69 (Additional Information).

Column (C): Use the drop-down menu to select the status of each officer: "N" for a new officer who took office during the reporting period; "P" for a past officer who was not in office at the end of the reporting period; or "C" for a continuing officer who was in office before the reporting period and was still in office at the end of the reporting period. If any officer was not elected at a regular election in accordance with the labor organization's constitution and bylaws or other governing documents on file with OLMS, explain the manner in which the officer was chosen in Item 69 (Additional Information).

Column (D): Enter the gross salary of each officer (before tax withholdings and other payroll deductions). Include disbursements for "lost time" or time devoted to union activities.

Column (E): Enter the total allowances made by direct and indirect disbursements to each officer on a daily, weekly, monthly, or other periodic basis. Do not include allowances paid on the basis of mileage or meals which must be reported in Column (G) or (H), as applicable.

Column (F): Enter all direct or indirect disbursements for benefits made to or on behalf of each officer. Benefit disbursements include, for example, disbursements for life insurance, health insurance, and pensions.

NOTE; In the rare instance where a labor organization, in good faith and on reasonable grounds, believes that a particular disbursement would reveal individually identifiable health information of the kind required to be protected under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), violate a federal or state law, or violate a confidential settlement agreement, it should not enter the disbursement in Schedule 11. The disbursement should be reported in Schedule 29 (Benefits) and the labor organization should report in Item 69 (Additional Information) that a disbursement was excluded from Column (F) of Schedule 11.

Column (G): Enter all direct and indirect disbursements to each officer that were necessary for conducting official business of the labor organization, except salaries, allowances, and benefits which must be reported in Columns (D), (E), and (F), respectively.

Examples of disbursements to be reported

in Column (G) include all expenses that were reimbursed directly to an officer, meal allowances and mileage allowances, expenses for officers' meals and entertainment, and various goods and services furnished to officers but charged to the labor organization. Such disbursements should be included in Column (G) only if they were necessary for conducting official business; otherwise, report them in Column (H). Also include in Column (G) travel advances that are not considered loans as explained in the instructions for Schedule 2 (Loans Receivable).

NOTE: Where a labor organization has paid directly for hotel room charges on behalf of numerous officers and did not receive an itemized bill, but instead received a total charge for all rooms used, the labor organization should divide the cost among those officers.

Do not report the following disbursements in Schedule 11:

- Reimbursements to an officer for the purchase of investments or fixed assets, such as reimbursing an officer for a file cabinet purchased for office use, which must be reported in Schedule 4 (Purchase of Investments and Fixed Assets) and explained in Item 69 (Additional Information);

- Disbursements made by the labor organization to someone other than an officer as a result of transactions arranged by an officer in which property, goods, services, or other things of value were received by or on behalf of the labor organization rather than the officer, such as rental of offices and meeting rooms, purchase of office supplies, refreshments and other expenses of membership banquets or meetings, and food and refreshments for the entertainment of groups other than the officers and membership on official business;

- Office supplies, equipment, and facilities furnished to officers by the labor organization for use in conducting official business; and

- Maintenance and operating costs of the labor organization's assets, including buildings, office furniture, and office equipment; however, see "Special Rules for Automobiles" below.

Column (H): Enter all other direct and indirect disbursements to each officer. Include all disbursements for which cash, property, goods, services, or other things of value were received by or on behalf of each officer and were essentially for the personal benefit of the officer and not necessary for conducting official business of the labor organization.

Include in Column (H) all disbursements for transportation by public carrier between the officer's home and place of employment or for other transportation not involving the conduct of official business. Also, include the operating and maintenance costs of all the labor organization's assets (automobiles, etc.) furnished to officers essentially for the officers' personal use rather than for use in conducting official business.

Do not include in Column (H) loans to officers, which must be reported in Schedule 2 (Loans Receivable) or disbursements for benefits to officers, which must be reported in Column F (Benefits).

Column (I): The software will add Columns (D) through (H) of each line and enter the totals in Column (I).

The software will enter on Line 6 the totals from any continuation pages for Schedule 11.

The software will enter the totals of Lines 1 through 6 for each Column (D) through (I) on Line 7.

Enter on Line 8 the total amount of withheld taxes, payroll deductions, and all

other deductions. The software will subtract Line 8 from Line 7, Column (I), and enter the difference on Line 9.

Line (J): Enter the estimated percentage of time spent by the officer on activities that fall within Schedules 24 through 28 in the box next to that schedule. You may round to the nearest 10%. When the time reported by an individual in an activity is less than 5% of his or her total work time, the officer's best estimate to the nearest percentage should be reported rather than rounding to zero. The total must equal 100%. It is understood that these figures may be imprecise. For instance, the president of an intermediate body may spend four months working intensely on a multi-state contract negotiation, two months lobbying against a state referendum, two more months on a contentious organizing drive, and throughout these activities he had to keep up with his other duties as president. The president's good-faith estimate might be to report 50% on Schedule 24 – Representational Activities, 17% on Schedule 25 – Political Activities and Lobbying, 3% on Schedule 26 – Contributions, Gifts, and Grants, and 30% on Schedule 28 – Union Administration. The example is not intended to be a representation of a typical allocation of time but it should be used to help understand the rationale that should be employed when making these determinations.

Using these percentages, the software will aggregate the amount of total disbursements (Column (I)) allocated to each schedule for every officer and enter the total on Line 3 of the Detailed Summary Page for Schedules 24-28.

SPECIAL RULES FOR AUTOMOBILES

Include in Column (H) of Schedule 11 that portion of the operating and maintenance costs of any automobile owned or leased by the labor organization to the extent that the use was for the personal benefit of the officer to whom it was assigned. This portion may be computed on the basis of the mileage driven on official business compared with the mileage for personal use. The portion not included in Column (H) must be reported in Column (G).

Alternatively, rather than allocating these operating and maintenance costs between Columns (G) and (H), if 50% or more of the officer's use of the vehicle was for official business, the labor organization may enter in Column (G) all disbursements relative to that vehicle with an explanation in Item 69 (Additional Information) indicating that the vehicle was also used part of the time for personal business. Likewise, if less than 50% of the officer's use of the vehicle was for official business, the labor organization may report all disbursements relative to the vehicle in Column (H) with an explanation in Item 69 indicating that the vehicle was also used part of the time on official business.

The amount of decrease in the market value of an automobile used over 50% for the personal benefit of an officer must also be reported in Item 69.

SCHEDULE 12 – DISBURSEMENTS TO EMPLOYEES — Report all direct and indirect disbursements to employees of the labor organization during the reporting period. Also report the percentage of time spent by each employee in the categories provided.

Include disbursements to individuals other than officers who receive lost time payments even if the labor organization does not otherwise consider them to be employees or does not make any other direct or indirect disbursements to them. The definitions of "direct disbursements" and "indirect disbursements" are the same as the definitions stated above in Schedule 11.

Column (A): Enter the last name, first name, and middle initial of each employee who during the reporting period received more than $10,000 in gross salaries,

allowances, and other direct and indirect disbursements from the labor organization or from the labor organization and any affiliates and/or trusts of the labor organization. ("Affiliates" means labor organizations chartered by the same parent body, governed by the same constitution and bylaws, or having the relation of parent and subordinate.) The labor organization's report, however, should not include disbursements made by affiliates or trusts but should include only the disbursements made by the labor organization.

Column (B): Enter the position each listed employee held in the labor organization.

Column (C): Enter the name of any affiliate or trust that paid any salaries, allowances, or expenses on behalf of a listed employee.

Columns (D) through (H): To complete Columns (D) through (H), follow the instructions for Columns (D) through (H) of Schedule 11.

Enter on Line 6, Columns (D) through (H) the totals of all gross salaries, allowances, benefits and other disbursements for all employees of the labor organization not required to be listed above.

The software will enter on Line 7 the totals from any continuation pages for Schedule 12.

The software will add Columns (D) through (H) for each of Lines 1 through 7, enter the totals in Column (I), and allocate the totals in Column (I) to Schedules 24 through 28 in accordance with the percentages you enter in Line (J) as described in Schedule 11. The software will enter the totals on Line 4 of the appropriate schedule on the Detailed Summary Page for Schedules 24 - 28.

The software will enter the totals of Lines 1 through 7 for each Column (D) through (I) on Line 8.
Enter on Line 9 the total amount of withheld taxes, payroll deductions, and all other deductions. The software will subtract Line 9 from Line 8, Column (I), and enter the difference on Line 10.

SCHEDULE 13 – MEMBERSHIP STATUS INFORMATION— Enter in Column (A) the categories of membership tracked by the reporting labor organization. Define each category of membership in Item 69 (Additional Information). The definition should include a description of the members covered by the category and indicate whether the members pay full dues.

In Column (B) enter the number of members for each of the membership categories listed in Column (A).

Members (Line 8) – The software will enter the total of all members of the labor organization (Total of Lines 1 through 7) on Line 8 and in Item 20 (Number of Members).

Agency Fee Paying Nonmembers (Line 9) – Agency fee paying nonmembers are those who make payments in lieu of dues to the reporting labor organization as a condition of employment under a union security provision in a collective bargaining agreement.

Total Members/Fee Payers (Line 10) – The software will enter the total of Lines 8 and 9, which will include all members and agency fee payers. The total in Column (B) is not the total number of members of the labor organization.

Check the "Yes" box in Column (C) if the category of membership listed in Column (A) is generally eligible to vote in all union elections held by the labor organization. Describe in Item 69 (Additional Information) any voting restrictions that apply to a category in Column (A).

SCHEDULES 14 THROUGH 28

Schedules 14 through 28 provide detailed information on the financial operations of

the labor organization in categories that reflect the services provided to union members. Receipts and disbursements are allocated to Schedules 14 through 28 and are either listed as individual entries or as aggregated entries. **Note that before completing the Detailed Summary Page for Schedules 14 through 28, you must complete Schedule 14, Schedule 15, and the itemization pages as described below.**

Allocating Receipts

Each receipt of the labor organization must be allocated to one of the receipt items in Statement B. All of these items have supporting schedules in which any "major" receipts during the reporting period must be separately identified. A "major" receipt includes: 1) any individual receipt of $5,000 or more; or 2) total receipts from any single entity or individual that aggregate to $5,000 or more during the reporting period. All other receipts in these schedules are aggregated. This process is discussed further below.

Allocating Disbursements

Each disbursement of the labor organization must be allocated to one of the disbursement items in Statement B. Some of these items have supporting schedules that require more detailed information. Schedules 24 through 28 reflect various services provided to union members by the union in which all "major" disbursements during the reporting period in the various categories must be separately identified. A "major" disbursement includes: 1) any individual disbursement of $5,000 or more; or 2) total disbursements to any single entity or individual that aggregate to $5,000 or more during the reporting period. All other disbursements in these schedules are aggregated.

All disbursements, other than those reported elsewhere in Statement B, must be allocated to Schedules 24 though 28, as appropriate.

Example 1: If the labor organization received a settlement of $4,999 in a small claims lawsuit, the receipt would not be individually identified, as long as the settlement was the only receipt from the entity or individual during the reporting period. The receipt would be aggregated with other small receipts in Line 3 of Schedule 23 (Other Receipts) on the Detailed Summary Page as discussed below.

Example 2: If the labor organization made three payments of $1,800 each to an office supplies vendor for office supplies used by employees engaged in contract negotiations during the reporting period, a single disbursement to the vendor of $5,400 would be listed in Line I on an Initial Itemization Page for that vendor for Schedule 24 (Representational Activities) as discussed below.

Example 3: If a union pays a total of $5,500 to a printing company during the reporting year and determines that $5,050 should be allocated to organizing costs, that amount must be identified in an Initial Itemization Page for the printing company for Schedule 24 (Representational Activities). If the remaining $450 paid to the same printer over the course of the year was attributable to charitable expenses, that amount will be reported in Line 5 of Schedule 26 (Contributions, Gifts, and Grants) on the Detailed Summary Page but the printer need not be identified as a recipient of any funds expended for Contributions, Gifts, and Grants, since the total paid to the printer during the reporting year for services related to Contributions, Gifts, and Grants did not exceed $5,000.

Example 4: The labor organization has an ongoing contract with a law firm that provides a wide range of legal services. The labor organization makes a single payment of $10,000 each month to the law firm. In a particular month the law firm spent 50% of its time on contract negotiation litigation and 50% on lobbying

for the enactment of, a new Federal law. The labor organization must allocate the payment for that month as two distinct disbursements of $5,000 each to Schedule 24 (Representational Activities) and Schedule 25 (Political Activities and Lobbying).

Procedures for Completing Schedules 14 Through 28.

Before completing the Detailed Summary Page for Schedules 14 through 28, complete Schedule 14, Schedule 15, and an Itemization Page for each payer/payee for whom there is (1) an individual receipt/disbursement of $5,000 or more or (2) total receipts/disbursements that aggregate to $5,000 or more during the reporting period. Do not complete an Itemization Page for disbursements to officers or employees because these disbursements are reported in Lines 3 and 4 of the Detailed Summary Page. A separate set of continuation pages must be used for each receipt and disbursement schedule.

Enter in Column (A) the full name and mailing address of the entity or individual from which the receipt was received or to which the disbursement was made. Do not abbreviate the name of the entity or individual. If you do not know and cannot reasonably attain the full address, the city and state are sufficient.

Enter in Column (B) the type of business or job classification of the entity or individual, such as printing company, office supplies vendor, lobbyist, think tank, marketing firm, legal counsel, etc.

Enter in Column (C) the purpose of each individual receipt/disbursement for that payee/payer of $5,000 or more, which means a brief statement or description of the reason the receipt/disbursement was made. Examples of adequate descriptions include the following: preparing organizing campaign pamphlets, staffing a help desk, opposition research, litigation regarding representation issues, litigation regarding a refusal to bargain charge, grievance arbitration, get-out-the-vote, voter education, advocating or opposing legislation, job retraining, etc.

Enter in Column (D) the date that the receipt/disbursement was made. The format for the date must be mm/dd/yyyy. The date of receipt/disbursement for reporting purposes is the date the labor organization actually received or disbursed the money.

Enter in Column (E) the amount of the receipt/disbursement.

The software will enter in Line (F) the total of all transactions listed in Column (E).

The software will enter in Line (G) the totals from any continuation pages for this payee/payer.

The software will enter in Line (H) the total of all itemized transactions with this payee/payer (the sum of Lines (F) and (G)).

Enter in Line (I) the total of all non-itemized transactions for the payee/payer (that is, all individual transactions of less than $5,000 each).

The software will enter in Line (J) the total of all transactions with the payee/payer for this schedule (the sum of Lines (H) and (I)).

Special Instructions for Reporting Credit Card Disbursements

Disbursements to credit card companies may not be reported as a single disbursement to the credit card company as the vendor. Instead, charges appearing on credit card bills paid during the reporting period must be allocated to the recipient of the payment by the credit card company according to the same process as described above.

The Department recognizes that filers will not always have the same access to information regarding credit card payments as with other transactions. Filers should report all of the information required in the itemization schedules that is available to the union.

For instance, in the case of a credit card transaction for which the receipt(s) and monthly statement(s) do not provide the full legal name of a payee and the union does not have access to any other documents that would contain the information, the union should report the name as it appears on the receipt(s) and statement(s). Similarly, if the receipt(s) and statement(s) do not include a full street address, the union should report as much information as is available and no less than the city and state.

Once these transactions have been incorporated into the union's recordkeeping system they can be treated like any other transaction for purposes of assigning a description and purpose.

In instances when a credit card transaction is canceled and the charge is refunded in whole or part by entry of a credit on the credit card statement, the charge should be treated as a disbursement, and the credit should be treated as a receipt. In reporting a credit of $5,000 or more as a receipt, Column (C) must indicate that the receipt was in refund of a disbursement, and must identify the disbursement by date and amount.

Special Procedures for Reporting Confidential Information

Filers may use the procedure described below to report the following types of information:

- Information that would identify individuals paid by the union to work in a non-union bargaining unit in order to assist the union in organizing employees, provided that such individuals are not employees of the union who receive more than $10,000 in the aggregate in the reporting year from the union. Employees receiving more than $10,000 must be reported on Schedule 12 – Disbursements to Employees;

- Information that would expose the reporting union's prospective organizing strategy. The union must be prepared to demonstrate that disclosure of the information would harm an organizing drive. Absent unusual circumstances, information about past organizing drives should not be treated as confidential;

- Information that would provide a tactical advantage to parties with whom the reporting union or an affiliated union is engaged or will be engaged in contract negotiations. The union must be prepared to demonstrate that disclosure of the information would harm a contract negotiation. Absent unusual circumstances information about past contract negotiations should not be treated as confidential;

- Information pursuant to a settlement that is subject to a confidentiality agreement, or that the union is otherwise prohibited by law from disclosing, or that would reveal individually identifiable health information of the kind required to be protected under the Health Insurance Portability and Accountability Act of 1996 (HIPAA); and,

- Information in those situations where disclosure would endanger the health or safety of an individual.

With respect to these specific types of information, if the reporting union can demonstrate that itemized disclosure of a specific major receipt or disbursement, or aggregated receipt or disbursement would be adverse to the union's legitimate interests, the union may include the

receipt or disbursement in Line 3 of Summary Schedule 23 (Other Receipts) or in Line 5 of Summary Schedules 24 (Representational Activities) or 28 (Union Administration). In Item 69 (Additional Information) the union must identify each schedule from which any itemized receipts or disbursements were excluded because of an asserted legitimate interest in confidentiality based on one of the first three reasons listed above. No notation need be made for exclusion of information disclosure of which is prohibited by law or that would endanger the health or safety of an individual. The notation must describe the general types of information that were omitted from the schedule, but the name of the payer/payee, date, and amount of the transaction(s) is not required. This procedure may not be used for Schedules 25 through 27.

NOTE: The special procedures for reporting confidential information may not be utilized with regard to "job targeting" disbursements, or other disbursements serving the same purpose, such as "industry advancement" or "market recovery" disbursements.

A union member, however, has the statutory right "to examine any books, records, and accounts necessary to verify" the union's financial report if the member can establish "just cause" for access to the information. 29 U.S.C. 431(c); 29 U.S.C. CFR 403.8 (2002). Any exclusion of itemized receipts or disbursements from Schedules 23, 24, or 28 for one of the first three reasons listed above would constitute a *per se* demonstration of "just cause" for purposes of this Act. Consequently, any union member (and the Department), upon request, has the right to review the undisclosed information that otherwise would have appeared in the applicable schedule if the union withholds the information in order to protect confidentiality interests.

Information that is withheld from full disclosure is not subject to the *per se* disclosure rule if its disclosure would consist of individually identifiable health information of the kind required to be protected under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) privacy regulation, violate state or federal law, violate a non-disclosure provision of a settlement agreement, or endanger the health or safety of an individual.

NOTE: Filers should not include social security or bank account numbers in completing the form.

Procedures for Completing the Detailed Summary Page

The Detailed Summary Page is used to summarize Schedules 14 through 28.

For Summary Schedules 14 and 15, the software will enter in Line 1 the total of all receipts during the reporting period from the named payers. This is the amount entered in Line (H) of Schedule 14 and Schedule 15.

The software will enter in Line 2 the total of all other receipts during the reporting period. This is the amount entered in Line (I) of Schedule 14 and Schedule 15. This is the total from your organization's books of all receipts during the reporting period relating to this schedule from payers who did not have receipts that aggregated $5,000 or more and receipts for payments made directly by individual members.

The software will enter in Line 3 the total of Lines 1 and 2 and forward this total to the appropriate line item of Statement B. This total is also reflected in Line (J) of Schedule 14 and Schedule 15.

For Summary Schedules 16 – 23, the software will enter in Line 1 the total of all itemized receipts during the reporting period from named payers. This is the sum of the amounts entered in Line (H) on all Itemization Pages for the schedule.

The software will enter in Line 2 the total of all non-itemized receipts from named

payers. This is the sum of the amounts entered in Line (I) on all Itemization Pages for the schedule.

Enter in Line 3 the total of all other receipts during the reporting period relating to the schedule. This is the total from your organization's books of all receipts during the reporting period relating to this schedule for payers who did not have a single receipt of $5,000 or more or receipts that aggregated $5,000 or more.

The software will enter in Line 4 the total of Lines 1 through 3 and forward this total to the appropriate line item of Statement B.

For Summary Schedules 24 - 28, the software will enter in Line 1 the total of all itemized disbursements during the reporting period to named vendors. This is the sum of the amounts entered in Line (H) on all Itemization Pages for the schedule.

The software will enter in Line 2 the total of all non-itemized disbursements to named vendors. This is the sum of the amounts entered in Line (I) on all Itemization Pages for the schedule.

The software will enter in Line 3 the total of all disbursements to officers allocated to the schedule. This is the sum of the amounts that correspond to the percentages entered in Line (J) of Schedule 11.

The software will enter in Line 4 the total of all disbursements to employees allocated to the schedule. This is the sum of the amounts that correspond to the percentages entered in Line (J) of Schedule 12.

Enter in Line 5 the total of all other disbursements during the reporting period relating to the schedule. This is the total from your organization's books of all disbursements during the reporting period relating to this schedule for payees who did not have a single disbursement of $5,000 or more or disbursements that aggregated $5,000 or more.

The software will enter in Line 6 the total of Lines 1 through 5 and forward this total to the appropriate line item of Statement B.

For example, if in Schedule 24 (Representational Activities) a labor organization has $200,000 in itemized disbursements of $5,000 or more to vendors, $35,000 in non-itemized disbursements of less than $5,000 each to those vendors, $100,000 in salary disbursements to officers, $50,000 in salary disbursements to employees, and $7,000 in disbursements to vendors who did not receive a major disbursement for representational activities, then the software will enter $200,000 in Line 1, $35,000 in Line 2, $100,000 in Line 3, $50,000 in Line 4, and the filer will enter $7,000 in Line 5 of Schedule 24 on the Detailed Summary Page. The total of Lines 1 through 5 is $392,000, which the software will enter in Line 6 of the summary schedule and Item 50 (Representational Activities) of Statement B.

SCHEDULE 14 – DUES AND AGENCY FEES [Note: Do not use the Itemization Pages for Schedule 14. Instead use the separate Schedule 14] – Report the labor organization's receipts from all dues and agency fees including regular dues, working dues, etc. received by the labor organization during the reporting year. Include dues received directly by the organization from members, dues received from employers through a check-off arrangement, and dues transmitted to the organization by a parent body or other affiliate. Report the full dues received, including any portion that will later be transmitted to an intermediate or parent body as per capita tax. Also report payments in lieu of dues received from any nonmember employees as a condition of employment under a union security provision in a collective bargaining

agreement.

If an intermediate or parent body receives dues checkoff directly from an employer on behalf of the reporting organization, do not report in Schedule 14 the portion retained by that organization for per capita tax or other purposes, such as a special assessment. Any amounts retained by the intermediate body or parent body other than per capita tax must be explained in Item 69 (Additional Information). For example, if the intermediate body or parent body retained $500 of the reporting organization's dues checkoff as payment for supplies purchased from that body by the reporting organization, this should be explained in Item 69, but the $500 should not be reported as a receipt or disbursement on either organization's Form LM-2. If, however, the intermediate body or parent body disbursed part of the reporting organization's dues checkoff on that organization's behalf, this amount should be included on Schedule 14 and in the appropriate disbursement item on the reporting organization's Form LM-2. For example, if the intermediate body or parent body disbursed $500 of the reporting organization's dues checkoff to an attorney who had provided lobbying services to the reporting organization, this amount should be reported in Schedule 14 and as a disbursement in Schedule 25 (Political Activities and Lobbying) of the reporting organization's Form LM-2.

Do not report on Schedule 14 dues that the reporting organization collected on behalf of other organizations for transmittal to them. For example, if the reporting organization received dues from a member of an affiliate who worked in the reporting organization's jurisdiction, the dues collected on the affiliate's behalf must be reported on Schedule 21.

Enter in Column (A) the full name of the entity from which the union received $5,000 or more in dues and/or agency fees during the reporting period. Do not abbreviate the name of the entity or individual.

Enter in Column (B) the mailing address of the entity from which the union received $5,000 or more in dues and/or agency fees during the reporting period. If you do not know and cannot reasonably obtain the full address of the entity, the city and state are sufficient.

NOTE: Labor organizations are not required to report an individual member's personal information on this schedule if the dues payment is made directly by the individual member. The payments should be reported in Line (I).

Enter in Column (C) the type of business or job classification of the entity or individual from which the union received $5,000 or more in dues and/or agency fees during the reporting period.

Enter in Column (D) the purpose of each individual receipt of $5,000 or more, which means a brief statement or description of why the union received the receipt. The brief statement should include information about what units or jobs were covered by the receipt, and what portion of the receipt is attributed to each unit or job.

Enter in Column (E) the aggregate amount received from the named payer.

The software will enter in Line (F) the total of all transactions listed in Column (E).

The software will enter in Line (G) the total from any continuation pages. The software will total Line (F) and Line (G) and enter the amount on Line (H) and enter the total on Line 1 of Summary Schedule 14 on the Detailed Summary Page.

Enter in Line (I) the total of all other receipts. That is the total from your organization's books of all receipts relating to this schedule from payers who did not have receipts that aggregated $5,000 or more and receipts for payments made directly by individual members. The

software will enter the total on Line 2 of Summary Schedule 14 on the Detailed Summary Page.

The software will enter in Line (J) the total of all transactions for this schedule (the sum of Lines (H) and (I)) and enter the total in Line 3 of Summary Schedule 14 on the Detailed Summary Page and in Item 36 (Dues and Agency Fees) of Statement B.

SCHEDULE 15 – PER CAPITA TAX [Note: Do not use the Itemization Pages for Schedule 15. Instead use the separate Schedule 15] – Report the labor organization's receipts from all per capita tax received during the reporting year by your organization if your organization is an intermediate or parent body; otherwise, report nothing in Schedule 15. Report the per capita tax portion of dues received directly by your organization from members of affiliates, per capita tax received from subordinates, either directly or through intermediaries, and the per capita tax portion of dues received through a check-off arrangement whereby local dues are remitted directly to an intermediate or parent body by employers. Do not report dues collected on behalf of subordinate organizations for transmittal to them. For example, if a parent body received dues checkoff directly from an employer and returned the local's portion of the dues, the parent body must report the dues received on behalf of the local on Schedule 21 (Receipts on Behalf of Affiliates for Transmittal to Them).

Enter in Column (A) the full name of the entity from which the union received $5,000 or more in per capita taxes during the reporting period. Do not abbreviate the name of the entity.

Enter in Column (B) the mailing address of the entity from which the union received $5,000 or more in per capita taxes during the reporting period. If you do not know and cannot reasonably obtain the full address of the entity, the city and state are sufficient.

Enter in Column (C) the type of business or job classification of the entity or individual from which the union received $5,000 or more in per capita taxes during the reporting period.

Enter in Column (D) the purpose of each individual receipt of $5,000 or more which means a brief statement or description of why the union received the receipt. The brief statement should include information about what units or jobs were covered by the receipt, and what portion of the receipt is attributed to each unit or job.

Enter in Column (E) the aggregate amount received from the named payer.

The software will enter in Line (F) the total of all transactions listed in Column (E).

The software will enter in Line (G) the total from any continuation pages. The software will total Line (F) and Line (G) and enter the amount on Line (H) and enter the total on Line 1 of Summary Schedule 15 on the Detailed Summary Page.

Enter in Line (I) the total of all other receipts. That is the total from your organization's books of all receipts relating to this schedule from payers who did not provide receipts that aggregated $5,000 or more and receipts for payments made directly by individual members. The software will enter the total on Line 2 of Summary Schedule 15 on the Detailed Summary Page.

The software will enter in Line (J) the total of all transactions for this schedule (the sum of Lines (H) and (I)) and enter the total in Line 3 of Summary Schedule 15 on the Detailed Summary Page and in Item 37 (Per Capita Tax) of Statement B.

SCHEDULE 16 – FEES, FINES, ASSESSMENTS, AND WORK PERMITS – Report the labor organization's receipts from all fees, fines, assessments, and work permits during the reporting year.

Receipts by the labor organization on behalf of affiliates for transmittal to them must be reported on Schedule 21 (Receipts on Behalf of Affiliates for Transmittal to Them).

Enter in Column (A) of an Itemization Page the full name and mailing address of the entity or individual from which the union received $5,000 or more in fees, fines, assessments, and work permits during the reporting period. Do not abbreviate the name of the entity or individual. If you do not know and cannot reasonably obtain the full address of the entity or individual, the city and state are sufficient.

Enter in Column (B) the type of activity, business, or job classification of the entity or individual from which the union received $5,000 or more in fees, fines, assessments, and work permits during the reporting period.

Enter in Column (C) the purpose of each individual receipt of $5,000 or more, which means a brief statement or description of why the union received the receipt. The brief statement should include information about what units or jobs were covered by the receipt, the time frame covered by the receipt, and what portion of the receipt is attributed to each unit or job.

Enter in Column (D) the date that the receipt of $5,000 or more was received. The format for the date must be mm/dd/yyyy. The date of receipt for reporting purposes is the date the labor organization actually received the money.

Enter in Column (E) the amount of the receipt of $5,000 or more.

The software will enter in Line (F) the total of all transactions listed in Column (E).

The software will enter in Line (G) the totals from any continuation Pages for this payer.

The software will enter in Line (H) the total of all itemized receipts from this payer (the sum of Lines (F) and (G)).

Enter in Line (I) the total of all non-itemized receipts from this payer (that is, all individual receipts of less than $5,000 each).

The software will enter in Line (J) the total of all transactions with the payer for this schedule (the sum of Lines (H) and (I)).

An Itemization Page must be completed for each payer. Only one payer should be reported per page.

The software will add the total amount of itemized receipts from named payers (the sum of the amounts entered in Line (H) on all Itemization Pages for Schedule 16) and enter the total on Line 1 of Summary Schedule 16 on the Detailed Summary Page. The software will add the total amount of non-itemized receipts from named payers (the sum of the amounts entered in Line (I) on all Itemization Pages for Schedule 16) and enter the total on Line 2 of Summary Schedule 16. Enter the total amount of all other receipts relating to this schedule from other payers during the reporting period on Line 3 of Summary Schedule 16. This is the total from your organization's books of all receipts relating to this schedule from payers who did not provide a single receipt of $5,000 or more or receipts that aggregated $5,000 or more. The software will add Lines 1 through 3 and enter the total on Line 4 of Summary Schedule 16 and in Item 38 (Fees, Fines, Assessments, and Work Permits) of Statement B.

SCHEDULE 17 – SALE OF SUPPLIES – Report the labor organization's receipts from all sales of supplies during the reporting period, such as union logo clothing, lapel pins, bumper stickers, etc.

Enter in Column (A) of an Itemization Page the full name and mailing address of the entity or individual from which the

union received $5,000 or more in sales of supplies during the reporting period. Do not abbreviate the name of the entity or individual. If you do not know and cannot reasonably obtain the full address of the entity or individual, the city and state are sufficient.

Enter in Column (B) the type of activity, business, or job classification of the entity or individual from which the union received $5,000 or more for the sale of supplies during the reporting period.

Enter in Column (C) the purpose of each individual receipt of $5,000 or more from the payer, which means a brief statement or description of why the union received the receipt.

Enter in Column (D) the date that the receipt of $5,000 or more was received. The format for the date must be mm/dd/yyyy. The date of receipt for reporting purposes is the date the labor organization actually received the money.

Enter in Column (E) the amount of the receipt of $5,000 or more.

The software will enter in Line (F) the total of all transactions listed in Column (E).

The software will enter in Line (G) the totals from any continuation Pages for this payer.

The software will enter in Line (H) the total of all itemized receipts from this payer (the sum of Lines (F) and (G)).

Enter in Line (I) the total of all non-itemized receipts from this payer (that is, all individual receipts of less than $5,000 each).

The software will enter in Line (J) the total of all transactions with the payer for this schedule (the sum of Lines (H) and (I)).

An Itemization Page must be completed for each payer. Only one payer should be reported per page.

The software will add the total amount of itemized receipts from named payers (the sum of the amounts entered in Line (H) on all Itemization Pages for Schedule 17) and enter the total on Line 1 of Summary Schedule 17 on the Detailed Summary Page. The software will add the total amount of non-itemized receipts from named payers (the sum of the amounts entered in Line (I) on all Itemization Pages for Schedule 17) and enter the total on Line 2 of Summary Schedule 17. Enter the total amount of all other receipts relating to this schedule from other payers during the reporting period on Line 3 of Summary Schedule 17. This is the total from your organization's books of all receipts relating to this schedule from payers who did not provide a single receipt of $5,000 or more or receipts that aggregated $5,000 or more. The software will add Lines 1 through 3 and enter the total on Line 4 of Summary Schedule 17 and in Item 39 (Sales of Supplies) of Statement B.

SCHEDULE 18 – INTEREST – Report the labor organization's receipt of interest from savings accounts, bonds, mortgages, loans, and all other sources during the reporting period.

Enter in Column (A) of an Itemization Page the full name and mailing address of the entity or individual from which the union received $5,000 or more in interest during the reporting period. Do not abbreviate the name of the entity or individual. If you do not know and cannot reasonably obtain the full address of the entity or individual, the city and state are sufficient.

Enter in Column (B) the type of activity, business or job classification of the entity or individual from which the union received $5,000 or more in interest during the reporting period.

Enter in Column (C) the purpose of each individual receipt of $5,000 or more from the payer, which means a brief statement

or description of why the union received the receipt.

Enter in Column (D) the date that the receipt of $5,000 or more was received. The format for the date must be mm/dd/yyyy. The date of receipt for reporting purposes is the date the labor organization actually received the money.

Enter in Column (E) the amount of the receipt of $5,000 or more.

The software will enter in Line (F) the total of all transactions listed in Column (E).

The software will enter in Line (G) the totals from any continuation Pages for this payer.

The software will enter in Line (H) the total of all itemized receipts from this payer (the sum of Lines (F) and (G)).

Enter in Line (I) the total of all non-itemized receipts from this payer (that is, all individual receipts of less than $5,000 each).

The software will enter in Line (J) the total of all transactions with the payer for this schedule (the sum of Lines (H) and (I)).

An Itemization Page must be completed for each payer. Only one payer should be reported per page.

The software will add the total amount of itemized receipts from named payers (the sum of the amounts entered in Line (H) on all Itemization Pages for Schedule 18) and enter the total on Line 1 of Summary Schedule 18 on the Detailed Summary Page. The software will add the total amount of non-itemized receipts from named payers (the sum of the amounts entered in Line (I) on all Itemization Pages for Schedule 18) and enter the total on Line 2 of Summary Schedule 18. Enter the total amount of all other receipts relating to this schedule from other payers during the reporting period on Line 3 of Summary Schedule 18. This is the total from your organization's books of all receipts relating to this schedule from payers who did not provide a single receipt of $5,000 or more or receipts that aggregated $5,000 or more. The software will add Lines 1 through 3 and enter the total on Line 4 of Summary Schedule 18 and in Item 40 (Interest) of Statement B.

SCHEDULE 19 – DIVIDENDS – Report the labor organization's receipts from all dividends from stocks and other investments received by the labor organization during the reporting period. Do not include "dividends" from credit unions, savings and loan associations, etc., which must be reported in Schedule 18 (Interest).

Enter in Column (A) of an Itemization Page the full name and mailing address of the entity or individual from which the union received $5,000 or more in dividends during the reporting period. Do not abbreviate the name of the entity or individual. If you do not know and cannot reasonably obtain the full address of the entity or individual, the city and state are sufficient.

Enter in Column (B) the type of activity, business, or job classification of the entity or individual from which the union received $5,000 or more in dividends during the reporting period.

Enter in Column (C) the purpose of each individual receipt of $5,000 or more from the payer, which means a brief statement or description of why the union received the receipt.

Enter in Column (D) the date that the receipt of $5,000 or more was received. The format for the date must be mm/dd/yyyy. The date of receipt for reporting purposes is the date the labor organization actually received the money.

Enter in Column (E) the amount of the receipt of $5,000 or more.

The software will enter in Line (F) the total of all transactions listed in Column (E).

The software will enter in Line (G) the totals from any continuation Pages for this payer.

The software will enter in Line (H) the total of all itemized receipts from this payer (the sum of Lines (F) and (G)).

Enter in Line (I) the total of all non-itemized receipts from this payer (that is, all individual receipts of less than $5,000 each).

The software will enter in Line (J) the total of all transactions with the payer for this schedule (the sum of Lines (H) and (I)).

An Itemization Page must be completed for each payer. Only one payer should be reported per page.

The software will add the total amount of itemized receipts from named payers (the sum of the amounts entered in Line (H) on all Itemization Pages for Schedule 19) and enter the total on Line 1 of Summary Schedule 19 on the Detailed Summary Page. The software will add the total amount of non-itemized receipts from named payers (the sum of the amounts entered in Line (I) on all Itemization Pages for Schedule 19) and enter the total on Line 2 of Summary Schedule 19. Enter the total amount of all other receipts relating to this schedule from other payers during the reporting period on Line 3 of Summary Schedule 19. This is the total from your organization's books of all receipts relating to this schedule from payers who did not provide a single receipt of $5,000 or more or receipts that aggregated $5,000 or more. The software will add Lines 1 through 3 and enter the total on Line 4 of Summary Schedule 19 and in Item 41 (Dividends) of Statement B.

SCHEDULE 20 – RENTS – Report the labor organization's receipts from all rents during the reporting period.

Enter in Column (A) of an Itemization Page the full name and mailing address of the entity or individual from which the union received $5,000 or more in rent during the reporting period. Do not abbreviate the name of the entity or individual. If you do not know and cannot reasonably obtain the full address of the entity or individual, the city and state are sufficient.

Enter in Column (B) the type of activity, business, or job classification of the entity or individual from which the union received $5,000 or more in rent during the reporting period.

Enter in Column (C) the purpose of each individual receipt of $5,000 or more from the payer, which means a brief statement or description of why the union received the receipt.

Enter in Column (D) the date that the receipt of $5,000 or more was received. The format for the date must be mm/dd/yyyy. The date of receipt for reporting purposes is the date the labor organization actually received the money.

Enter in Column (E) the amount of the receipt of $5,000 or more.

The software will enter in Line (F) the total of all transactions listed in Column (E).

The software will enter in Line (G) the totals from any continuation Pages for this payer.

The software will enter in Line (H) the total of all itemized receipts from this payer (the sum of Lines (F) and (G)).

Enter in Line (I) the total of all non-itemized receipts from this payer (that is, all individual receipts of less than $5,000 each).

The software will enter in Line (J) the total of all transactions with the payer for this schedule (the sum of Lines (H) and (I)).

An Itemization Page must be completed for each payer. Only one payer should be reported per page.

The software will add the total amount of itemized receipts from named payers (the sum of the amounts entered in Line (H) on all Itemization Pages for Schedule 20) and enter the total on Line 1 of Summary Schedule 20 on the Detailed Summary Page. The software will add the total amount of non-itemized receipts from named payers (the sum of the amounts entered in Line (I) on all Itemization Pages for Schedule 20) and enter the total on Line 2 of Summary Schedule 20. Enter the total amount of all other receipts relating to this schedule from other payers during the reporting period on Line 3 of Summary Schedule 20. This is the total from your organization's books of all receipts relating to this schedule from payers who did not provide a single receipt of $5,000 or more or receipts that aggregated $5,000 or more. The software will add Lines 1 through 3 and enter the total on Line 4 of Summary Schedule 20 and in Item 42 (Rents) of Statement B.

SCHEDULE 21 – RECEIPTS ON BEHALF OF AFFILIATES FOR TRANSMITTAL TO THEM – Report the labor organization's receipts from all dues, fees, fines, assessments, and work permit fees received by the labor organization, through a check-off arrangement or otherwise, on behalf of affiliates for transmittal to them. Do not report the receipts withheld by the labor organization for per capita taxes or other purposes, such as loan repayments, which must be reported elsewhere in Statement B. When the receipts reported in Schedule 21 are transmitted, the disbursement must be reported in related Item 63 (To Affiliates of Funds Collected on Their Behalf).

Enter in Column (A) of an Itemization Page the full name and mailing address of the entity or individual from which the union received $5,000 or more in receipts during the reporting period. Do not abbreviate the name of the entity or individual. If you do not know and cannot reasonably obtain the full address of the entity or individual, the city and state are sufficient.

Enter in Column (B) the type of business or job classification of the entity or individual from which the union received $5,000 or more in receipts on behalf of affiliates for transmittal to them during the reporting period.

Enter in Column (C) the purpose of each individual receipt of $5,000 or more, which means a brief statement or description of why the union received the receipt. The brief statement should include information about what units or jobs were covered by the receipt, the time frame covered by the receipt, and what portion of the receipt is attributed to each unit or job.

Enter in Column (D) the date that the receipt of $5,000 or more was received. The format for the date must be mm/dd/yyyy. The date of receipt for reporting purposes is the date the labor organization actually received the money.

Enter in Column (E) the amount of the receipt of $5,000 or more.

The software will enter in Line (F) the total of all transactions listed in Column (E).

The software will enter in Line (G) the totals from any continuation Pages for this payer.

The software will enter in Line (H) the total of all itemized receipts from this payer (the sum of Lines (F) and (G)).

Enter in Line (I) the total of all non-itemized receipts from this payer (that is, all individual receipts of less than $5,000 each).

The software will enter in Line (J) the total of all transactions with the payer for this schedule (the sum of Lines (H) and (I)).

An Itemization Page must be completed for each payer. Only one payer should be reported per page.

The software will add the total amount of itemized receipts from named payers (the sum of the amounts entered in Line (H) on all Itemization Pages for Schedule 21) and enter the total on Line 1 of Summary Schedule 21 on the Detailed Summary Page. The software will add the total amount of non-itemized receipts from named payers (the sum of the amounts entered in Line (I) on all Itemization Pages for Schedule 21) and enter the total on Line 2 of Summary Schedule 21. Enter the total amount of all other receipts relating to this schedule from other payers during the reporting period on Line 3 of Summary Schedule 21. This is the total from your organization's books of all receipts relating to this schedule from payers who did not provide a single receipt of $5,000 or more or receipts that aggregated $5,000 or more. The software will add Lines 1 through 3 and enter the total on Line 4 of Summary Schedule 21 and in Item 46 (Receipts On Behalf of Affiliates for Transmittal to Them) of Statement B.

SCHEDULE 22 – RECEIPTS FROM MEMBERS FOR DISBURSEMENT ON THEIR BEHALF – Report the labor organization's receipts during the reporting period from members that are specifically designated by them for disbursement on their behalf; for example, contributions from members for transmittal by the labor organization to charities. When receipts that are reported in Schedule 22 are transmitted, the disbursement must be reported in related Item 64 (Disbursements on Behalf of Individual Members).

Enter in Column (A) of an Itemization Page the full name and mailing address of the entity or individual from which the union received $5,000 or more in receipts during the reporting period. Do not abbreviate the name of the entity or individual. If you do not know and cannot reasonably obtain the full address of the entity or individual, the city and state are sufficient.

Enter in Column (B) the type of activity, business, or job classification of the entity or individual from which the union received $5,000 or more in receipts from members for disbursement on their behalf during the reporting period.

Enter in Column (C) the purpose of each individual receipt of $5,000 or more, which means a brief statement or description of why the union received the receipt. The brief statement should include information about what units or jobs were covered by the receipt, the time frame covered by the receipt, and what portion of the receipt is attributed to each unit or job.

Enter in Column (D) the date that the receipt of $5,000 or more was received. The format for the date must be mm/dd/yyyy. The date of receipt for reporting purposes is the date the labor organization actually received the money.

Enter in Column (E) the amount of the receipt of $5,000 or more.

The software will enter in Line (F) the total of all transactions listed in Column (E).

The software will enter in Line (G) the totals from any continuation Pages for this payer.

The software will enter in Line (H) the total of all itemized receipts from this payer (the sum of Lines (F) and (G)).

Enter in Line (I) the total of all non-itemized receipts from this payer (that is, all individual receipts of less than $5,000 each).

The software will enter in Line (J) the total of all transactions with the payer for this schedule (the sum of Lines (H) and (I)).

An Itemization Page must be completed for each payer. Only one payer should be

reported per page. If the Itemization Page does not provide enough space, the continuation Pages should be used to report additional receipts from the payer.

The software will add the total amount of itemized receipts from named payers (the sum of the amounts entered in Line (H) on all Itemization Pages for Schedule 22) and enter the total on Line 1 of Summary Schedule 22 on the Detailed Summary Page. The software will add the total amount of non-itemized receipts from named payers (the sum of the amounts entered in Line (I) on all Itemization Pages for Schedule 22) and enter the total on Line 2 of Summary Schedule 22. Enter the total amount of all other receipts relating to this schedule from other payers during the reporting period on Line 3 of Summary Schedule 22. This is the total from your organization's books of all receipts relating to this schedule from payers who did not provide a single receipt of $5,000 or more or receipts that aggregated $5,000 or more. The software will add Lines 1 through 3 and enter the total on Line 4 of Summary Schedule 22 and in Item 47 (Receipts From Members for Disbursement on Their Behalf) of Statement B.

SCHEDULE 23 – OTHER RECEIPTS — Report the labor organization's receipts from all sources during the reporting period, other than those that must be reported elsewhere in Statement B, such as reimbursements from officers and employees for excess expense payments or travel advances not reported as loans in Schedule 2 (Loans Receivable); receipts from fundraising activities such as raffles, bingo games, and dances; funds received from a parent body, other unions, or the public for strike fund assistance; and receipts from another labor organization which merged into the labor organization.

Enter in Column (A) of an Itemization Page the full name and mailing address of the entity or individual from which the union received $5,000 or more in Other Receipts during the reporting period. Do not abbreviate the name of the entity or individual. If you do not know and cannot reasonably obtain the full address of the entity or individual, the city and state are sufficient.

Enter in Column (B) the type of activity, business, or job classification of the entity or individual from which the union received $5,000 or more in Other Receipts during the reporting period.

Enter in Column (C) the purpose of each individual receipt of $5,000 or more from the payer in sufficient detail to determine why the receipt cannot be allocated to another schedule.

Enter in Column (D) the date that the receipt of $5,000 or more was received. The format for the date must be mm/dd/yyyy. The date of receipt for reporting purposes is the date the labor organization actually received the money.

Enter in Column (E) the amount of the receipt of $5,000 or more.

The software will enter in Line (F) the total of all transactions listed in Column (E).

The software will enter in Line (G) the totals from any continuation Pages for this payer.

The software will enter in Line (H) the total of all itemized receipts from this payer (the sum of Lines (F) and (G)).

Enter in Line (I) the total of all non-itemized receipts from this payer (that is, all individual receipts of less than $5,000 each).

The software will enter in Line (J) the total of all transactions with the payer for this schedule (the sum of Lines (H) and (I)).

An Itemization Page must be completed for each payer. Only one payer should be reported per page. If the Itemization Page

does not provide enough space, the continuation Pages should be used to report additional receipts from the payer. The software will add the total amount of itemized receipts from named payers (the sum of the amounts entered in Line (H) on all Itemization Pages for Schedule 23) and enter the total on Line 1 of Summary Schedule 23 on the Detailed Summary Page. The software will add the total amount of non-itemized receipts from named payers (the sum of the amounts entered in Line (I) on all Itemization Pages for Schedule 23) and enter the total on Line 2 of Summary Schedule 23. Enter the total amount of all other receipts relating to this schedule from other payers during the reporting period on Line 3 of Summary Schedule 23. This is the total from your organization's books of all receipts relating to this schedule from payers who did not provide a single receipt of $5,000 or more or receipts that aggregated $5,000 or more. The software will add Lines 1 through 3 and enter the total on Line 4 of Summary Schedule 23 and in Item 48 (Other Receipts) of Statement B.

SCHEDULE 24 – REPRESENTATIONAL ACTIVITIES – Report the labor organization's direct and indirect disbursements to all entities and individuals during the reporting period associated with preparation for, and participation in, the negotiation of collective bargaining agreements and the administration and enforcement of the agreements made by the labor organization. Do not include strike benefits that must be reported in Item 57 (Strike Benefits) of Statement B. The union must also report disbursements associated with efforts to become the exclusive bargaining representative for any unit of employees, or to keep from losing a unit in a decertification election or to another labor organization, or to recruit new members.

Enter in Column (A) of an Itemization Page the full name and mailing address of the entity or individual to which the disbursement was made. Do not abbreviate the name of the entity or individual. If you do not know and cannot reasonably obtain the full address of the entity or individual, the city and state are sufficient.

Enter in Column (B) the type of activity, business, or job classification of the entity or individual to which the union disbursed $5,000 or more for Representational Activities during the reporting period, such as printing company, office supplies vendor, legal counsel, etc.

Enter in Column (C) the purpose of the disbursement of $5,000 or more, which means a brief statement or description of the reason the disbursement was made. Examples of adequate descriptions include the following: contract negotiation, grievance arbitration, litigation regarding the interpretation of a collective bargaining agreement, preparing organizing campaign pamphlets, staffing a help desk, opposition research, litigation regarding representation issues, litigation regarding a refusal to bargain, etc. Neither the name of the employer nor the specific bargaining unit that is the subject of the organizing activity need be identified.

Enter in Column (D) the date that the disbursement of $5,000 or more was made. The format for the date must be mm/dd/yyyy. The date of disbursement for reporting purposes is the date the labor organization actually disbursed the money.

Enter in Column (E) the amount of the disbursement of $5,000 or more.
The software will enter in Line (F) the total of all disbursements listed in Column (E).

The software will enter in Line (G) the totals from any Continuation Pages for this payee.

The software will enter in Line (H) the total of all itemized disbursements to this payee (the sum of Lines (F) and (G)).

Enter in Line (I) the total of all non-itemized disbursements to this payee (that is, all individual disbursements of less than $5,000 each).

The software will enter in Line (J) the total of all transactions with this payee for this schedule (the sum of Lines (H) and (I)).

An Itemization Page must be completed for each payee. Only one payee should be reported per page. If the Itemization Page does not provide enough space, the continuation Page(s) should be used to report additional disbursements to the payee.

The software will add the total amount of itemized disbursements to named payees (the sum of the amounts entered in Line (H) on all Itemization Pages for Schedule 24) and enter the total on Line 1 of Summary Schedule 24 on the Detailed Summary Page. The software will add the total amount of non-itemized disbursements to named payees (the sum of the amounts entered in Line (I) on all Itemization Pages for Schedule 24) and enter the total on Line 2 of Summary Schedule 24. The software will enter in Line 3 of Summary Schedule 24 the total of all disbursements to officers allocated to the schedule. This is the sum of the amounts that correspond to the percentages entered in Line (J) of Schedule 11. The software will enter in Line 4 of Summary Schedule 24 the total of all disbursements to employees allocated to the schedule. This is the sum of the amounts that correspond to the percentages entered in Line (J) of Schedule 12. Enter the total amount of all other disbursements relating to this schedule made to other payees during the reporting period on Line 5 of Summary Schedule 24. This is the total from your organization's books of all disbursements relating to this schedule made to payees who did not have a single disbursement of $5,000 or more or disbursements that aggregated $5,000 or more. The software will add Lines 1 through 5 and enter the total on Line 6 of Summary Schedule 24 and in Item 50 (Representational Activities) of Statement B.

SCHEDULE 25 – POLITICAL ACTIVITIES AND LOBBYING– Report the labor organization's direct and indirect disbursements to all entities and individuals during the reporting period associated with political disbursements or contributions in money. Also report the labor organization's direct and indirect disbursements to all entities and individuals during the reporting period associated with dealing with the executive and legislative branches of the Federal, state, and local governments and with independent agencies and staffs to advance the passage or defeat of existing or potential laws or the promulgation or any other action with respect to rules or regulations (including litigation expenses). It does not matter whether the lobbying attempt succeeds.

A political disbursement or contribution is one that is intended to influence the selection, nomination, election, or appointment of anyone to a Federal, state, or local executive, legislative or judicial public office, or office in a political organization, or the election of Presidential or Vice Presidential electors, and support for or opposition to ballot referenda. It does not matter whether the attempt succeeds. Include disbursements for communications with members (or agency fee paying nonmembers) and their families for registration, get-out-the-vote and voter education campaigns, the expenses of establishing, administering and soliciting contributions to union segregated political funds (or PACs), disbursements to political organizations as defined by the IRS in 26 U.S.C. 527, and other political disbursements.

For all major disbursements in this category:

Enter in Column (A) of an Itemization Page the full name and mailing address of the entity or individual to which the disbursement was made. Do not

abbreviate the name of the entity or individual. If you do not know and cannot reasonably obtain the full address of the entity or individual, the union may report only the city and state.

Enter in Column (B) the type of business or job classification of the entity or individual to which the union disbursed $5,000 or more for Political Activities and Lobbying during the reporting period, such as campaign advisor, lobbyist, marketing firm, fund raiser, think tank, issue advocacy group, printing company, office supplies vendor, legal counsel, etc.

Enter in Column (C) the purpose of the disbursement of $5,000 or more, which means a brief statement or description of the reason the disbursement was made. Examples of adequate descriptions include the following: a registration drive, get-out-the-vote campaign, voter education campaign, fund raising, advocating or opposing legislation (including litigation challenging such legislation) advocating or opposing regulations (including litigation challenging such regulations), etc. The specific campaign, legislation, regulation, referendum, etc. should be identified whenever possible. Distinguish between activities in the United States and activities in foreign countries.

Enter in Column (D) the date that the disbursement of $5,000 or more was made. The format for the date must be mm/dd/yyyy. The date of disbursement for reporting purposes is the date the labor organization actually disbursed the money.

Enter in Column (E) the amount of the disbursement of $5,000 or more.

The software will enter in Line (F) the total of all disbursements listed in Column (E).

The software will enter in Line (G) the totals from any continuation Pages for this payee.

The software will enter in Line (H) the total of all itemized disbursements to this payee (the sum of Lines (F) and (G)).

Enter in Line (I) the total of all non-itemized disbursements to this payee (that is, all individual disbursements of less than $5,000 each).

The software will enter in Line (J) the total of all transactions with this payee for this schedule (the sum of Lines (H) and (I)).

An Itemization Page must be completed for each payee. Only one payee should be reported per page. If the Itemization Page does not provide enough space, the continuation Page(s) should be used to report additional disbursements to the payee.

The software will add the total amount of itemized disbursements to named payees (the sum of the amounts entered in Line (H) on all Itemization Pages for Schedule 25). The software will enter the total on Line 1 of Summary Schedule 25 on the Detailed Summary Page. Add the total amount of non-itemized disbursements to named payees (the sum of the amounts entered in Line (I) on all Initial Itemization Pages for Schedule 25). The software will enter the total on Line 2 of Summary Schedule 25. The software will also enter in Line 3 of Summary Schedule 25 the total of all disbursements to officers allocated to the schedule. This is the sum of the amounts that correspond to the percentages entered in Line (J) of Schedule 11. The software will enter in Line 4 of Summary Schedule 25 the total of all disbursements to employees allocated to the schedule. This is the sum of the amounts that correspond to the percentages entered in Line (J) of Schedule 12. Enter the total amount of all other disbursements relating to other payees during the reporting period on Line 5 of Summary Schedule 25. This is the total from your organization's books of all disbursements relating to this schedule made to payees who did not have a single disbursement of $5,000 or more or

disbursements that aggregated $5,000 or more. The software will add Lines 1 through 5 and enter the total on Line 6 of Summary Schedule 25 and in Item 51 (Political Activities and Lobbying) of Statement B.

SCHEDULE 26 – CONTRIBUTIONS, GIFTS, AND GRANTS – Report the labor organization's direct and indirect disbursements to all entities and individuals during the reporting period associated with contributions, gifts, and grants, other than those listed on Schedules 24, 25, and 29. Include, for example, charitable contributions, contributions to scholarship funds, etc.

For all major disbursements in this category:

Enter in Column (A) of an Itemization Page the full name and mailing address of the entity or individual to which the disbursement was made. Do not abbreviate the name of the entity or individual. If you do not know and cannot reasonably obtain the full address of the entity or individual, the union may report only the city and state.

Enter in Column (B) the type of business or job classification of the entity or individual to which the union disbursed $5,000 or more in Contributions, Gifts, and Grants during the reporting period, such as charity, scholarship fund, state or local affiliate, etc.

Enter in Column (C) the purpose of the disbursement of $5,000 or more, which means a brief statement or description of the reason the disbursement was made. Examples of adequate descriptions include the following: medical research, community development, job retraining, education, disaster and relief assistance, athletic and youth sponsorships, etc.

Enter in Column (D) the date that the disbursement of $5,000 or more was made. The format for the date must be mm/dd/yyyy. The date of disbursement for reporting purposes is the date the labor organization actually disbursed the money.

Enter in Column (E) the amount of the disbursement of $5,000 or more.

The software will enter in Line (F) the total of all disbursements listed in Column (E).

The software will enter in Line (G) the totals from any Continuation Pages for this payee.

The software will enter in Line (H) the total of all itemized disbursements to this payee (the sum of Lines (F) and (G)).

Enter in Line (I) the total of all non-itemized disbursements to this payee (that is, all individual disbursements of less than $5,000 each).

The software will enter in Line (J) the total of all transactions with this payee for this schedule (the sum of Lines (H) and (I)).

An Itemization Page must be completed for each payee. Only one payee should be reported per page. If the Itemization Page does not provide enough space, the continuation pages should be used to report additional disbursements to the payee.

The software will total the itemized disbursements to named payees (the amounts entered in Line (H) on all Itemization Pages for Schedule 26) and enter that amount on Line 1 of Summary Schedule 26 on the Detailed Summary Page. The software will total the non-itemized disbursements to named payees (the sum of the amounts entered in Line (I) on all Itemization Pages for Schedule 26) and enter that amount on Line 2 of Summary Schedule 26. The software will enter in Line 3 of Summary Schedule 26 the total of all disbursements to officers allocated to the schedule. This is the sum of the amounts that correspond to the percentages entered in Line (J) of

Schedule 11. The software will enter in Line 4 of Summary Schedule 26 the total of all disbursements to employees allocated to the schedule. This is the sum of the amounts that correspond to the percentages entered in Line (J) of Schedule 12. Enter the total amount of all other disbursements relating to this schedule made to other payees during the reporting period on Line 5 of Summary Schedule 26. This is the total from your organization's books of all disbursements relating to this schedule made to payees who did not have a single disbursement of $5,000 or more or disbursements that aggregated $5,000 or more. The software will total Lines 1 through 5 and enter that amount on Line 6 of Summary Schedule 26 and in Item 52 (Contributions, Gifts and Grants) of Statement B.

SCHEDULE 27 – GENERAL OVERHEAD – Report the labor organization's direct and indirect disbursements to all entities and individuals during the reporting period associated with general overhead that cannot be allocated to any of the other disbursement categories in Statement B.

Some disbursements for overhead do not support a specific function, so these disbursements should be reported in this schedule. Include support personnel at the labor organization's headquarters, such as building maintenance personnel and security guards, and other overhead costs. Not all support staff should be included in General Overhead. For instance, the salary of an assistant, whenever possible, should be allocated at the same ratio as the person or persons to whom they provide support.

For all major disbursements in this category:

Enter in Column (A) of an Itemization Page the full name and mailing address of the entity or individual to which the disbursement was made. Do not abbreviate the name of the entity or individual. If you do not know and cannot reasonably obtain the full address of the entity or individual, the union may report only the city and state.

Enter in Column (B) the type of business or job classification of the entity or individual to which the union disbursed $5,000 or more for General Overhead during the reporting period, such as office supplies vendor, landlord, mortgage lender, cleaning firm, security firm, etc.

Enter in Column (C) the purpose of the disbursement of $5,000 or more, in sufficient detail to determine why the disbursement cannot be allocated to another schedule.

Enter in Column (D) the date that the disbursement of $5,000 or more was made. The format for the date must be mm/dd/yyyy. The date of disbursement for reporting purposes is the date the labor organization actually disbursed the money.

Enter in Column (E) the amount of the disbursement of $5,000 or more.

The software will enter in Line (F) the total of all disbursements listed in Column (E).

The software will enter in Line (G) the totals from any Continuation Pages for this payee.

The software will enter in Line (H) the total of all itemized disbursements to this payee (the sum of Lines (F) and (G)).

Enter in Line (I) the total of all non-itemized disbursements to this payee (that is, all individual disbursements of less than $5,000 each).

The software will enter in Line (J) the total of all transactions with this payee for this schedule (the sum of Lines (H) and (I)).

An Itemization Page must be completed for each payee. Only one payee should be reported per page. If the Itemization Page does not provide enough space, continuation pages should be used to

report additional disbursements to the payee.

The software will total the itemized disbursements to named payees (the sum of the amounts entered in Line (H) on all Itemization Pages for Schedule 27) and enter that amount on Line 1 of Summary Schedule 27 on the Detailed Summary Page. The software will total the non-itemized disbursements to named payees (the sum of the amounts entered in Line (I) on all Itemization Pages for Schedule 27) and enter that amount on Line 2 of Summary Schedule 27. The software will enter in Line 3 of Summary Schedule 27 the total of all disbursements to officers allocated to the schedule. This is the sum of the amounts that correspond to the percentages entered in Line (J) of Schedule 11. The software will enter in Line 4 of Summary Schedule 27 the total of all disbursements to employees allocated to the schedule. This is the sum of the amounts that correspond to the percentages entered in Line (J) of Schedule 12. Enter the total amount of all other disbursements relating to this schedule made to other payees during the reporting period on Line 5 of Summary Schedule 27. This is the total from your organization's books of all disbursements relating to this schedule made to payees who did not have a single disbursement of $5,000 or more or disbursements that aggregated $5,000 or more. The software will add Lines 1 through 5 and enter the total on Line 6 of Summary Schedule 27 and in Item 53 (General Overhead) of Statement B.

SCHEDULE 28 – UNION ADMINISTRATION — Report the labor organization's direct and indirect disbursements to all entities and individuals during the reporting period associated with union administration. Union administration includes disbursements relating to the nomination and election of union officers, the union's regular membership meetings, intermediate, national and international meetings, union disciplinary proceedings, the administration of trusteeships, and the administration of apprenticeship and member education programs (not including political education which should be reported in Schedule 25).

For all major disbursements in this category:

Enter in Column (A) of an Itemization Page the full name and mailing address of the entity or individual to which the disbursement was made. Do not abbreviate the name of the entity or individual. If you do not know and cannot reasonably obtain the full address of the entity or individual, the union may report only the city and state.

Enter in Column (B) the type of business or job classification of the entity or individual to which the union disbursed $5,000 or more for Union Administration during the reporting period, such as printing company, office supplies vendor, legal counsel, etc.

Enter in Column (C) the purpose of the disbursement of $5,000 or more in sufficient detail to determine why the disbursement cannot be allocated to another schedule. For example, printing of election ballots, rental of meeting facilities for a union convention, printing of transcripts of trusteeship hearing, etc.

Enter in Column (D) the date that the disbursement of $5,000 or more was made. The format for the date must be mm/dd/yyyy. The date of disbursement for reporting purposes is the date the labor organization actually disbursed the money.

Enter in Column (E) the amount of the disbursement of $5,000 or more.

The software will enter in Line (F) the total of all disbursements listed in Column (E).

The software will enter in Line (G) the totals from any continuation pages for this payee.

The software will enter in Line (H) the total of all itemized disbursements to this payee (the sum of Lines (F) and (G)).

Enter in Line (I) the total of all non-itemized disbursements to this payee (that is, all individual disbursements of less than $5,000 each).

The software will enter in Line (J) the total of all transactions with this payee for this schedule (the sum of Lines (H) and (I)).

An Itemization Page must be completed for each payee. Only one payee should be reported per page. If the Itemization Page does not provide enough space, continuation pages should be used to report additional disbursements to the payee.

The software will total the itemized disbursements to named payees (the sum of the amounts entered in Line (H) on all Itemization Pages for Schedule 28) and enter that amount on Line 1 of Summary Schedule 28 on the Detailed Summary Page. The software will total the non-itemized disbursements to named payees (the sum of the amounts entered in Line (I) on all Itemization Pages for Schedule 28) and enter that amount on Line 2 of Summary Schedule 28. The software will enter in Line 3 of Summary Schedule 28 the total of all disbursements to officers allocated to the schedule. This is the sum of the amounts that correspond to the percentages entered in Line (J) of Schedule 11. The software will enter in Line 4 of Summary Schedule 28 the total of all disbursements to employees allocated to the schedule. This is the sum of the amounts that correspond to the percentages entered in Line (J) of Schedule 12. Enter the total amount of all other disbursements relating to this schedule made to other payees during the reporting period on Line 5 of Summary Schedule 28. This is the total from your organization's books of all disbursements relating to this schedule made to payees who did not have a single disbursement of $5,000 or more or disbursements that aggregated $5,000 or more. The software will total Lines 1 through 5 and enter that amount on Line 6 of Summary Schedule 28 and in Item 54 (Union Administration) of Statement B.

SCHEDULE 29 – BENEFITS – [Note: Do not use the Itemization Pages for Schedule 29. Instead use the separate Schedule 29] Report the labor organization's direct and indirect disbursements to all entities and individuals during the reporting period associated with direct and indirect benefits for members, and their beneficiaries or others. Benefit disbursements to be reported in Schedule 29 include, for example, disbursements for life insurance, health insurance, and pensions. Do not include disbursements for benefits for the labor organization's officers, which must be reported in Schedule 11 or for the labor organization's employees, which must be reported in Schedule 12, except as expressly provided in those schedules.

Direct benefit disbursements are those made to individuals from the labor organization's funds. Indirect benefit disbursements are those made from the labor organization's funds to a separate and independent entity, such as a trust or insurance company, which in turn and under certain conditions will pay benefits to the covered individuals. An example of an indirect benefit disbursement is the premium on group life insurance.

Enter in Column (A) the type of benefit, such as pension, welfare, etc.

Enter in Column (B) to whom payment was made; for example, union members, insurance company, etc. Individual union members and their beneficiaries are not required to be listed by name.

Enter in Column (C) the amount disbursed for each type of benefit.

The software will enter on Line 22 the total from any continuation pages. The

software will total Lines 1 through 22 and enter that amount on Line 23 and in Item 55 (Benefits) of Statement B.

STATEMENT A
ASSETS AND LIABILITIES

ASSETS

The software will pre-fill Columns A and C (Start of Reporting Period) from your organization's report for the previous fiscal year. If the data is inaccurate, however, it can be edited manually. Be sure to explain any changes in Item 69.

22. CASH — The software will pre-fill Column (A). Enter the total of all the labor organization's cash on hand and on deposit at the end of the reporting period in Column (B). Include all cash on hand, such as undeposited cash, checks, and money orders; petty cash; and cash in safe deposit boxes. Cash on deposit includes funds in banks, credit unions, and other financial institutions, such as checking accounts, savings accounts, certificates of deposit, and money market accounts. Also, include any interest credited to the labor organization's account during the reporting period.

NOTE: The checking account balances reported should be obtained from the labor organization's books as reconciled with the balances shown on bank statements.

23. ACCOUNTS RECEIVABLE — Ordinarily, accounts receivable are moneys due for goods sold or services rendered evidenced by notes, statements, invoices, or other written evidence of a present obligation. The software will pre-fill Column (A). The software will enter in Column (B) the total of all gross accounts receivable at the end of the reporting period from Line 28, Column B of Schedule 1 (Accounts Receivable Aging Schedule). If accounts receivable are carried on the labor organization's books at net (gross accounts receivable less the allowance for doubtful accounts), the labor organization may report the allowance for doubtful accounts in Item 69 (Additional Information).

24. LOANS RECEIVABLE — The software will pre-fill Column (A) with the total of all gross loans receivable at the start of the reporting period, which is also reported on Line 6, Column (B) of Schedule 2 (Loans Receivable). The software will enter the total of all gross loans receivable at the end of the reporting period in Column (B) from Line 6, Column (E) of Schedule 2.

25. U.S. TREASURY SECURITIES — The software will pre-fill Column (A). Enter the total value of all U.S. Treasury securities as shown on the labor organization's books at the end of the reporting period in Column (B). If the value reported is different from the original cost, the original cost must be reported in Item 69 (Additional Information). Other U.S. Government obligations, state and municipal bonds, and foreign government securities must be reported in Schedule 5 (Investments Other Than U.S. Treasury Securities) under "Marketable Securities" and in Item 26 (Investments).

26. INVESTMENTS — The software will pre-fill Column (A) with the total book value at the start of the reporting period of all investments other than U.S. Treasury securities, which are reported in Item 25 (U.S. Treasury Securities). The software will enter in Column (B) the total reported on Line 7 of Schedule 5 (Investments Other Than U.S. Treasury Securities).

27. FIXED ASSETS — The software will pre-fill Column (A) with the total value as shown on the labor organization's books at the start of the reporting period of all fixed assets, such as land, buildings, automobiles, and office furniture and equipment. The software will enter in Column (B) the total reported on Line 8, Column (D) of Schedule 6 (Fixed Assets).

28. OTHER ASSETS — The software will pre-fill Column (A) with the total value as

shown on the labor organization's books at the start of the reporting period of all assets not reported in Items 22 through 27. The software will enter in Column (B) the total reported on Line 15 of Schedule 7 (Other Assets).

29. TOTAL ASSETS — The software will total Items 22 through 28, Columns (A) and (B), and enter the respective amounts in Item 29.

LIABILITIES

30. ACCOUNTS PAYABLE — Ordinarily, accounts payable are those obligations incurred on an open account for goods and services rendered. The software will pre-fill Column (C) with the total of all gross accounts payable at the start of the reporting period. The software will enter the total of all gross accounts payable at the end of the reporting period in Column (D) from Line 28, Column B of Schedule 8 (Accounts Payable Aging Schedule).

31. LOANS PAYABLE — The software will pre-fill Column (C) with the total of all gross loans payable at the start of the reporting period, which is also reported on Line 13, Column (B) of Schedule 9 (Loans Payable). The software will enter the total of all gross loans payable at the end of the reporting period in Column (D) and on Line 13, Column (E) of Schedule 9.

32. MORTGAGES PAYABLE — The software will pre-fill Column (C) with the total amount of the labor organization's obligations that were secured by mortgages or similar liens on real property (land or buildings) at the start of the reporting period. Enter the amount at the end of the reporting period in Column (D).

33. OTHER LIABILITIES — The software will pre-fill Column (C) with the total amount as shown on the labor organization's books at the start of the reporting period of all liabilities not reported in Items 30 through 32. The software will enter in Column (D) the total reported on Line 14 of Schedule 10 (Other Liabilities).

34. TOTAL LIABILITIES — The software will total Items 30 through 33, Columns (C) and (D), and enter the respective amounts in Item 34.

35. NET ASSETS — The software will subtract Item 34 (Total Liabilities), Column (C) from Item 29 (Total Assets), Column (A) and enter the difference in Item 35, Column (C). The software will also subtract Item 34, Column (D) from Item 29, Column (B) and enter the difference in Item 35, Column (D).

STATEMENT B
RECEIPTS AND DISBURSEMENTS

Under Statement B, receipts must be recorded when money is actually received by the labor organization and disbursements must be recorded when money is actually paid out by the labor organization.

The purpose of Statement B is to report the flow of cash in and out of the labor organization during the reporting period. Transfers between separate bank accounts or between special funds of the labor organization, such as vacation or strike funds, do not represent the flow of cash in and out of the labor organization. Therefore, these transfers should not be reported as receipts and disbursements of the labor organization. For example, do not report a transfer of cash from the labor organization's savings account to its checking account. Likewise, the use of funds reported in Item 22 (Cash) of Statement A to purchase certificates of deposit and the redemption of certificates of deposit should not be reported in Statement B.

Since Statement B reports all cash flowing in and out of the labor organization, "netting" is not permitted. "Netting" is the offsetting of receipts against disbursements and reporting only the balance (net) as either a receipt or disbursement. For example, if an officer

received $1,000 from the labor organization for convention expenses, used only $800 and returned the remaining $200, the $1,000 disbursement must be reported in Schedule 11 (All Officers and Disbursements to Officers) and the appropriate disbursement Schedule 24 through 28, and the $200 receipt must be reported in Schedule 23 (Other Receipts). It would be incorrect to report only an $800 net disbursement to the officer.

Receipts and disbursements by an agent on behalf of the labor organization are considered receipts and disbursements of the labor organization and must be reported in the same detail as other receipts and disbursements. For example, if the labor organization owns a building managed by a rental agent, the agent's rental receipts and disbursements for expenses must be reported on the labor organization's Form LM-2. Also, if the labor organization's parent body or an intermediate body functions as an agent receiving and disbursing funds of the labor organization to third parties, these receipts and disbursements must be reported on the labor organization's Form LM-2. For example, if a parent body receives the labor organization's dues and makes disbursements from that money to pay the labor organization's bills (such as payments to an attorney for legal services), those receipts and disbursements must be reported on the labor organization's Form LM-2.

CASH RECEIPTS

36. DUES AND AGENCY FEES – The software will enter the total reported on Summary Schedule 14, Line 3.

37. PER CAPITA TAX — The software will enter the total reported on Summary Schedule 15, Line 3.

38. FEES, FINES, ASSESSMENTS, WORK PERMITS — The software will enter the total reported on Summary Schedule 16, Line 4.

39. SALE OF SUPPLIES — The software will enter the total reported on Summary Schedule 17, Line 4.

40. INTEREST — The software will enter the total reported on Summary Schedule 18, Line 4.

41. DIVIDENDS — The software will enter the total reported on Summary Schedule 19, Line 4.

42. RENTS — The software will enter the total reported on Summary Schedule 20, Line 4.

43. SALE OF INVESTMENTS AND FIXED ASSETS — The software will enter the total reported on Summary Schedule 3, Line 6.

44. LOANS OBTAINED — The software will enter the total reported on Line 13, Column (C) of Schedule 9 (Loans Payable).

45. REPAYMENTS OF LOANS MADE — The software will enter the total reported on Line 6, Column (D)(1) of Schedule 2 (Loans Receivable).

46. ON BEHALF OF AFFILIATES FOR TRANSMITTAL TO THEM — The software will enter the total reported on Summary Schedule 21, Line 4.

47. FROM MEMBERS FOR DISBURSEMENT ON THEIR BEHALF — The software will enter the total reported on Summary Schedule 22, Line 4.

48. OTHER RECEIPTS — The software will enter the total reported on Summary Schedule 23, Line 4.

49. TOTAL RECEIPTS — The software will add Items 36 through 48 and enter the total in Item 49.

CASH DISBURSEMENTS

50. REPRESENTATIONAL ACTIVITIES

– The software will enter the total from Summary Schedule 24, Line 6.

51. POLITICAL ACTIVITIES AND LOBBYING– The software will enter the total from Summary Schedule 25, Line 6.

52. CONTRIBUTIONS, GIFTS, AND GRANTS – The software will enter the total from Summary Schedule 26, Line 6.

53. GENERAL OVERHEAD – The software will enter the total from Summary Schedule 27, Line 6.

54. UNION ADMINISTRATION – The software will enter the total from Summary Schedule 28, Line 6.

55. BENEFITS – The software will enter the total from Summary Schedule 29, Line (6).

56. PER CAPITA TAX — Enter your organization's total amount of per capita tax paid as a condition or requirement of affiliation with your parent national or international union, state and local central bodies, a conference, joint or system board, joint council, federation, or other labor organization.

57. STRIKE BENEFITS – Enter the total amount of all disbursements made to, or on behalf of the members (or agency fee paying nonmembers) of the labor organization, and others, associated with strikes (including recognitional strikes), work stoppages and lockouts during the reporting period.

58. FEES, FINES, ASSESSMENTS, ETC. — Enter the total amount of fees, fines, assessments, and similar disbursements made by the labor organization to a parent body or other labor organization.

59. SUPPLIES FOR RESALE — Enter the labor organization's total disbursements for purchases of supplies such as union logo clothing, lapel pins, bumper stickers, etc. for resale.

60. PURCHASE OF INVESTMENTS AND FIXED ASSETS — The software will enter the total from Summary Schedule 4, Line 6.

61. LOANS MADE — The software will enter the total reported on Line 6, Column (C) of Schedule 2 (Loans Receivable).

62. REPAYMENT OF LOANS OBTAINED — The software will enter the total reported on Line 13, Column (D)(1) of Schedule 9 (Loans Payable).

63. TO AFFILIATES OF FUNDS COLLECTED ON THEIR BEHALF — Enter the total disbursements of funds collected on behalf of affiliates by the labor organization. This amount usually is the same as the amount reported in related Item 46 (On Behalf of Affiliates for Transmittal to Them). Any such funds not disbursed by the end of the reporting period are liabilities of the labor organization and must be reported in Schedule 10 (Other Liabilities).

64. ON BEHALF OF INDIVIDUAL MEMBERS — Enter the total disbursements of funds collected from members by the labor organization that were specifically designated by them for disbursement on their behalf. This amount usually is the same as the amount reported in related Item 47 (Cash Receipts from Members for Disbursement on Their Behalf). Any such funds not disbursed by the end of the reporting period are liabilities of the labor organization and must be reported in Schedule 10 (Other Liabilities).

65. DIRECT TAXES – Enter all taxes assessed against and paid by your organization, including your organization's FICA taxes as an employer. Do not include disbursements for the transmittal of taxes withheld from the salaries of officers and employees which must be reported in Item 67 (Withholding Taxes and Other Payroll Deductions). Also, do not include indirect taxes, such as sales

and excise taxes, for purchases reported in other disbursement items.

66. SUBTOTAL — The software will add Items 50 through 65 and enter the result in Item 66.

67. WITHHOLDING TAXES AND OTHER PAYROLL DEDUCTIONS –

a. Total Withheld—Enter the total amount of withholding taxes and all other payroll deductions during the reporting period.

b. Total Disbursed—Enter the total amount of withholding taxes and all other payroll deductions that were disbursed by your organization during the reporting period. This includes your organization's total disbursements to Federal, state, county, and municipal government agencies for the transmittal of taxes withheld from the salaries of officers and employees, including officers' and employees' portion of FICA taxes and all disbursements for the transmittal of other payroll deductions.

c. Total Withheld But Not Disbursed—The software will subtract Item 67b from Item 67a and enter the result in Item 67c.

68. TOTAL DISBURSEMENTS – The software will subtract Item 67c from Item 66 and enter the result in Item 68.

NOTE: The following worktable may be used to determine that the figures for receipts, disbursements, and cash are correctly reported on the labor organization's Form LM-2:

A. Cash at Start of Reporting Period — Item 22, Column (A)	$
B. Add: Total Receipts — Item 49	$
C. Total of Lines A and B	$
D. Subtract: Total Disbursements — Item 68	$
E. Cash at End of Period	$

If Line E does not equal the amount reported in Item 22, Column (B), there is an error in the labor organization's report, which should be corrected.

ADDITIONAL INFORMATION AND SIGNATURES

69. ADDITIONAL INFORMATION — Use Item 69 to provide additional information as indicated on Form LM-2 and in these instructions. Enter the number of the item to which the information relates in the Item Number column if the software has not entered the number.

70-71. OFFICER TELEPHONE NUMBERS AND SIGNATURES — Before entering the date and signing the form, enter the telephone number at which the signatories conduct official business.

The completed Form LM-2 that is filed with OLMS must be signed by both the president and treasurer, or corresponding principal officers, of the labor organization. If an officer other than the president or treasurer performs the duties of the principal executive or principal financial officer, the other officer may sign the report. If an officer other than the president or treasurer signs the report, enter the correct title in the title field next to the signature and explain in Item 69 (Additional Information) why the president or treasurer did not sign the report. Forms must be signed with digital signatures. Information about digital signatures can be obtained on the OLMS Web site at http://www.olms.dol.gov.

XII. Labor Organizations That Have Ceased to Exist

If a labor organization has gone out of existence as a reporting labor organization, the last president and treasurer or the officials responsible for winding up the affairs of the labor organization must file a terminal financial report for the period from the beginning of the fiscal year to the date of termination. A terminal financial report must be filed if the labor organization has gone out of

business by disbanding, merging into another organization, or being merged and consolidated with one or more labor organizations to form a new labor organization. A terminal financial report is not required if the labor organization changed its affiliation but continues to function as a separate reporting labor organization.

The terminal financial report must be filed on Form LM-2 if the labor organization filed its previous annual report on Form LM-2 and must be submitted within 30 days after the date of termination.

To complete a terminal report on Form LM-2, follow the instructions in Section XI and, in addition:

- Enter the date the labor organization ceased to exist in Item 2 after the word "Through." The format for the date must be mm/dd/yyyy.

- Select Item 3(c) indicating that the labor organization ceased to exist during the reporting period and that this is the labor organization's terminal Form LM-2.

- Provide in Item 69 (Additional Information) a detailed statement of the reason the labor organization ceased to exist. Also report in Item 69 plans for the disposition of the labor organization's cash and other assets, if any (for example, transfer of cash and assets to the parent body). Provide the name and mailing address of the person or organization that will retain the records of the terminated organization. If the labor organization merged with another labor organization, report that organization's name, address, and 6-digit file number.

Contact the nearest OLMS field office listed below if you have questions about filing a terminal report.

If You Need Assistance

The Office of Labor-Management Standards has field offices located in the following cities to assist you if you have any questions concerning LMRDA and CSRA reporting requirements.

Atlanta, GA
Boston, MA
Buffalo, NY
Chicago, IL
Cincinnati, OH
Cleveland, OH
Dallas, TX
Denver, CO
Detroit, MI
Los Angeles, CA
Milwaukee, WI
Nashville, TN
New Orleans, LA
New York, NY
Philadelphia, PA
Pittsburgh, PA
St. Louis, MO
San Francisco, CA
Seattle, WA
Washington, DC

Consult the OLMS Web site listed below or local telephone directory listings under United States Government, Labor Department, Office of Labor-Management Standards, for the address and telephone number of the nearest field office.

Copies of labor organization annual financial reports, employer reports, and labor relations consultant reports filed for the year 2000 and after can be viewed and printed at http://www.unionreports.gov. Copies of reports for the year 1999 and earlier can be ordered through the Web site.

Information about OLMS, including key personnel and telephone numbers, compliance assistance materials, the text of the LMRDA, and related Federal Register and Code of Federal Regulations documents, is also available on the Internet at:

http://www.olms.dol.gov

Public reporting burden for this collection of information is estimated to average 116 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. Reporting of this information is mandatory and is required by the Labor-Management Reporting and Disclosure Act of 1959, as amended, for the purpose of public disclosure. As this is public information, there are no assurances of confidentiality. If you have any comments regarding this estimate or any other aspect of this information collection, including suggestions for reducing this burden, please send them to the U.S. Department of Labor, Employment Standards Administration, Office of Labor-Management Standards, Division of Interpretations and Standards, Room N-5609, 200 Constitution Avenue, NW, Washington, DC 20210.

INSTRUCTIONS FOR ELECTRONIC FORM LM-3 LABOR ORGANIZATION ANNUAL REPORT

GENERAL INSTRUCTIONS

I. WHO MUST FILE

Every labor organization subject to the Labor- Management Reporting and Disclosure Act of 1959, as amended (LMRDA), the Civil Service Reform Act (CSRA), or the Foreign Service Act (FSA) must file a financial report, Form LM-2, LM-3, or LM-4, each year with the Office of Labor-Management Standards (OLMS) of the U.S. Department of Labor's Employment Standards Administration. These laws cover labor organizations that represent employees who work in private industry, employees of the U.S. Postal Service, and most Federal government employees. Labor organizations that represent only state, county, or municipal government employees are not covered by these laws and, therefore, are not required to file, except that any "conference, general committee, joint or system board, or joint council" that is subordinate to a national or international labor organization is a labor organization under the LMRDA and is required to file a financial report if the national or international labor organization is a labor organization engaged in an industry affecting commerce within the meaning of section 3(j) of the LMRDA. If you have a question about whether your organization is required to file, contact the nearest OLMS field office listed at the end of these instructions.

II. WHAT FORM TO FILE

For fiscal years that began July 1, 2004 or later, labor organizations with total annual receipts of less than $250,000 may file the simplified annual report Form LM-3, if not in trusteeship as defined in Section IX of these instructions. For fiscal years that began before July 1, 2004, only labor organizations with less than $200,000 in annual receipts may file Form LM-3. The term "total annual receipts" means all financial receipts of the labor organization during its fiscal year, regardless of the source, including receipts of any special funds as described in Section VIII of these instructions and any "subsidiaries" as defined in Section X.

Labor organizations with greater total annual receipts and those in trusteeship must file the more detailed Form LM-2. Labor organizations with less than $10,000 in total annual receipts may file the abbreviated 2-page annual report Form LM-4, if not in trusteeship.

The privilege to file the Form LM-3 may be revoked under certain circumstances. If so, the labor organization must file a Form LM-2, despite total annual receipts of less than $250,000. The standards and procedures appear in the Department's regulations (29 C.F.R. § 403.4). The regulations appear on page 17 of these Instructions.

III. WHEN TO FILE

Form LM-3 must be filed within 90 days after the end of your organization's fiscal year (12-month reporting period). The law does not authorize the U.S. Department of Labor to grant an extension of time for filing reports for any reason. The penalties for delinquency are described in Section VI of these instructions.

If your organization went out of existence during its fiscal year, a terminal financial report must be filed within 30 days after the date it ceased to exist. See Section XII of these instructions for information on filing a terminal financial report.

IV. HOW TO FILE

An Adobe Reader version of Form LM-3 is now available for download from the OLMS Web site. The content of this form is identical to the Informed Filler Form LM-3, but the new software is easier to use. This new form has pre-fill and the option for digital signatures for electronic filing. You can download the Adobe Reader version Form LM-3 at http://www.dol.gov/esa/olms/regs/compliance/lm3_downloadpg.htm.

On the download pages you will find a User Guide for the Adobe Reader Form LM-3 that will guide you through the process of preparing and completing the form, and provide instructions and navigation tips to help you download the form, enter information directly into the form, and add digital signatures.

If you have difficulty navigating the software, or have questions about its functions and features, call the Department of Labor's National Call Center at: 1-866-487-2365. You may also send questions via e-mail to olms-public@dol.gov.

After you have completed Form L M-3 you have two options for submitting your report. You can print it and have the officers sign it manually and mail it to the Office of Labor-Management Standards, 200 Constitution Ave., NW, Room N-5616, Washington, DC 20210-0001 or you can electronically sign and submit the form.

NOTE: *Certain labor organizations are required to file Form 990, Return of Organization Exempt from Income Tax, with the Internal Revenue Service (IRS). The IRS will accept a copy of your organization's Form LM-3 to provide some of the information required by Form 990. See the instructions for the current Form 990 for details. Filing Form LM-3 with the IRS does not satisfy your organization's reporting requirement with the U.S. Department of Labor.*

V. PUBLIC DISCLOSURE

The LMRDA requires that the U.S. Department of Labor make labor organization financial reports available for inspection by the public. Reports for the year 2000 and later may be viewed and downloaded from the OLMS Web site at **www.unionreports.gov**. Copies of reports and union constitutions and bylaws can be ordered at the same Web site. Reports may also be examined and copies purchased at the OLMS Public Disclosure Room at:

U.S. Department of Labor
Employment Standards Administration
Office of Labor-Management Standards
200 Constitution Avenue, NW
Room N-5608
Washington, DC 20210-0001
Telephone: 202-693-0125

VI. OFFICER RESPONSIBILITIES AND PENALTIES

The president and treasurer or the corresponding principal officers of the labor organization required to sign Form LM-3 are personally responsible for its filing and accuracy. Under the LMRDA, officers are subject to criminal penalties for willful failure to file a required report and for false reporting. False reporting includes making any false statement or misrepresentation of a material fact while knowing it to be false, or for knowingly failing to disclose a material fact in a required report or in the information

required to be contained in it or in any information required to be submitted with it.

The reporting labor organization and the officers required to sign Form LM-3 are also subject to civil prosecution for violations of the filing requirements. Section 210 of the LMRDA (29 U.S.C. 440) provides that "whenever it shall appear that any person has violated or is about to violate any of the provisions of this title, the Secretary may bring a civil action for such relief (including injunctions) as may be appropriate."

Under the CSRA and FSA and implementing regulations, false reporting and failure to report may result in administrative enforcement action and litigation. The officers responsible for signing Form LM-3 are also subject to criminal penalties for false reporting under Sections 1001 of Title 18 and 1746 of Title 28 of the United States Code.

VII. RECORDKEEPING

The officers required to file Form LM-3 are responsible for maintaining records which will provide in sufficient detail the information and data necessary to verify the accuracy and completeness of the report. The records must be kept for at least 5 years after the date the report is filed. Any record necessary to verify, explain, or clarify the report must be retained, including, but not limited to, vouchers, worksheets, receipts, and applicable resolutions, and any electronic documents, including recordkeeping software, used to complete, read, and file the report.

VIII. FUNDS TO BE REPORTED

Your labor organization's Form LM-3 must report financial information for all funds of your organization. Include any special purpose funds or accounts, such as strike funds, vacation funds, and scholarship funds even it they are not part of your organization's general treasury.

All labor organization political action committee (PAC) funds are considered to be labor organization funds. However, to avoid duplicate reporting, PAC funds which are kept separate from your labor organization's treasury are not required to be included in your organization's Form LM-3 if publicly available reports on the PAC funds are filed with a Federal or state agency.

Your organization is required to report financial information about any "subsidiary organization(s)." Financial information about your organization and its subsidiary organizations may be combined on a single Form LM-3 or a separate report may be filed for any subsidiary organization. See Section X of these instructions for information on reporting financial information for subsidiary organizations.

In combining the information concerning special funds and/or any subsidiary organizations, be sure to include the requested information and amounts for the "special funds" and subsidiary organizations as well as for your organization in all items.

SPECIAL INSTRUCTIONS FOR CERTAIN ORGANIZATIONS

IX. LABOR ORGANIZATIONS IN TRUSTEESHIP

Any labor organization which has placed a subordinate labor organization in trusteeship is responsible for filing the subordinate's annual financial report. A trusteeship is defined in section 3(h) of the LMRDA as "any receivership, trusteeship, or other method of supervision or control whereby a labor organization suspends the autonomy otherwise available to a subordinate body under its constitution or bylaws."

Annual financial reports filed for any labor organization in trusteeship must be filed on Form LM-2 rather than Form LM-3. The report must be signed by the president and treasurer or corresponding principal officers of the labor organization which imposed the trusteeship and by the trustees of the subordinate labor organization. Form LM-2 can be downloaded from the OLMS Web

site at **www.olms.dol.gov**. For additional information contact any of the offices listed at the end of these instructions.

X. LABOR ORGANIZATIONS WITH SUBSIDIARY ORGANIZATIONS

A subsidiary organization, within the meaning of these instructions, is any separate organization of which the ownership is wholly vested in the reporting labor organization or its officers or its membership, which is governed or controlled by the officers, employees, or members of the reporting labor organization, and which is wholly financed by the reporting labor organization. A subsidiary organization is considered to be wholly financed if the initial financing was provided by the reporting labor organization even if the subsidiary organization is currently wholly or partially self-sustaining. An example of a subsidiary organization is a building corporation which holds title to a building; the labor organization owns the building corporation, selects the officers, and finances the operation of the building corporation.

If your organization has no subsidiary organization as defined above, skip to Section XI of these instructions.

A labor organization is required to report financial information for each of its subsidiary organizations using one of the following methods:

Method (1) — Consolidate the financial information for the subsidiary organization(s) and the labor organization on a single Form LM-3.

Method (2) — Complete a separate Form LM-3 for the subsidiary organization and file it with the labor organization's Form LM-3. The LM-3 report for the subsidiary organization must be identified by selecting Item 3(c).

Method (3) — File, with the labor organization's Form LM-3, the regular annual report of the financial condition and operations of the subsidiary organization, accompanied by a statement signed by an independent public accountant certifying that the financial report presents fairly the financial condition and operations of the subsidiary organization and was prepared in accordance with generally accepted accounting principles.

Financial information reported separately for subsidiary organizations under methods (2) and (3) above must include the name of the subsidiary organization and the name and file number of the labor organization as shown on its Form LM-3. The financial report of the subsidiary organization must cover the same reporting period as that used by the reporting labor organization.

When method (2) or (3) is used and the subsidiary organization is an investment, the financial interest of the reporting labor organization in the subsidiary organization must be reported in Item 28 (Investments) of the labor organization's Form LM-3. When method (2) or (3) is used and the subsidiary organization is of a non-investment nature, the financial interest of the reporting labor organization in the subsidiary organization must be reported in Item 30 (Other Assets) of the labor organization's Form LM-3.

The same type of information required on Form LM-3 regarding disbursements to officers and employees and loans made by labor organizations must also be reported with respect to the subsidiary organization. In method (1) the information relating to the subsidiary organization must be combined with that of the labor organization and reported on the labor organization's Form LM-3 in Item 24 and in Item 56 in the detail required by the instructions for Items 17 and 18. In method (2) this information must be reported on the separate Form LM-3 of the subsidiary organization in Item 24 and in Item 56 in the detail required by the instructions for Items 17 and 18. If method (3) is used, an attachment must be submitted containing the information required by the instructions for Items 17, 18, and 24.

The information regarding loans made by the subsidiary organization must include a listing of the names of each officer, employee, or member of the labor organization and each officer or employee of the subsidiary organization whose total loan indebtedness to the subsidiary organization, to the labor organization, or to both at any time during the reporting period exceeded $250. However, if method (2) or (3) is used, the amount reported by the subsidiary organization should be only the amount owed to the subsidiary organization.

The annual financial report must also include all disbursements made by the subsidiary organization to or on behalf of its officers and officers of the labor organization. The report must also list the name and position of the subsidiary organization's employees whose total gross salaries, allowances, and other disbursements from the subsidiary organization, the reporting labor organization, and any affiliates were more than $10,000. However, if method (2) or (3) is used, only the disbursements of the subsidiary organization for its employees should be reported.

XI. COMPLETING FORM LM-3

Opening the Form LM-3 from either the Web site or as a saved file should launch Adobe and open the form.

Items 1, 2, and 4-8 are "pre-filled" items. These fields were filled in by the software based on information you entered when you accessed and downloaded the form from our Web site. With the exception of Item 8, you cannot edit these fields.

Most pages have a "Perform Calculations" button to total and transfer data to fields in various parts of the form. You may click on one or more of these buttons as you fill out the form at any time.

You may click on the "Validate Form" button at any time to check for errors. This action will generate an "Errors Page" listing any errors that will need to be corrected before you will be able to sign the form. Clicking on the signature lines will also perform the validation function.

INFORMATION ITEMS 1-23

Answer Items 1 through 23 as instructed. Select the appropriate box for those questions requiring a "Yes" or "No" answer; do not leave both boxes blank. Enter a single "0" in the boxes for items requiring a number or dollar amount if there is nothing to report.

1. FILE NUMBER — The software will enter the labor organization's 6-digit file number here and at the top of each page of Form LM-3. This is the number you entered when you downloaded Form LM-3. If the number is incorrect, you must download another copy of the form using the correct number. If the labor organization does not have the number on file and cannot obtain the number from prior reports filed with the Department, the number can be obtained from the OLMS Web site at http://www.union-reports.dol.gov, or by contacting the nearest OLMS field office listed at the end of these instructions.

2. PERIOD COVERED — The software will enter the beginning and ending dates of the period covered by this report. These are the dates you entered when you downloaded Form LM-3. If the dates are incorrect, you must download another form using the correct dates.

If the labor organization changed its fiscal year, the ending date in Item 2 should be the labor organization's new fiscal year ending date and the labor organization should indicate in Item 56 (Additional Information) that the report is for a period of less than 12 months because its fiscal year has changed. For example, if the labor organization's fiscal year ending date changes from June 30 to December 31, a report must be filed for the partial year from July 1 to December 31. Thereafter, the labor

organization's annual report should cover a full 12-month period from January 1 to December 31.

3. AMENDED, TERMINAL, OR SUBSIDIARY REPORT — Do not complete this item unless this report is an amended or terminal report, or a separate report for a subsidiary organization. Select Item 3(a) if the labor organization is filing an amended report correcting a previously filed report. Select Item 3(b) if the labor organization has gone out of business by disbanding, merging into another labor organization, or being merged and consolidated with one or more labor organizations to form a new labor organization, and this is the labor organization's terminal report. Be sure the date the labor organization ceased to exist is entered in Item 2 (Period Covered) after the word "Through." See Section XII (Labor Organizations That Have Ceased to Exist) of these instructions for more information on filing a terminal report. Select Item 3(c) if this is a separate report for a subsidiary organization of your organization as defined in Section X of these instructions.

4. AFFILIATION OR ORGANIZATION NAME — The software will access this information from the OLMS database and enter the name of the national or international labor organization that granted the labor organization a charter. "Affiliates," within the meaning of these instructions, are labor organizations chartered by the same parent body, governed by the same constitution and bylaws, or having the relationship of parent and subordinate. For example, a parent body is an affiliate of all of its subordinate bodies, and all subordinate bodies of the same parent body are affiliates of each other.

If the labor organization has not reported such an affiliation, the software will enter the name of the labor organization as currently identified in the labor organization's constitution and bylaws or other organizational documents.

This item cannot be edited. If the labor organization needs to change this information, contact OLMS at (202) 693-0124.

5. DESIGNATION — The software will enter the specific designation that is used to identify the labor organization, such as Local, Lodge, Branch, Joint Board, Joint Council, District Council, etc. This field cannot be edited.

6. DESIGNATION NUMBER — The software will enter the number or other identifier, if any, by which the labor organization is known. This field cannot be edited.

7. UNIT NAME — The software will enter any additional or alternate name by which the labor organization is known, such as "Chicago Area Local." This field cannot be edited.

8. MAILING ADDRESS — The software will enter the current address where mail is most likely to reach the labor organization as quickly as possible. The first and last name of the person, if any, to whom such mail should be sent and any building and room number should be included. These fields are pre-filled from the OLMS database but can be edited by the filer.

9. PLACE WHERE RECORDS ARE KEPT — If the records required to be kept by the labor organization to verify this report are kept at the address reported in Item 8 (Mailing Address), answer "Yes." If not, answer "No" and provide in Item 56 (Additional Information) the address where the labor organization's records are kept.

10. SUBSIDIARY ORGANIZATIONS — If Item 10 is answered "Yes," provide in Item 56 the name, address, and purpose of each subsidiary organization. Indicate whether the information concerning its financial condition and operations is included in this Form LM-3 or in a separate report. See Section X of these instructions for information on reporting subsidiary organizations.

11. TRUSTS OR FUNDS — Answer Item 11 "Yes" if your labor organization created or participated in the administration of a "trust in which a labor organization is interested" which is defined in section 3(l) of the LMRDA as "a trust or other fund or organization (1) which was created or established by a labor organization, or one or more of the trustees or one or more members of the governing body of which is selected or appointed by a labor organization, and (2) a primary purpose of which is to provide benefits for the members of such labor organization or their beneficiaries."

If Item 11 is answered "Yes," provide in Item 56 the name, address, and purpose of each trust. If a report has been filed for the trust or other fund under the Employee Retirement Income Security Act of 1974 (ERISA), report in Item 56 the ERISA file number (Employer Identification Number — EIN) and plan number, if any.

12. POLITICAL ACTION COMMITTEE FUNDS — If Item 12 is answered "Yes," provide in Item 56 the full name of each separate political action committee (PAC) and list the name of any government agency, such as the Federal Election Commission or a state agency, with which the PAC has filed a publicly available report, and the relevant file number of the PAC. (PAC funds which are kept separate from your labor organization's treasury are not required to be included in your organization's Form LM-3 if publicly available reports on the PAC funds are filed with a Federal or state agency. See Section VIII of these instructions for additional information on PAC funds.)

13. ACQUISITION OR DISPOSITION OF ASSETS — If Item 13 is answered "Yes," describe in Item 56 the manner in which your organization acquired or disposed of assets, such as donating office furniture or equipment to charitable organizations, trading in assets, writing off a receivable, or giving away other tangible or intangible property of the labor organization. Include the type of asset, its value, and the identity of the recipient or donor, if any. Also report in Item 56 the cost or other basis at which any acquired assets were entered on your organization's books or the cost or other basis at which any assets disposed of were carried on your organization's books.

For assets that were traded in, enter in Item 56 the cost, book value, and trade-in allowance.

14. AUDIT OR REVIEW OF BOOKS AND RECORDS — If Item 14 is answered "Yes," indicate in Item 56 whether the audit or review was performed by an outside accountant or a parent body auditor/representative. If the audit or review was performed by an outside accountant, provide the name of the accountant or accounting firm. Report any audit or review by an outside accountant or a parent body auditor/representative in which your organization's books and records were examined to verify their accuracy and validity. The term "audit or review" does not include providing assistance in developing a bookkeeping system, providing routine bookkeeping services, or merely compiling information from your organization's books and records to prepare Form LM-3 or other financial reports. Also, do not answer Item 14 "Yes" if the audit or review was performed by an audit committee or trustees of your organization.

15. LOSSES OR SHORTAGES — If Item 15 is answered "Yes," describe the loss or shortage in detail in Item 56, including such information as the amount of the loss or shortage of funds or a description of the property that was lost, how it was lost, and to what extent, if any, there has been an agreement to make restitution or any recovery by means of repayment, fidelity bond, insurance, or other means.

16. ADDITIONAL POSITIONS OF OFFICERS — Answer Item 16 "Yes" only if an officer of your organization was paid $10,000 or more in salary, wages, and allowances by your organization and was paid $10,000 or more in salary, wages, and allowances as an officer or employee of

another labor organization or of an employee benefit plan. In calculating whether an officer was paid $10,000 or more, include allowances paid on a daily, weekly, monthly, or other periodic basis. Do not include allowances paid on the basis of mileage or meals or amounts officers received as reimbursed expenses. If Item 16 is answered "Yes," provide in Item 56 the name of each officer, the name of the other labor organization(s) or employee benefit plan(s), and the officer's position in the other labor organization(s) or employee benefit plan(s).

17. EMPLOYEES — Answer Item 17 "Yes" if any employee of your organization received more than $10,000 in gross salaries, allowances, and other direct and indirect disbursements during the reporting period (direct and indirect disbursements are defined in the instructions for Item 24). In computing the total, add together all disbursements made to each employee by your organization (including any subsidiary organization) and any affiliates. ("Affiliates" means labor organizations chartered by the same parent body, governed by the same constitution and bylaws, or having the relationship of parent and subordinate.)

If Item 17 is answered "Yes," report in Item 56 the name and position of each employee and the names of the other affiliated labor organizations which made disbursements to or on behalf of the employee. Also report in Item 56 the total disbursements made to each employee or on the employee's behalf by your organization, including all salary and allowances (before any deductions) and other disbursements (including reimbursed expenses).

18. LOANS — Answer Item 18 "Yes" if any officer, employee, or member owed your organization, together with any subsidiary organization, more than $250 at any time during the reporting period; or if your organization made a loan, regardless of amount, to any business enterprise during the reporting period. Include any direct or indirect loans whether or not evidenced by a promissory note or secured by a mortgage. An example of an indirect loan is a disbursement by your organization to an educational institution for the tuition expense of an officer, employee, or member which must be repaid to your organization by that individual.

If Item 18 is answered "Yes," report in Item 56 the name of each individual and business enterprise, the amount each individual owed at the end of the reporting period, and the amount loaned to each business enterprise during the reporting period. Also report in Item 56 the purpose, terms for repayment, and any security for each such loan.

NOTE: *Advances, including salary advances, are considered loans and must be reported in Item 26 (Loans Receivable) and Item 53 (Loans Made). However, advances to officers and employees of your organization for travel expenses necessary for conducting official business are not considered loans if the following conditions are met:*

- *the amount of an advance for a specific trip does not exceed the amount of expenses reasonably expected to be incurred for official travel in the near future, and the amount of the advance is fully repaid or fully accounted for by vouchers or paid receipts within 30 days after the completion or cancellation of the travel.*

- *the amount of a standing advance to an officer or employee who must frequently travel on official business does not unreasonably exceed the average monthly travel expenses for which the individual is separately reimbursed after the submission of vouchers or paid receipts, and the individual does not exceed 60 days without engaging in official travel.*

See the instructions for Item 24, Column (E), Item 30, and Item 46 for reporting travel advances which meet these criteria.

19. NUMBER OF MEMBERS — Enter the number of members in your organization at the end of the reporting period. Include all

categories of members who pay dues. Do not include nonmember employees who make payments in lieu of dues as a condition of employment under a union security provision in a collective bargaining agreement.

20. FIDELITY BOND — Enter the maximum amount recoverable for a loss caused by any officer, employee, or agent of your organization who handled your organization's funds. Enter "0" if your organization was not covered by a fidelity bond during the reporting period.

NOTE: *If your organization had property and annual financial receipts which totaled more than $5,000, each of your organization's officers, employees, and agents who handles funds or other property of your organization must be bonded. The amount of the bond must be at least 10% of the value of the funds handled by the individual during the last reporting period, up to a maximum bond of $500,000. The bond must be obtained from a surety company approved by the Secretary of the Treasury. If you have any questions or need more information about bonding requirements, contact the nearest OLMS field office listed at the end of these instructions.*

21. CHANGES IN CONSTITUTION AND BYLAWS OR PRACTICES/PROCEDURES — If Item 21 is answered "Yes" because your organization's constitution and bylaws were changed during the reporting period (other than rates of dues and fees), a dated copy of the new constitution and bylaws must either be submitted as an electronic attachment to the Form LM-3 the labor organization submits to OLMS, or the labor organization may submit a dated copy of the new constitution and bylaws to:

Office of Labor-Management Standards
200 Constitution Ave., NW, Room N-5616
Washington, DC 20210-0001

If your organization is governed by a uniform constitution and bylaws prescribed by your organization's parent national or international body, your organization's parent body may file the constitution and bylaws on your behalf. If your parent body files a constitution and bylaws on your behalf, answer Item 21 "Yes" and state that fact in Item 56.

If Item 21 is answered "Yes" because your organization changed any of the practices/procedures listed below during the reporting period and the practices/procedures are not described in your organization's constitution and bylaws, your organization must file an amended Form LM-1 (Labor Organization Information Report) with its Form LM-3 to update information on file with OLMS:

- qualifications for or restrictions on membership;
- levying assessments;
- participating in insurance or other benefit plans;
- authorizing disbursement of labor organization funds;
- auditing financial transactions of the labor organization;
- calling regular and special meetings;
- authorizing bargaining demands;
- ratifying contract terms;
- authorizing strikes;
- disciplining or removing officers or agents for breaches of their trust;
- imposing fines and suspending or expelling members including the grounds for such action and any provision made for notice, hearing, judgment on the evidence, and appeal procedures;
- selecting officers and stewards and any representatives to other bodies composed of labor organizations' representatives;

• invoking procedures by which a member may protest a defect in the election of officers (including not only all procedures for initiating an election protest but also all procedures for subsequently appealing an adverse decision, e.g., procedures for appeals to superior or parent bodies, if any); and

• issuing work permits.

Form LM-1 can be downloaded from the OLMS Web site at **www.olms.dol.gov**. If you are unable to download the form, contact any of the offices listed at the end of these instructions to obtain a copy.

NOTE: *Federal employee labor organizations subject solely to the Civil Service Reform Act or Foreign Service Act are not required to submit an amended Form LM-1 to describe revised or changed practices/procedures.*

22. NEXT REGULAR ELECTION — Enter the month and year of your organization's next regular election of general officers (president, vice president, treasurer, secretary, etc.). Do not report the date of any interim election to fill vacancies.

23. DUES AND FEES — Enter the dues and fees established by your organization. If more than one rate applies, enter the minimum and maximum rates. Enter "0" where appropriate.

Line (a): Enter the regular dues or fees or other periodic payments which a member must pay to be in good standing in your organization and enter the calendar basis for the payment (per month, per year, etc.). If your organization requires members to pay "working" dues as a part of regular dues, also report the amount or percent of "working" dues and enter the basis for the payment (per hour, per month, etc.). Include only the dues or fees of regular members and not dues or fees of members with special rates, such as apprentices, retirees, or unemployed members.

Line (b): Enter the initiation fees required from new members.

Line (c): Enter the fees other than dues required from transferred members. Such fees are those charged to persons applying for a transfer of membership to your organization from another labor organization with the same affiliation. Do not report fees charged to members transferring from one class of membership to another within your organization.

Line (d): If your organization issues work permits, enter the fees required and enter the calendar basis for the payment (per month, per year, etc.). Work permit fees are fees charged to nonmembers of your organization who work within its jurisdiction. Do not report as work permit fees those fees charged to nonmember applicants for membership pending acceptance of their membership application, or fees charged to persons applying for transfer of membership to your organization pending acceptance of their application for transfer.

FINANCIAL DETAILS

REPORT ONLY DOLLAR AMOUNTS
Report all amounts in dollars only. Round cents to the nearest dollar. Amounts ending in $.01 through $.49 should be rounded down. Amounts ending in $.50 through $.99 should be rounded up.

REPORTING CLASSIFICATIONS
Complete all items and lines on the form as given. Do not use different accounting classifications or change the wording of any item or line.

COMPLETE ALL ITEMS 24 THROUGH 55
Complete Item 24 and all items in Statement A and Statement B. Enter "0" where appropriate.

LIST OF OFFICERS AND DISBURSEMENTS TO THEM

ITEM 24. ALL OFFICERS AND DISBURSEMENTS TO OFFICERS — List all your organization's officers and report all salaries and other direct and indirect disbursements to officers during the reporting period. However, direct and indirect disbursements not involving the payment of some form of cash (cash, checks, money orders, etc.) should not be reported in Item 24 but must be explained in Item 56. Any direct or indirect cash disbursement required to be included in Item 24 should not be reported in other disbursement items.

NOTE: *A "direct disbursement" to an officer is a payment made by your organization to the officer in the form of cash, property, goods, services, or other things of value.*

An "indirect disbursement" to an officer is a payment made by your organization to another party for cash, property, goods, services, or other things of value received by or on behalf of the officer. "On behalf of the officer" means received by a party other than the officer or your organization for the personal interest or benefit of the officer. Such payments include those made through a credit arrangement under which charges are made to the account of your organization and are paid by your organization.

Column (A): Enter in (A) the last name, first name, and middle initial of each person who held office in the labor organization at any time during the reporting period. Include all the labor organization's officers whether or not any salary or other disbursements were made to them or on their behalf by the labor organization. "Officer" is defined in section 3(n) of the LMRDA (29 U.S.C. 402) as "any constitutional officer, any person authorized to perform the functions of president, vice president, secretary, treasurer, or other executive functions of a labor organization, and any member of its executive board or similar governing body."

Column (B): Enter in (B) the title of the position each officer listed held during the reporting period. If an officer held more than one position during the reporting period, list each additional position and the dates on which the officer held the position in Item 56 (Additional Information).

Column (C): Use the drop-down menu to select the status of each officer: "N" for a new officer who took office during the reporting period; "P" for a past officer who was not in office at the end of the reporting period; or "C" for a continuing officer who was in office before the reporting period and was still in office at the end of the reporting period. If any officer was not elected at a regular election in accordance with the labor organization's constitution and bylaws or other governing documents on file with OLMS, explain the manner in which the officer was chosen in Item 56 (Additional Information).

Column (D): Enter the gross salary of each officer (before tax withholdings and other payroll deductions). Include disbursements for "lost time" or time devoted to union activities.

Column (E): Enter the total of all other direct and indirect disbursements to each officer other than salary, including allowances, disbursements which were necessary for conducting official business of your organization, and disbursements essentially for the personal benefit of the officer and not necessary for conducting official business of your organization.

Examples of disbursements to be reported in Column (E) include: allowances made by direct and indirect disbursements to each officer on a daily, weekly, monthly, or other periodic basis; allowances paid on the basis of mileage or meals; all expenses that were reimbursed directly to an officer; expenses for officers' meals and entertainment; and various goods and services furnished to officers but charged to your organization. Column (E) must also include:

• the total maintenance and operating costs of any automobile owned or leased by your organization and assigned to an officer regardless of whether the use was for

official business or for the personal benefit of the officer. If more than 50% of the use of the automobile was for the personal benefit of the officer, the amount of decrease in the market value attributable to the officer's personal use must be reported in Item 56.

• all disbursements for transportation by public carrier between the officer's home and place of employment or for other transportation not involving the conduct of official business.

• all other direct and indirect disbursements to each officer not included elsewhere in this report. Include all direct and indirect disbursements which were essentially for the personal benefit of the officer and not necessary for conducting official business of your organization. However, disbursements for occasional non-cash gifts of insubstantial value need not be included in Column (E) if reported in Item 51 (Contributions, Gifts, and Grants).

• travel advances which are not considered loans as explained in the instructions for Item 18.

Do not report the following disbursements in Item 24:

• loans to officers which must be reported in Item 26 (Loans Receivable) and Item 53 (Loans Made);

• benefits to officers which must be reported in Item 50 (Benefits);

• reimbursements to an officer for the purchase of investments or fixed assets, such as reimbursing an officer for a file cabinet purchased for office use, which must be reported in Item 52 (Purchase of Investments and Fixed Assets) and explained in Item 56;

• indirect disbursements for temporary lodging (room rent charges only) or transportation by public carrier necessary for conducting official business while the officer is in travel status away from his or her home and principal place of employment with your organization if payment is made by your organization directly to the provider or through a credit arrangement and these disbursements are reported in Item 48 (Office and Administrative Expense); however, charges other than room rent on hotel bills must be reported in Column (E);

• disbursements made by your organization to someone other than an officer as a result of transactions arranged by an officer in which property, goods, services, or other things of value were received by or on behalf of your organization rather than the officer, such as rental of offices and meeting rooms, purchase of office supplies, refreshments and other expenses of membership banquets or meetings, and food and refreshments for the entertainment of groups other than the officers and membership on official business;

• office supplies, equipment, and facilities furnished to officers by your organization for use in conducting official business; and

• maintenance and operating costs of your organization's assets other than automobiles owned or leased by your organization and assigned to officers. The software will enter on Line 8, Columns (D) and (E) the totals from any continuation pages for Item 24.

Column (F): The software will add Columns (D) and (E) for each of Lines 1 through 8 and enter the totals in Column (F).

The software will add Lines 1 through 8, Columns (D) through (F), and enter the totals on Line 9.

Enter on Line 10 the total amount of withheld taxes, payroll deductions, and other deductions. Disbursements for the transmittal of withheld taxes, payroll deductions, and other deductions must be reported in Item 54 (Other Disbursements). Any portion of withheld taxes or any payroll or other deductions which have not been transmitted at the end of the reporting period are liabilities of your organization and must be reported in Item 35. Payroll or other

deductions retained by your labor organization (such as repayments of loans made) must be fully explained in Item 56.

The software subtracts Line 10, from Line 9, Column F, and enters the difference on Line 11 and in Item 45 (To Officers).

STATEMENT A
ASSETS AND LIABILITIES

The software will pre-fill Columns A and C (Start of Reporting Period) from your organization's report for the previous fiscal year. If the data is inaccurate, however, it can be edited manually. Be sure to explain any changes in Item 56.

ASSETS

25. CASH — Enter the total of all your organization's cash on hand and on deposit at the start and end of the reporting period in Columns (A) and (B), respectively. Include all cash on hand, such as undeposited cash, checks, and money orders; petty cash; and cash in safe deposit boxes. Cash on deposit includes funds in banks, credit unions, and other financial institutions, such as checking accounts, savings accounts, certificates of deposit, and money market accounts. Also include any interest credited to your organization's account during the reporting period.

NOTE: *The checking account balances reported should be obtained from your organization's books as reconciled with the balances shown on bank statements.*

26. LOANS RECEIVABLE — Enter the total of all loans owed to your organization at the start and end of the reporting period in Columns (A) and (B), respectively. Include all direct and indirect loans (whether or not evidenced by promissory notes or secured by mortgages) owed to your organization by individuals, business enterprises, benefit plans, and other entities including labor organizations. An example of an indirect loan is a disbursement by your organization to an educational institution for the tuition expense of an officer, employee, or member which must be repaid to your organization by that individual. Do not include investments in corporate bonds or mortgages purchased on a block basis through a bank or similar institution which must be reported in Item 28 (Investments).

27. U.S. TREASURY SECURITIES — Enter the total value of all U.S. Treasury securities as shown on your organization's books at the start and end of the reporting period in Columns (A) and (B), respectively. If the value reported is different from the original cost, the original cost must be reported in Item 56. Other U.S. Government obligations, state and municipal bonds, and foreign government securities must be reported in Item 28 (Investments).

28. INVESTMENTS — Enter in Columns (A) and (B), respectively, the total book value at the start and end of the reporting period of all investments other than U.S. Treasury securities. The book value of these investments is the lower of cost or market value.

29. FIXED ASSETS — Enter in Columns (A) and (B), respectively, the book value at the start and end of the reporting period of all fixed assets, such as land, buildings, automobiles, and office furniture and equipment owned by your organization. The book value of fixed assets is cost less depreciation.

30. OTHER ASSETS — Enter in Columns (A) and (B),
respectively, the total value as shown on your organization's books at the start and end of the reporting period of all assets (such as accounts receivable, utility deposits, or travel advances which are not considered loans as explained in the instructions for Item 18) which have not been reported in Items 25 through 29.

31. TOTAL ASSETS — The software adds Items 25 through 30, Columns (A) and (B), and enters the respective totals in Item 31.

LIABILITIES

32. ACCOUNTS PAYABLE — Enter the total amount of your organization's accounts payable at the start and end of the reporting period in Columns (C) and (D), respectively. Ordinarily, accounts payable are those obligations incurred on an open account for goods and services rendered.

33. LOANS PAYABLE — Enter in Columns (C) and (D), respectively, the total amount of all loans owed by your organization at the start and end of the reporting period, including those represented by notes. Do not include loans secured by mortgages or similar liens on real property (land or buildings) which must be reported in Item 34 (Mortgages Payable).

34. MORTGAGES PAYABLE — Enter the total amount of your organization's obligations which were secured by mortgages or similar liens on real property (land or buildings) at the start and end of the reporting period in Columns (C) and (D), respectively.

35. OTHER LIABILITIES — Enter in Columns (C) and (D), respectively, the total amount as shown on your organization's books at the start and end of the reporting period of all other liabilities not reported in Items 32 through 34.

36. TOTAL LIABILITIES — The software adds Items 32 through 35, Columns (C) and (D), and enters the respective totals in Item 36.

37. NET ASSETS — The software subtracts Item 36 (Total Liabilities), Column (C) from Item 31 (Total Assets), Column (A) and enters the difference in Item 37, Column (C). The software also subtracts Item 36, Column (D) from Item 31, Column (B) and enters the difference in Item 37, Column (D).

STATEMENT B
RECEIPTS AND DISBURSEMENTS

Under Statement B, receipts must be recorded when money is actually received by the labor organization and disbursements must be recorded when money is actually paid out by the labor organization.

The purpose of Statement B is to report the flow of cash in and out of your organization during the reporting period. Transfers between separate bank accounts or between special funds of your organization, such as vacation or strike funds, do not represent the flow of cash in and out of your organization. Therefore, these transfers should not be reported as receipts and disbursements of your organization. For example, do not report a transfer of cash from your organization's savings account to its checking account. Likewise, the use of funds reported in Item 25 (Cash) to purchase certificates of deposit and the redemption of certificates of deposit should not be reported in Statement B.

Since Statement B reports all cash flowing in and out of your organization, "netting" is not permitted. "Netting" is the offsetting of receipts against disbursements and reporting only the balance (net) as either a receipt or disbursement. For example, if an officer received $1,000 from your organization for convention expenses, used only $800 and returned the remaining $200, the $1,000 disbursement must be reported in Item 24 and the $200 receipt must be reported in Item 43. It would be incorrect to report only an $800 net disbursement to the officer.

Receipts and disbursements by an agent on behalf of your organization are considered receipts and disbursements of your organization and must be reported in the same detail as other receipts and disbursements. For example, if your organization owns a building managed by a rental agent, the agent's rental receipts and disbursements for expenses must be reported on your organization's Form LM-3. Also, if your organization's parent body or an intermediate body functions as an agent receiving and disbursing funds of your organization to third parties, these receipts

and disbursements must be reported on your organization's Form LM-3.

CASH RECEIPTS

38. DUES — Enter the total dues received by your organization. Include dues received directly by your organization from members, dues received from employers through a checkoff arrangement, and dues transmitted to your organization by a parent body or other affiliate. Report the full dues received, including any portion that will later be transmitted to an intermediate or parent body as per capita tax. Also report in Item 38 payments in lieu of dues received from any nonmember employees as a condition of employment under a union security provision in a collective bargaining agreement.

If an intermediate or parent body receives dues checkoff directly from an employer on behalf of your organization, do not report in Item 38 the portion retained by that organization for per capita tax or other purposes, such as a special assessment. Any amounts retained by the intermediate body or parent body other than per capita tax must be explained in Item 56. For example, if the intermediate body or parent body retained $500 of your organization's dues checkoff as payment for supplies purchased from that body by your organization, this should be explained in Item 56 of your organization's Form LM-3 but the $500 should not be reported as a receipt or a disbursement on your organization's Form LM-3. However, if the intermediate body or parent body disbursed part of your organization's dues checkoff on your organization's behalf, this amount should be included in Item 38 and in the appropriate disbursement item on your organization's Form LM-3. For example, if the intermediate body or parent body disbursed $500 of your organization's dues checkoff to an attorney who had provided legal services to your organization, this amount should be reported in Item 38 and as a disbursement in Item 49 (Professional Fees) of your organization's Form LM-3.

Do not report in Item 38 dues which your organization collected on behalf of other organizations for transmittal to them. For example, if your organization received dues from a member of an affiliate who worked in your organization's jurisdiction, the dues collected on the affiliate's behalf must be reported in Item 43.

39. PER CAPITA TAX — Enter the total per capita tax received by your organization if your organization is an intermediate or parent body; otherwise, enter "0" in Item 39. Include the per capita tax portion of dues received directly by your organization from members of affiliates, per capita tax received from subordinates, either directly or through intermediaries, and the per capita tax portion of dues received through a checkoff arrangement whereby local dues are remitted directly to an intermediate or parent body by employers. Do not include dues collected on behalf of subordinate organizations for transmittal to them. For example, if a parent body received dues checkoff directly from an employer and returned the local's portion of the dues, the parent body must report the dues received on behalf of the local in Item 43 (Other Receipts).

40. FEES, FINES, ASSESSMENTS, AND WORK PERMITS — Enter your organization's receipts from fees, fines, assessments, and work permits. Receipts by your organization on behalf of affiliates for transmittal to them must be reported in Item 43 (Other Receipts).

41. INTEREST AND DIVIDENDS — Enter the total amount of interest and dividends received by your organization from savings accounts, bonds, mortgages, loans, investments, and all other sources.

42. SALE OF INVESTMENTS AND FIXED ASSETS — Enter the net amount received by your organization for all investments (including U.S. Treasury securities) and fixed assets sold. Do not include amounts received from the sale or redemption of investments which

were promptly reinvested (i.e., "rolled over") during the reporting period.

The amount to be excluded for each reinvestment is the lower of the following:

• the original cost of the investment sold;

• the amount reinvested when the amount received from the sale was less than the investment's original cost; or

• the amount reinvested when only a portion of the amount received from the sale was actually reinvested. Interest and dividends received during the reporting period must be reported in Item 41.

Any portion of the amount due your organization (gross sales price less deductions for selling expenses) from sales of investments and fixed assets which has not been received by the end of the reporting period must be reported in Item 30 (Other Assets). However, if a mortgage or note is taken back, it must be reported in Item 26 (Loans Receivable).

43. OTHER RECEIPTS — Enter all receipts of your organization other than those reported in Items 38 through 42, including proceeds from the sale of supplies, loans obtained, repayments of loans made, rents, and funds collected for transmittal to third parties.

44. TOTAL RECEIPTS — The software adds Items 38 through 43 and enters the total in Item 44.

CASH DISBURSEMENTS

45. TO OFFICERS — The software enters the total reported on Line 11 of Item 24.

46. TO EMPLOYEES — Enter the total of all salaries, allowances, travel advances which are not considered loans as explained in the instructions for Item 18, and other direct and indirect disbursements (less deductions for FICA, withheld taxes, etc.) to employees of your organization during the reporting period. Include disbursements to individuals other than officers who receive lost time payments even if your organization does not consider them to be employees or does not make any other direct or indirect disbursements to them.

NOTE: *The following worktable may be used to determine the amount to be reported in Item 46:*

A. Total Gross Salaries, Allowances, $_____
and Other Disbursements to Employees (before withheld taxes and other deductions)

B. Subtract: Total Withheld Taxes $_____
and Other Deductions

C. Net Disbursements to Employees $_____

The amount on Line C should agree with the amount reported in Item 46.

47. PER CAPITA TAX — Enter your organization's total amount of per capita tax paid as a condition or requirement of affiliation with your parent national or international union, state and local central bodies, a conference, joint or system board, joint council,
federation, or other labor organization.

48. OFFICE AND ADMINISTRATIVE EXPENSE — Enter your organization's total disbursements for its ordinary office and administrative expenses, for example, rent, utilities, office supplies, postage, subscriptions, fidelity bond premiums, etc.

As explained in the instructions for Item 24, Column (E), disbursements for hotel rooms or for transportation by public carrier of officers and employees on official business may be reported in Item 48 when payment is made directly to the provider or through a credit arrangement. Do not include in Item 48 salaries, allowances, or other direct and indirect disbursements to officers and

employees which must be reported in Items 45 and 46.

Also report in Item 48 all taxes assessed against and paid by your organization, including your organization's FICA taxes as an employer. Do not include disbursements for the transmittal of taxes withheld from the salaries of officers and employees which must be reported in Item 54. Also, do not include indirect taxes, such as sales and excise taxes, for purchases reported in other disbursement items.

49. PROFESSIONAL FEES — Enter your organization's total disbursements for "outside" legal and other professional services (auditing, economic research, computer consulting, arbitration, etc.). Include any disbursements made for the expenses of individuals or firms providing professional services to your organization. Do not include direct and indirect disbursements to officers and employees which must be reported in Items 45 and 46.

50. BENEFITS — Enter the total of all direct and indirect benefit disbursements made by your organization. Direct benefit disbursements are those made to officers, employees, members, and their beneficiaries from your organization's funds. Indirect benefit disbursements are those made from your organization's funds to a separate and independent entity, such as a trust or insurance company, which in turn and under certain conditions will pay benefits to the covered individuals. An example of an indirect benefit disbursement is the premium on group life insurance.

51. CONTRIBUTIONS, GIFTS, AND GRANTS — Enter the total of all disbursements for contributions, gifts, and grants made by your organization.

52. PURCHASE OF INVESTMENTS AND FIXED ASSETS — Enter the total disbursements for all investments and fixed assets purchased by your organization. Do not include any unpaid balances still owed which should be reported in Item 33 (Loans Payable) or Item 34 (Mortgages Payable). Also, do not include disbursements for reinvestment in U.S. Treasury securities and investments of amounts received from sales of U.S. Treasury securities and investments as explained in the instructions for Item 42 (Sale of Investments and Fixed Assets). The amount to be excluded from Item 52 for reinvestment must be the same as the amount which was excluded from Item 42 for reinvestment.

53. LOANS MADE — Enter the total disbursements for loans made by your organization. Include all direct and indirect loans made to individuals, business enterprises, and other organizations, regardless of amount.

NOTE: *Section 503(a) of the LMRDA prohibits labor organizations from making direct or indirect loans to any officer or employee of the labor organization which results in a total indebtedness on the part of such officer or employee to the labor organization in excess of $2,000 at any time.*

54. OTHER DISBURSEMENTS — Enter all disbursements made by your organization not reported in Items 45 through 53, including fees, fines, assessments, supplies for resale, repayments of loans obtained, transmittals of funds collected for third parties, educational and publicity expenses, withholding taxes, and payments for the account of affiliates and other third parties.

55. TOTAL DISBURSEMENTS — The software adds Items 45 through 54 and enters the total in Item 55.

NOTE: *The following worktable may be used to determine that the figures for receipts, disbursements, and cash are correctly reported on your organization's Form LM-3:*

A. Cash at Start of Reporting
$_____

Period — Item 25, Column (A)

B. Add: Total Receipts — Item 44
$_____

C. Total of Lines A and B $_____

D. Subtract: Total Disbursements
$_____

— Item 55

E. Cash at End of Period $_____

If Line E does not equal the amount reported in Item 25, Column (B), there is an error in your organization's report which should be corrected.

ADDITIONAL INFORMATION AND SIGNATURES

56. ADDITIONAL INFORMATION — Use Item 56 to provide additional information as indicated on Form LM-3 and in Section XII of these instructions. Enter the number of the item to which the information relates in the Item Number column if the software has not entered the number.

57-58. SIGNATURES — Electronically submitted forms must be signed digitally. To complete the electronic signature option you must have purchased an electronic digital signature. This digital signature enables you to electronically sign your report so that you can submit it to OLMS. For information on obtaining a digital signature please visit http://www.dol.gov/esa/olms/regs/compliance/digital-signatures.htm. If the duties of the principal executive or principal financial officer are performed by an officer other than the president or treasurer, the report may be signed by the other officer. If the report is signed by an officer other than the president or treasurer, enter the correct title in Item 57 or 58 from the drop down box, and explain in Item 56 why the president or treasurer did not sign the report. Before signing the form, enter the date the report was signed and the telephone number at which the signatories conduct official business; you do not have to report a private, unlisted telephone number.

For forms that are printed and mailed to OLMS, have the officers sign it manually and mail it to the Office of Labor-Management Standards, 200 Constitution Ave., NW, Room N-5616, Washington, DC 20210-0001. Original signatures are required on the printed Form LM-3 filed with OLMS; stamped or mechanical signatures are not acceptable. If the duties of the principal executive or principal financial officer are performed by an officer other than the president or treasurer, the report may be signed by the other officer. If the report is signed by an officer other than the president or treasurer, cross out the printed title, enter the correct title in Item 57 or 58, and explain in Item 56 why the president or treasurer did not sign the report. Enter the date the report was signed and the telephone number at which the signatories conduct official business; you do not have to report a private, unlisted telephone number.

XII. LABOR ORGANIZATIONS THAT HAVE CEASED TO EXIST

If your organization has gone out of existence as a reporting labor organization, the last president and treasurer or the officials responsible for winding up the affairs of your organization must file a terminal financial report for the period from the beginning of the fiscal year to the date of termination. A terminal financial report must be filed if your organization has gone out of business by disbanding, merging into another organization, or being merged and consolidated with one or more labor organizations to form a new labor organization. A terminal financial report is not required if your organization changed its affiliation but continues to function as a separate reporting labor organization.

The terminal financial report may be filed on Form LM- 3 if your organization filed its previous annual report on Form LM-3 and your organization's total annual receipts, as defined in Section II of these instructions, were less than $250,000 for the part of the last fiscal year during which your organization existed or less than $200,000 if

your organization's last fiscal year began before July 1, 2004. (If total annual receipts were more than these limits, your organization must use Form LM-2 to file its terminal financial report.) Your organization's terminal financial report may be filed electronically or may be printed, manually signed, and submitted to the U.S. Department of Labor, Employment Standards Administration, Office of Labor-Management Standards, 200 Constitution Avenue, NW, Room N-5616, Washington, DC 20210- 0001, within 30 days after the date of termination.

To complete a terminal report on Form LM-3, follow the instructions in Section XI and, in addition:

• Enter the date your organization ceased to exist in Item 2 after the word "Through."

• Select Item 3(b) indicating that your organization ceased to exist during the reporting period and that this is your organization's terminal Form LM-3.

• Enter "3(b)" in the Item Number column in Item 56 and provide a detailed statement of the reason your organization ceased to exist. Also report in Item 56 plans for the disposition of your organization's cash and other assets, if any (for example, transfer of cash and assets to the parent body). Provide the name and address of the person or organization that will retain the records of the terminated organization. If your organization merged with another labor organization, report that organization's name, address, and 6-digit file number.

Contact the nearest OLMS field office listed below if you have questions about filing a terminal report.

SELECTED PROVISIONS FROM THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT REGULATIONS

29 C.F.R. § 403.4 Simplified annual reports for smaller labor organizations.

(a)(1) If a labor organization, not in trusteeship, has gross annual receipts totaling less than $250,000 for its fiscal year, it may elect, subject to revocation of the privilege as provided in section 208 of the LMRDA, to file the annual financial report called for in section 201(b) of the LMRDA and Sec. 403.3 of this part on United States Department of Labor Form LM-3 entitled "Labor Organization Annual Report," in accordance with the instructions accompanying such form and constituting a part thereof.

(2) If a labor organization, not in trusteeship, has gross annual receipts totaling less than $10,000 for its fiscal year, it may elect, subject to revocation of the privileges as provided in section 208 of the Act, to file the annual financial report called for in section 201(b) of the Act and § 403.3 on United States Department of Labor Form LM-4 entitled "Labor Organization Annual Report" in accordance with the instructions accompanying such form and constituting a part thereof.

(b) The Secretary may revoke a labor organization's privilege to file the Form LM-3 simplified annual report described in § 403.4(a)(1) and require the labor organization to file the Form LM-2 as provided in § 403.3, if the following conditions are met:

(1) The Secretary has provided notice to the labor organization that revocation is possible if conditions warranting revocation are not remedied;

(2) The Secretary has undertaken such investigation as the Secretary deems proper revealing:

(i) The date the labor organization's Form LM-3 was due has passed and no Form LM-3 has been received; or

(ii) The labor organization filed the Form LM-3 with a material deficiency and failed to remedy this deficiency after notification by

the Secretary that the report was deficient; or

(iii) Other circumstances exist that warrant revocation of the labor organization's privilege to file the Form LM-3.

(3) The Secretary has provided notice to the labor organization of a proposed decision to revoke the filing privilege, the reason for such revocation, and an opportunity for the labor organization to submit in writing a position statement with relevant factual information and argument regarding:

(i) the existence of the delinquency or the deficiency (including whether a deficiency is material) or other circumstances alleged in the notice;

(ii) the reason for the delinquency, deficiency or other cited circumstance and whether it was caused by factors reasonably outside the control of the labor organization; and

(iii) any other factors, including those in mitigation, the Secretary should consider in making a determination regarding whether the labor organization's privilege to file the Form LM-3 should be revoked.

(4) The Secretary (or a designee who has not participated in the investigation), after review of all the information collected and provided, shall issue a determination in writing to the labor organization. If the Secretary determines that the privilege shall be revoked, the Secretary will inform the labor organization of the reasons for the determination and order it to file the Form LM-2 for such reporting periods as the Secretary finds appropriate.

(c) A labor organization that receives a notice as set forth in §403.4(b)(3) must submit its written statement of position and any supporting facts, evidence, and argument by mail, hand delivery, or by alternative means specified in the notice to the Office of Labor-Management Standards (OLMS) at the address provided in the notice within 30 days after the date of the letter proposing revocation. If the 30th day falls on a Saturday, Sunday, or Federal holiday, the submission will be timely if received by OLMS on the first business day after the 30th day. Absent a timely submission to OLMS, the proposed revocation shall take effect automatically unless the Secretary in his or her discretion determines otherwise.

(d) The Secretary's determination shall be the Department's final agency action on the revocation.

(e) For purposes of this section, a deficiency is "material" if in the light of surrounding circumstances the inclusion or correction of the item in the report is such that it is probable that the judgment of a reasonable person relying upon the report would have been changed or influenced.

(f) A local labor organization not in trusteeship, which has no assets, no liabilities, no receipts and no disbursements during the period covered by the annual report of the national organization with which it is affiliated need not file the annual report required by § 403.2 if the following conditions are met:

(1) It is governed by a uniform constitution and bylaws filed on its behalf pursuant to § 402.3(b) of this chapter, and does not have governing rules of its own;

(2) Its members are subject to uniform fees and dues applicable to all members of the local labor organizations for which such simplified reports are submitted;

(3) The national organization with which it is affiliated assumes responsibility for the accuracy of, and submits with its annual report, a separate letter-size sheet for each local labor organization containing the following information with respect to each local organization in the format illustrated below as part of this regulation:

(i) The name and designation number or other identifying information;

(ii) The file number which the Office of Labor-Management Standards has assigned to it;

(iii) The mailing address;

(iv) The beginning and ending date of the reporting period which must be the same as that of the report for the national organization;

(v) The names and titles of the president and treasurer or corresponding principal officers as of the end of the reporting period;

(4) At least thirty days prior to first submitting simplified annual reports in accordance with this section, the national organization notifies the Office of Labor-Management Standards in writing of its intent to begin submitting simplified annual reports for affiliated local labor organizations;

(5) The national organization files the terminal report required by 29 CFR 403.5(a) on Form LM-3 or LM-4, as may be appropriate, clearly labeled on the form as a terminal report, for any local labor organization which has lost its identity through merger, consolidation, or otherwise if the national organization filed a simplified annual report on behalf of the local labor organization for its last reporting period; and

(6) The national organization with which it is affiliated assumes responsibility for the accuracy of, and submits with its annual report and the simplified annual reports for the affiliated local labor organizations, the following certification properly completed and signed by the president and treasurer of the national organization:

CERTIFICATION

We, the undersigned, duly authorized officers of [name of national organization], hereby certify that the local labor organizations individually listed on the attached documents come within the purview of 29 CFR 403.4(b) for the reporting period from [beginning date of national organization's fiscal year] through [ending date of national organization's fiscal year], namely:

(1) they are local labor organizations; (2) they are not in trusteeship; (3) they have no assets, liabilities, receipts, or disbursements; (4) they are governed by a uniform constitution and bylaws, and fifty copies of the most recent uniform constitution and bylaws have been filed with the Office of Labor-Management Standards; (5) they have no governing rules of their own; and (6) they are subject to the following uniform schedule of fees and dues: [specify schedule for dues, initiation fees, fees required from transfer members, and work permit fees, as applicable].

Each document attached contains the specific information called for in 29 CFR 403.4(b)(3)(i)-(v), namely: (i) the local labor organization's name and designation number; (ii) the file number assigned the organization by the Office of Labor-Management Standards; (iii) the local labor organization's mailing address; (iv) the beginning and ending date of the reporting period; and (v) the names and titles of the president and treasurer or corresponding principal officers of the local labor organization as of [the ending date of the national organization's fiscal year].

Furthermore, we certify that the terminal reports required by 29 CFR 403.4(b)(5) and 29 CFR 403.5(a) have been filed for any local labor organizations which have lost their identity through merger, consolidation, or otherwise on whose behalf a simplified annual report was filed for the last reporting period.

(Format for Simplified Annual Reporting)

SIMPLIFIED ANNUAL REPORT

Affiliation name:

_____

Designation name and number:

_____

Unit name:

_____

Mailing address:

_____

Name of person:

_____

Number and street:

_____

City, State and zip:

_____

File number:

_____

Period covered:

_____

From Through

_____

Names and Titles of president and treasurer or corresponding principal officers

_____

For certification see NHQ file folder file number:

President

_____

Where signed

_____

Date

_____

Treasurer

_____

Where signed

_____

Date

_____

Note: Forms LM-3 and LM-4 were revised at 58 FR 67594, December 21, 1993.

[28 FR 14383, Dec. 27, 1963, as amended at 37 FR 10669, May 26, 1972; 41 FR 27318, July 2, 1976; 42 FR 59070, Nov. 15, 1977; 45 FR 7525, Feb. 1, 1980; 50 FR 31309, 31310, Aug. 1, 1985; 57 FR 49290, 49357, Oct. 30, 1992; 58 FR 28308, May 12, 1993; 62 FR 6092, Feb. 10, 1997; 64 FR 71623, Dec. 21, 1999; 65 FR 21141, April 20, 2000]

OLMS Field Offices

The Office of Labor-Management Standards has field offices located in the following cities to assist you if you have any questions concerning LMRDA and CSRA reporting requirements.

Atlanta, GA
Boston, MA
Buffalo, NY
Chicago, IL
Cincinnati, OH
Cleveland, OH
Dallas, TX
Denver, CO
Detroit, MI
Los Angeles, CA
Milwaukee, WI
Nashville, TN
New Orleans, LA
New York, NY
Philadelphia, PA
Pittsburgh, PA
St. Louis, MO
San Francisco, CA
Seattle, WA
Washington, DC

Consult local telephone directory listings under United States Government, Labor Department, Office of Labor-Management Standards, for the address and phone number of your nearest field office. This information is also available at www.olms.dol.gov.

Copies of labor organization annual financial reports, employer reports, labor relations consultant reports, and other reports, filed for the year 2000 and after can be viewed and printed at www.unionreports.gov. Copies of reports for the year 1999 and earlier can be ordered through the website.

Information about OLMS, including key personnel and telephone numbers, compliance assistance materials, the text of the LMRDA, and related Federal Register and Code of Federal Regulations (CFR) documents, is also available on the Internet at: www.olms.dol.gov.

For questions on Form LM-3 and the instructions, call the Department of Labor's toll-free number at: 1-866-4-USA-DOL (1-866-487-2365) or email olms-public@dol.gov.

If you would like to receive via email periodic updates from the Office of Labor-Management Standards, including information about the LM forms, enforcement results, and compliance assistance programs, you may subscribe to the OLMS Mailing List from the OLMS Web site: www.olms.dol.gov.

[FR Doc. E9–503 Filed 1–16–09; 8:45 am]
BILLING CODE 4510–CM–C

Federal Register

Wednesday,
January 21, 2009

Part III

Department of Labor

Employee Benefits Security Administration

29 CFR Part 2550

Investment Advice—Participants and Beneficiaries; Final Rule

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2550

RIN 1210–AB13

Investment Advice—Participants and Beneficiaries

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Final rule.

SUMMARY: This document contains final rules under the Employee Retirement Income Security Act, and parallel provisions in the Internal Revenue Code of 1986, relating to the provision of investment advice by a fiduciary adviser to participants and beneficiaries in participant-directed individual account plans, such as 401(k) plans, and beneficiaries of individual retirement accounts (and certain similar plans). These rules affect sponsors, fiduciaries, participants and beneficiaries of participant-directed individual account plans, as well as providers of investment and investment advice-related services to such plans.

DATES: These final rules are effective on March 23, 2009.

FOR FURTHER INFORMATION CONTACT: Fred Wong, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693–8500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

Section 3(21)(A)(ii) of the Employee Retirement Income Security Act of 1974 (ERISA) and section 4975(e)(3)(B) of the Internal Revenue Code of 1986 (Code) include within the definition of ''fiduciary'' a person that renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of a plan, or has any authority or responsibility to do so.[1] The prohibited transaction provisions of ERISA and the Code prohibit an investment advice fiduciary from using the authority, control or responsibility that makes it a fiduciary to cause itself, or a party in which it has an interest that may affect its best judgment as a fiduciary, to receive additional fees. As a result, in the absence of a statutory or administrative exemption, fiduciaries are prohibited from rendering investment advice to plan participants regarding investments that result in the payment of additional advisory and other fees to the fiduciaries or their affiliates. Section 4975 of the Code applies similarly to the rendering of investment advice by a fiduciary to an individual retirement account (IRA) beneficiary.

With the growth of participant-directed individual account plans, there has been an increasing recognition of the importance of investment advice to participants and beneficiaries in such plans. Over the past several years, the Department of Labor (Department) has issued various forms of guidance concerning when a person would be a fiduciary by reason of rendering investment advice and when the provision of investment advice might result in prohibited transactions.[2] Most recently, Congress and the Administration, responding to the need to afford participants and beneficiaries greater access to professional investment advice, amended the prohibited transaction provisions of ERISA and the Code, as part of the Pension Protection Act of 2006 (PPA),[3] to permit a broader array of investment advice providers to offer their services to participants and beneficiaries responsible for investment of assets in their individual accounts and, accordingly, for the adequacy of their retirement savings.

Specifically, section 601 of the PPA added a statutory exemption under sections 408(b)(14) and 408(g) of ERISA. Parallel provisions were added to the Code at sections 4975(d)(17) and 4975(f)(8).[4] Section 408(b)(14) sets forth the investment advice-related transactions that will be exempt from the prohibitions of section 406 if the requirements of section 408(g) are met. The transactions described in section 408(b)(14) are: The provision of investment advice to the participant or beneficiary with respect to a security or other property available as an investment under the plan; the acquisition, holding or sale of a security or other property available as an investment under the plan pursuant to the investment advice; and the direct or indirect receipt of compensation by a fiduciary adviser or affiliate in connection with the provision of investment advice or the acquisition, holding or sale of a security or other property available as an investment under the plan pursuant to the investment advice.

On December 4, 2006, the Department published a Request for Information (RFI) in the **Federal Register** soliciting information to assist the Department in the development of regulations under sections 408(b)(14) and 408(g).[5] Specifically, the Department invited interested persons to address the qualifications for the ''eligible investment expert'' that is required to certify that computer models used in connection with the statutory exemption meet the requirements of the statutory exemption. The Department also invited interested persons to provide information to assist the Department in developing procedures to be followed in certifying that a computer model meets the requirements of the statutory exemption. The Department also invited suggestions for a model disclosure form for purposes of the statutory exemption. In response to the RFI, the Department received 24 letters addressing a variety of issues presented by the statutory exemption. These comments were taken into account in developing the proposed regulations described below.

On February 2, 2007, the Department issued Field Assistance Bulletin 2007–01 addressing certain issues presented by the new statutory exemption. This Bulletin affirmed that the enactment of sections 408(b)(14) and 408(g) did not invalidate or otherwise affect prior guidance of the Department relating to investment advice and that such guidance continues to represent the views of the Department.[6] The Bulletin

[1] *See also* 29 CFR 2510.3–21(c) and 26 CFR 54.4975–9(c).

[2] *See* Interpretative Bulletin relating to participant investment education, 29 CFR 2509.96–1 (Interpretive Bulletin 96–1); Advisory Opinion (AO) 2005–10A (May 11, 2005); AO 2001–09A (December 14, 2001); and AO 97–15A (May 22, 1997).

[3] Public Law 109–280, 120 Stat. 780 (Aug. 17, 2006).

[4] Under Reorganization Plan No. 4 of 1978 (43 FR 47713, Oct. 17, 1978), 5 U.S.C. App. 1, 92 Stat. 3790, the authority of the Secretary of the Treasury to issue rulings under section 4975 of the Code has been transferred, with certain exceptions not here relevant, to the Secretary of Labor. Therefore, the references in this notice to specific sections of ERISA should be taken as referring also to the corresponding sections of the Code.

[5] 71 FR 70429. The Department, on the same date, also published an RFI in the **Federal Register** soliciting information to assist the Department in determining, as required by PPA section 601(b)(3), the feasibility of using computer models in connection with individual retirement accounts. 72 FR 70427.

[6] In this regard, the Department cited the following: August 3, 2006 Floor Statement of Senate Health, Education, Labor and Pensions Committee Chairman Enzi (who chaired the Conference Committee drafting legislation forming the basis of H.R. 4) regarding investment advice to participants in which he states, ''It was the goal and objective of the Members of the Conference to keep this advisory opinion [AO 2001–09A, SunAmerica Advisory Opinion] intact as well as other pre-existing advisory opinions granted by the Department. This legislation does not alter the current or future status of the plans and their many participants operating under these advisory opinions. Rather, the legislation builds upon these advisory opinions and provides alternative means for providing investment advice which is protective

also confirmed the applicability of the principles set forth in section 408(g)(10) [Exemption for plan sponsor and certain other fiduciaries] to plan sponsors and fiduciaries who offered investment advice arrangements with respect to which relief under the statutory exemption is not required. Finally, the Bulletin addressed the scope of the fee-leveling requirement for purposes of an eligible investment advice arrangement described in section 408(g)(2)(A)(i).

On August 22, 2008, the Department published in the **Federal Register** proposed regulations that would, upon adoption, implement the provisions of the statutory exemption for the provision of investment advice to participants and beneficiaries under sections 408(b)(14) and 408(g) of the Act and the parallel provisions in the Code (73 FR 49896). On the same date, the Department also published a proposed class exemption that, upon adoption, would establish alternative conditions for granting prohibited transaction relief in connection with the provision of investment advice, and thereby promote the broad availability of investment advice to both participants and beneficiaries in individual account plans and beneficiaries with individual retirement accounts (73 FR 49924). In response to these proposals, the Department received forty-three comment letters.

On October 21, 2008, the Department held a public hearing at which interested members of the public were afforded an additional opportunity to present their views on the proposals. Eight organizations testified at the hearing.

Set forth below is an overview of the final rules and an overview of the major comments received on the proposed rules and class exemption.

B. Overview of Final § 2550.408g–1 and Public Comments

1. General

As noted above, the Department published both a proposed regulation and a proposed class exemption pertaining to the furnishing of investment advice to participants and beneficiaries. In an effort to facilitate both use of and reference to the relief afforded by the statutory exemption and the class exemption, the Department has included both within a single final rule, discussed below. In this regard, a number of paragraph, subparagraph and other reference changes are reflected in the final rule to accommodate the merger of the two proposals, as well as other changes. The provisions applicable to the statutory exemption are set forth in paragraph (b) of the final rule and the provisions applicable to the class exemption are set forth at paragraph (d) of the final rule. In addition to the structural changes, the final rule, while retaining the general requirements and substance of the proposals, reflects a number of clarifying changes made in response to suggestions and concerns from commenters on the proposals. These suggestions and concerns are discussed below.

Paragraph (a)(1) of the final rule describes the general scope of the final rule, referencing both the statutory exemption under sections 408(b)(14) and 408(g)(1) of ERISA and sections 4975(d)(17) and 4975(f)(8) of the Code for certain transactions in connection with the provision of investment advice, as set forth in paragraph (b) of the final rule, and the class exemption, issued pursuant to the Department's authority under section 408(a) of ERISA and section 4975(c)(2) of the Code, for certain transactions not otherwise covered by the statutory exemption. In response to the concerns of some commenters that the conditions of the final rule might be construed as being applicable to all investment advice arrangements, without regard to whether the provision of advice pursuant to such arrangements involves prohibited transactions, paragraph (a)(1) makes clear that the requirements and conditions of the final rule apply solely for the relief described in the final rule and, accordingly, that no inferences should be drawn with respect to the requirements applicable to the provision of investment advice not addressed by the rule.

Commenters also requested that the final rule make clear that nothing in the rule establishes an obligation on the part of plans or plan sponsors to provide investment advice. Other commenters requested that the Department reaffirm its view that neither the statutory exemption under section 408(g)(1) nor the regulations issued thereunder invalidate or otherwise affect prior guidance concerning the circumstances under which the provision of investment advice would not constitute a prohibited transaction. The Department addressed these concerns in paragraphs (a)(2) and (a)(3), respectively. Paragraph (a)(2) provides that nothing contained in ERISA section 408(g)(1), Code section 4975(f)(8), the regulation or the class exemption imposes an obligation on a plan fiduciary or any other party to offer, provide or otherwise make available any investment advice to a participant or beneficiary. Paragraph (a)(3) provides that nothing contained in those same provisions of ERISA and the Code, the regulation or the class exemption invalidates or otherwise affects prior regulations, exemptions, interpretive or other guidance issued by the Department pertaining to the provision of investment advice and the circumstances under which such advice may or may not constitute a prohibited transaction under section 406 of ERISA or section 4975 of the Code.[7]

One commenter requested confirmation that the provision of investment advice pursuant to the final rule will not affect the relief accorded plan fiduciaries under section 404(c) of the Act. It is the view of the Department that there is nothing in the Act, Code, or this final rule that, in connection with the offering or provision of investment advice, would itself affect the availability of relief to plan sponsors or other fiduciaries of the plan (with the exception of the fiduciary advisers) otherwise available under section 404(c). The Department notes that, as explained in Field Assistance Bulletin 2007–1, a plan sponsor or other fiduciary that prudently selects and monitors an investment advice provider will not be liable for the advice furnished by such provider to the plan's participants and beneficiaries, whether or not that advice is provided pursuant to the statutory exemption under section 408(b)(14).[8] It is the view of the Department that section 404(c) and the Department's regulations thereunder do not limit the liability of fiduciary advisers that, pursuant to the exemptions contained in the final rule, specifically assume and acknowledge fiduciary responsibility for the provision of investment advice, within the meaning of section 3(21)(A)(ii) and the regulations issued thereunder, and related transactions; advice that clearly is intended to serve as the primary basis for investment decisions by plan participants and beneficiaries. Section 404(c) provides relief for acts which are the direct and necessary result of a participant's or beneficiary's exercise of control. The investment advice (and related transactions) covered by the exemption and furnished to participants and beneficiaries would not, in the Department's view, be the direct and necessary result of a participant's or

of the interests of plan participants and IRA owners.'' 152 Cong. Rec. S8,752 (daily ed. Aug. 3, 2006) (statement of Sen. Enzi).

[7] *See* Field Assistance Bulletin 2007–1 (Feb. 2, 2007).

[8] *See* section 408(g)(10) and Field Assistance Bulletin 2007–1 for a discussion of a fiduciary's duty to prudently select and monitor investment advisers.

beneficiary's exercise of control and, accordingly, the fiduciary adviser would not be relieved of liability for such advice. See examples at paragraphs (f)(8) and (f)(9) of § 2550.404c–1.

2. Statutory Exemption

a. General

Paragraph (b) of the final rule specifically addresses the statutory exemption and applicable conditions set forth in section 408(g)(1) of the Act. Like the proposal, these provisions generally track the requirements under section 408(g)(1) that must be satisfied in order for the investment advice-related transactions described in section 408(b)(14) to be exempt from the prohibitions of section 406.

Paragraph (b)(1) provides that for purposes of the relief afforded for transactions described in section 408(b)(14) (and section 4975(d)(17) of the Code) the investment advice must be provided by a fiduciary adviser under an ''eligible investment advice arrangement.'' The transactions described in section 408(b)(14) include the provision of investment advice to a participant or beneficiary with respect to a security or other property available as an investment under the plan; the acquisition, holding or sale of a security or other property available as an investment under the plan pursuant to the advice; and the direct or indirect receipt of fees or other compensation by the fiduciary adviser or an affiliate in connection with the provision of the advice or in connection with the acquisition, holding or sale of the security or other property.

With regard to the scope of relief, one commenter requested that the Department clarify that transactions covered by the regulation and the class exemption include extensions of credit and similar transactions necessary to the execution and settlement of trades of securities. It is the view of the Department that transactions in connection with the provision of investment advice described in section 3(21)(A)(ii) of ERISA include, for purposes of the statutory exemption and class exemption, otherwise permissible transactions necessary for the efficient execution and settlement of trades of securities, such as extensions of credit in connection with settlements.

One commenter requested that the relief afforded by the regulation and class exemption be extended to investment advice provided to plan sponsors generally. The Department notes that the transactions described in 408(b)(14), with respect to which relief is given if the requirements of section 408(g)(1) are satisfied, are specifically limited to certain transactions that involve the provision of investment advice to a participant or beneficiary of a plan. The scope of both the regulation and the related class exemption, therefore, were limited to these transactions. While advice provided to plan fiduciaries such as plan sponsors may well be similar in many respects to advice provided to participants and beneficiaries, the Department does not believe it would be appropriate, as part of this final rule, without further notice and comment, to extend relief to transactions involving investment advice provided to plan sponsors. Accordingly, the Department has not adopted this suggestion.

One commenter requested that the Department confirm that advice to a participant or beneficiary concerning the selection of an investment manager to manage some or all of the participant's or beneficiary's assets constitutes the provision of investment advice within the meaning of section 3(21)(A)(ii) of ERISA for purposes of the statutory exemption and the class exemption. It has long been the view of the Department that the act of making individualized recommendations of particular investment managers to plan fiduciaries may constitute the provision of investment advice within the meaning of section 3(21)(A). The fiduciary nature of that advice does not, in the Department's view, change merely because the advice is being given to a plan participant or beneficiary. Accordingly, it is the view of the Department that the recommending of investment managers to participants and beneficiaries may constitute the provision of investment advice for purposes of both the statutory and class exemption contained in this final rule.

Paragraph (b)(2) provides that, for purposes of section 408(g)(1) of the Act and 4975(f)(8) of the Code, an ''eligible investment advice arrangement'' is an arrangement that meets the requirements of paragraph (b)(3), applicable to arrangements that use fee-leveling, or paragraph (b)(4), applicable to arrangements that use computer models, or both.

b. Arrangements using fee-leveling

Paragraph (b)(3) sets forth the requirements applicable to investment advice arrangements that use fee-leveling under the statutory exemption. Paragraph (b)(3)(i) delineates the specific requirements that must be met. In this regard, paragraph (b)(3)(i)(A) of the final rule, like the proposal, requires that any investment advice must be based on generally accepted investment theories that take into account historic returns of different asset classes over defined periods of time, noting that additional considerations are not precluded from being taking into account.

One commenter recommended that the investment advice also take into account investment management and other fees attendant to the recommended investment(s). The Department agrees that the fees and expenses attendant to an investment are an important consideration and should be factored into individualized recommendations. Given the Department's various regulatory initiatives directed toward enhancing the consideration of investment-related fees and expenses by plan fiduciaries and plan participants and beneficiaries,[9] the Department believes that it is reasonable to expect fiduciary advisers, as well as their computer models, to take such fees and expenses into account in providing investment advice to the plan participants and beneficiaries. The Department, therefore, has added a new provision, at paragraph (b)(3)(i)(B), requiring arrangements that utilize fee-leveling to take into account investment management and other fees and expenses attendant to the recommended investments. Similar changes appear in paragraph (b)(4)(i)(B) for arrangements that use computer models, and paragraph (d)(6)(i)(B), applicable to arrangements for providing advice under the class exemption.

Paragraph (b)(3)(i)(C) of the final rule requires that arrangements utilizing fee-leveling must take into account certain personal information furnished by a participant or beneficiary. In the proposal, this information related to age, life expectancy, retirement age, risk tolerance, other assets or sources of income and investment preferences. The Department received a number of comments on this provision. Many of the commenters requested clarification that the delineated factors were not mandatory, some of the commenters noting that the fiduciary adviser may not have the information, participants may not be willing to give the information or the information they furnish may be incomplete. Other commenters recommended that the

[9] *See* ''Fiduciary Requirements for Disclosure in Participant-Directed Individual Account Plans,'' 73 FR 43013 (July 23, 2008) (proposed rule); ''Reasonable Contract or Arrangement under Section 408(b)(2)—Fee Disclosure; Proposed Rule,'' 73 FR 70987 (Dec. 13, 2007); and Notice of adoption of revisions to annual return/report forms, 72 FR 64731, 64788–794, 64824–28 (Nov. 16, 2007) (form and instructions for the Schedule C (From 5500), ''Service Provider Information'').

information focus on ''time horizons'' rather than life expectancy or retirement age, noting the use of ''time horizons'' by the Financial Industry Regulatory Authority (FINRA) in its guidance on determining the suitability of a recommendation.

For purposes of the final rule, the Department retained the factors delineated in the statute, section 408(g)(3)(B)(ii) of ERISA, as examples of the information investment advice should be capable of taking into account. The Department also has included in the final rule, as an additional factor, information pertaining to the participant's or beneficiary's current investments in designated investment options. The Department believes that these factors are so fundamental to meaningful investment advice, the Department is applying the personal information requirement to all advice provided under the statutory exemption and class exemption. However, the Department notes that the information is only required to be taken into account to the extent that a participant or beneficiary actually provides such information. There is no obligation, therefore, for a fiduciary adviser to factor in personal information that it does not have or that the participant or beneficiary fails or refuses to provide. Rather, the fiduciary adviser is merely required to request the personal information described in the final rule, and utilize such information only to the extent furnished. The Department has modified the text of the final rule to provide this clarification. The Department also has modified the language of the final rule to reference ''time horizons,'' and by parenthetical citation to life expectancy and retirement age as examples of such time horizons. Similar changes are reflected in paragraph (b)(4)(i)(C), for arrangements utilizing computer models, and paragraph (d)(6)(i)(C), applicable to arrangements for providing advice under the class exemption.

Paragraphs (b)(3)(i)(D) and (E) of the final rule set forth the limitations on fees and compensation at the employee, agent and registered representative level and the fiduciary adviser level, respectively, applicable to arrangements utilizing fee-leveling under the statutory exemption. These limitations are unchanged from the proposal. Paragraph (b)(3)(i)(D) provides that any fees or other compensation (including salary, bonuses, awards, promotions, commissions or other things of value) received, directly or indirectly, by *any employee, agent or registered representative that provides investment advice on behalf of a fiduciary adviser* cannot vary depending on the basis of any investment option selected by a participant or beneficiary. Paragraph (b)(3)(i)(E) provides that any fees (including any commission or other compensation) received by *the fiduciary adviser* for investment advice or with respect to the sale, holding, or acquisition of any security or other property for purposes of investment of plan assets may not vary depending on the basis of any investment option selected by a participant or beneficiary.

While a number of commenters supported the Department's application of the fee-leveling requirement, some commenters objected to the Department's implementation of the statutory provision, arguing that Congress, in an effort to eliminate the potential for conflicts of interest, intended the fee-leveling requirement to encompass not only the fiduciary adviser but also affiliates of the fiduciary adviser. The Department disagrees with this interpretation of the section 408(g)(2)(A)(i). Shortly after enactment of the PPA, the Department issued Field Assistance Bulletin 2007–1 (February 2, 2007) setting forth its legal analysis of the fee-leveling requirements in section 408(g)(2)(A)(i) of the Act.

In that Bulletin, the Department noted that it is clear from section 408(g)(2)(A)(i) that only the fees or other compensation of the fiduciary adviser may not vary. The Department explained that, in contrast to other provisions of section 408(b)(14) and section 408(g), section 408(g)(2)(A)(i) references only the fiduciary adviser, not the fiduciary adviser or an affiliate. Inasmuch as a person, pursuant to section 408(g)(11)(A), can be a fiduciary adviser only if that person is a fiduciary of the plan by virtue of providing investment advice, an affiliate of a registered investment adviser, a bank or similar financial institution, an insurance company, or a registered broker dealer will be subject to the varying fee limitation only if that affiliate is providing investment advice to plan participants and beneficiaries. The Department further explained that, consistent with earlier guidance in this area, if the fees and compensation received by an affiliate of a fiduciary that provides investment advice do not vary or are offset against those received by the fiduciary for the provision of investment advice, no prohibited transaction would result solely by reason of providing investment advice and thus there would be no need for a prohibited transaction exemption, such as provided under sections 408(b)(14) and 408(g).[10] The Department concluded that, for purposes of section 408(g)(2)(A)(i), Congress could not have intended for the requirement that fees not vary depending on the basis of any investment options selected to extend to affiliates of the fiduciary adviser, unless, of course, the affiliate is also a provider of investment advice to a plan. This position continues to reflect the Department's legal analysis of section 408(g)(2)(A)(i) and, therefore, is reflected in the fee-leveling provisions of the final regulation.

With regard to those commenters concerned about potential conflicts of interest influencing the investment advice recommendations, the Department believes that, while there may always be a few individuals who, without regard to limitations imposed by law, abuse their position of trust as fiduciaries, the safeguards established by the regulation, as well as the class exemption, will, in the Department's view, remove many of the incentives and create strong deterrents for abusive behavior. In this regard, we note that, in addition to the specific fee-leveling limitations, fiduciary advisers utilizing investment advice arrangements that employ fee-leveling must comply with the requirements of paragraphs (b)(5) [authorization by plan fiduciary], (b)(6) [annual audits], (b)(7) [advance and annual disclosure], (b)(8) [other conditions], and (e) [maintenance of records] of the final rule, each of which is discussed in more detail below.

A number of commenters had questions or requested clarification of the fee-leveling requirements applicable to employees, agents, or registered representatives that provide advice on behalf of a fiduciary adviser, now set forth in paragraph (b)(3)(i)(D) of the final rule. One commenter asked for examples of things of value that an employee, agent or representative might receive, directly or indirectly, that would violate the rule. Paragraph (b)(3)(i)(D), like the proposal, delineates a number of types of compensation that, if varied based on investment options selected by a participant or beneficiary, would violate the rule, namely salary, bonuses, awards, commissions, or other things of value. Things of value would include trips, gifts and other things that while having a value, are not given in the form of cash.

A number of commenters requested confirmation that bonus programs based on the overall profitability of the fiduciary adviser or its affiliate, or a designated business unit within the adviser's business would not violate the

[10] *See* AO 97–15A and AO 2005–10A.

fee-leveling requirement. The application of the fee-leveling is intended to be very broad in order to ensure that objectivity of the investment advice recommendations to plan participants and beneficiaries is not compromised by the advice provider's own financial interest in the outcome. Accordingly, almost every form of remuneration that takes into account the investments selected by participants and beneficiaries would likely violate the fee-leveling requirement of the final rule. On the other hand, it is conceivable that a compensation or bonus arrangement that is based on the overall profitability of an organization may be permissible to the extent that it can be established that the individual account plan and IRA investment advice and investment option components were excluded from, or constituted a negligible portion of, the calculation of the organization's profitability. The Department believes, however, that whether any particular salary, bonus, awards, promotions or commissions program meets or fails this fee-leveling requirement ultimately depends on the details of the program. In this regard, the Department notes that the details of such programs will be the subject of both a review and a report by an independent auditor as a condition for relief under the statutory and class exemption.

c. Arrangements Using Computer Models

As with the general requirements for arrangements using fee-leveling, and like the proposal in most respects, the final rule requires that arrangements utilizing computer models satisfy certain basic requirements.[11] These requirements include the application of generally accepted investment theories (paragraph (b)(4)(i)(A)), the consideration of investment management and other fees and expenses attendant to recommended investments (paragraph (b)(4)(i)(B)), and the utilization of certain participant-provided information (paragraph (b)(4)(i)(C)). The changes to these requirements were discussed in connection with the fee-leveling provisions of the regulation.

Other conditions imposed on computer models require that such models utilize objective criteria to provide asset allocation portfolios (paragraph (b)(4)(i)(D)) and avoid recommendations that inappropriately favor investments options offered by the fiduciary adviser or that may generate greater income for the fiduciary adviser or those with a material affiliation or material contractual relationship with the fiduciary adviser (paragraph (b)(4)(i)(E)).

As with the proposal, the language of the final rule makes clear that a computer model would not fail to meet the requirements of paragraph (b)(4)(i)(E) merely because the only investment options offered under the plan are options offered by the fiduciary adviser or a person with a material affiliation or material contractual relationship with the fiduciary adviser. The language also makes clear that a computer model cannot be designed and operated to inappropriately favor those investment options that generate the most income for the fiduciary adviser or a person with a material affiliation or material contractual relationship with the fiduciary adviser. The final rule defines a ''material affiliation'' and ''material contractual relationship'' at paragraphs (c)(6) and (c)(7), respectively.

One commenter requested clarification that the provisions of paragraph (b)(4)(i)(E) would not be violated where an IRA beneficiary requests investment advice with the understanding that the computer model will be providing only hold or sell recommendations with respect to investment options not offered through the IRA. While the Department believes that computer models should, with few exceptions, be required to model all investment options available under a plan or through an IRA, the Department does not believe that it is reasonable to expect that all computer models be capable of modeling the universe of investment options, rather than just those investment alternatives designated as available investments through the plan or IRA. Accordingly, it is the view of the Department that a computer model would not fail to meet the requirements of paragraph (b)(4)(i)(E) merely because it limits buy recommendations only to those investment options that can be bought through the plan or IRA, even if the model is capable of modeling hold and sell recommendations with respect to investments not available through the plan or IRA, provided, of course, that the plan participant or beneficiary or IRA beneficiary is fully informed of the model's limitations in advance of the recommendations, thereby enabling the recipient of advice to assess the usefulness of the recommendations. This view would also extend to the requirements of the class exemption at paragraph (d)(3).

Paragraph (b)(4)(i)(F)(*1*) of the final rule, like the proposal, requires that a computer model take into account all ''designated investment options'' available under the plan without giving inappropriate weight to any investment option.[12] The term ''designated investment option'' is defined in paragraph (c)(1) of the final rule to mean any investment option designated by the plan into which participants and beneficiaries may direct the investment of assets held in, or contributed to, their individual accounts. The term ''designated investment option'' does not include ''brokerage windows,'' ''self-directed brokerage accounts,'' or similar plan arrangements that enable participants and beneficiaries to select investments beyond those designated by the plan.

Paragraph (b)(4)(i)(F)(*2*)(*i*) also, like the proposal, provides that a computer model shall not be treated as failing to take all designated investment options into account merely because it does not take into account an investment option that constitutes an investment primarily in qualifying employer securities. While most of the commenters on the proposal supported the exclusion of qualifying employer securities, some commenters requested clarification as to whether the computer model nonetheless had to factor in the holding of such investments by a participant or beneficiary, without regard to buy, sell or hold recommendations.

It is the view of the Department that, absent a specific request from the participant or beneficiary to exclude such assets from the modeled investment advice, a computer model must take into account the fact that the participant or beneficiary has such an investment when giving advice with respect to the participant's or beneficiaries remaining assets or investments. If, on the other hand, a participant or beneficiary elects not to have such investments factored into the modeled advice or does not provide such information and the computer model does not have such information, the model would not be required to take such assets into account in providing a recommendation. This approach, in the Department's view, is consistent with the requirement set forth in paragraph (b)(4)(i)(C) of the final rule that computer models take into account other assets and investment preferences of the participant or beneficiary. One commenter requested that the exclusion for qualifying employer securities be expanded to apply to other single asset funds, such as funds invested in stock

[11] In general, these requirements track the requirements set forth in section 408(g)(3)(B) of the Act.

[12] *See* section 408(g)(3)(B)(v) of the Act.

of prior employers or a spin-off company. The commenter did not indicate other types of single asset funds, or the extent to which they are offered as designated investment options under plans. The Department does not believe it has sufficient information at this time to extend similar treatment to any such investments.

Other commenters requested that computer models not be required to include, among other things, options from predecessor plans (referred to as ''legacy options''), managed accounts, target date funds, and in-plan annuity options, which they described as annuity purchase programs that serve as both accumulation and distribution options. With respect to legacy options, it is the view of the Department that to the extent participants continue to have an ability to further invest in such options, the options must be included within the computer model. If, on the other hand, participants are merely permitted to hold and sell investments in such options, it is the view of the Department that, as discussed above with respect to qualifying employer securities, unless a participant specifically elects to not have such investments taken into account, the model should take into account that the participant holds such assets. Similar to the above, a computer model would not, in the view of the Department, fail to meet the requirements of paragraph (b)(4)(i)(F)(*1*) merely because it limits buy recommendations only to those investment options that can be bought through the plan, even though the model is capable of modeling hold and sell recommendations with respect to other investments.

A few commenters noted that certain types of investment options, such as managed accounts, life cycle-type funds, and funds that are designed to manage assets taking into account a particular risk level for the participant, rely on an investment manager to maintain the asset allocation appropriate to its particular fund, product or service and, therefore, that it serves no purpose to have such investments included in another unrelated overlaying asset allocation analysis. The Department agrees that where an investment fund, product or service is itself designed to maintain a particular asset allocation taking into account the time horizons (retirement age, life expectancy) or risk level of a participant, such fund should not be required to be included in the computer modeled investment advice. Similarly, the Department believes that where, in connection with an in-plan annuity option, with respect to which a participant may allocate a portion of his or her assets toward the purchase of an annuitized retirement benefit and those allocated assets are no longer available for investment at the time of the advice, the participant or beneficiary has, in effect, decided to treat those assets as no longer available for investment and, accordingly, such assets should not, in the view of the Department, be required to be modeled for purposes of buy, hold or sell recommendations. On the other hand, when such options are available to participants and beneficiaries, the Department believes that participants and beneficiaries receiving modeled recommendations should at the same time be furnished a general description of these options and how they operate. This disclosure will assure that participants and beneficiaries have information concerning all of their investment choices, not merely those that can be modeled by a computer. This treatment is set forth in paragraphs (b)(4)(i)(F)(*2*)(*ii*) and (*iii*).

Thus, under paragraph (b)(4)(i)(F)(*2*)(*ii*) of the final rule, a computer model will not fail to meet the requirements of the regulation merely because it does not make recommendations relating to the acquisition, holding or sale of an investment fund, product or service that allocates the invested assets of a participant or beneficiary to achieve varying degrees of long-term appreciation and capital preservation through equity and fixed income exposures, based on a defined time horizon (such as retirement age or life expectancy) or level of risk of the participant or beneficiary (e.g., life cycle-type funds).

Similarly, paragraph (b)(4)(i)(F)(*2*)(*iii*) provides that a computer model will not fail merely because it does not make recommendations with respect to an annuity option with respect to which a participant or beneficiary may allocate assets toward the purchase of a stream of retirement income payments guaranteed by an insurance company.

As noted above, however, the foregoing exceptions from the modeling requirement apply only if participants and beneficiaries are provided, contemporaneous with the provision of investment advice generated by the computer model, information explaining the funds, products or services, or in the case of an annuity, the option.

Paragraph (b)(4)(ii) of the final rule, like the proposal, requires that, prior to utilization of the computer model, the fiduciary adviser must obtain a written certification that the computer model meets the requirements of paragraph (b)(4)(i), discussed above. If the model is modified in a manner that may affect its ability to meet the requirements of paragraph (b)(4)(i), the fiduciary adviser, prior to utilization of the modified model, must obtain a new certification. The required certification must be made by an ''eligible investment expert,'' within the meaning of paragraph (b)(4)(iii) and must be made in accordance with the requirements of paragraph (b)(4)(iv).

Paragraph (b)(4)(iii) of the final rule, like the proposal, defines an ''eligible investment expert'' to mean a person that, through employees or otherwise, has the appropriate technical training or experience and proficiency to analyze, determine and certify, in a manner consistent with paragraph (b)(4)(iv), whether a computer model meets the requirements of paragraph (b)(4)(i); except that the term eligible investment expert does not include any person that has any material affiliation or material contractual relationship with the fiduciary adviser, with a person with a material affiliation or material contractual relationship with the fiduciary adviser, or with any employee, agent, or registered representative of the foregoing.

One commenter requested that the Department provide examples of adequate credentials for an ''eligible investment expert.'' The Department continues to believe that it is very difficult to define a specific set of academic or other credentials that would serve to define the appropriate expertise and experience for an eligible investment expert. Unfortunately, for the same reason it is difficult to define specific credentials for an eligible investment expert, it is difficult to provide examples of the one or a set of credentials that in every case would qualify an individual to make the required certifications. The Department also is concerned that, even if an example were possible, such an example may encourage unnecessary and inappropriate reliance on the example as a person considered by the Department to possess the necessary qualifications. For this reason, the Department has not provided any examples of credentials for eligible investment experts.

One commenter inquired whether the eligible investment expert is required to be bonded for purposes of section 412 of ERISA. In the view of the Department, an eligible investment expert, in performing the computer model certification described in the final rule, would neither be acting as a fiduciary under ERISA, nor be ''handling'' plan assets such that the

bonding requirements would be applicable to the eligible investment expert.

One commenter requested confirmation that a fiduciary adviser's selection and payment of an eligible investment expert is not itself a per se prohibited transaction. It is the view of the Department that, given the structure of the statutory exemption under section 408(g)(1) and the expectation that a fiduciary adviser will obtain a certification from an eligible investment expert, the selection and payment of the fiduciary adviser is not a per se conflict, provided that the eligible investment expert has neither a material affiliation or material contractual relationship with the fiduciary adviser. Moreover, the Department has made clear that the selection of an eligible investment expert is a fiduciary act governed by section 404(a)(1) of the Act. See paragraph (b)(4)(v). Similarly, the selection and payment of an auditor to conduct the audit required under the statutory exemption or class exemption would not constitute a per se conflict of interest. As noted in the preamble to the proposal, while the rule gives latitude to a fiduciary adviser in selecting an eligible investment expert to certify a computer model, as the party seeking prohibited transaction relief under the exemption, the fiduciary adviser has the burden of demonstrating that all applicable requirements of the exemption are satisfied with respect to its arrangement.

Paragraph (b)(4)(iv) of the final rule provides that a certification by an eligible investment expert shall be in writing and contain the following: An identification of the methodology or methodologies applied in determining whether the computer model meets the requirements of paragraph (b)(4)(i) of the final rule; an explanation of how the applied methodology or methodologies demonstrated that the computer model met the requirements of paragraph (b)(4)(i); and a description of any limitations that were imposed by any person on the eligible investment expert's selection or application of methodologies for determining whether the computer model meets the requirements of paragraph (b)(4)(i). In addition the certification is required to contain a representation that the methodology or methodologies were applied by a person or persons with the educational background, technical training or experience necessary to analyze and determine whether the computer model meets the requirements of paragraph (b)(4)(i); and a statement certifying that the eligible investment expert has determined that the computer model meets the requirements of paragraph (b)(4)(i). Finally the certification must be signed by the eligible investment expert. The Department received no comments on this provision and, accordingly, has adopted the provision as proposed.

d. Authorization by a Plan Fiduciary

Paragraph (b)(5) of the final rule, consistent with section 408(g)(4) of ERISA, the proposed rule and proposed class exemption, provides that the arrangement pursuant to which investment advice is provided to participants and beneficiaries must be expressly authorized by a plan fiduciary (or, in the case of an IRA, the IRA beneficiary) other than: The person offering the arrangement; any person providing designated investment options under the plan; or any affiliate of either. The final rule, like the proposals, further provides that, for purposes of such authorization, an IRA beneficiary will not be treated as an affiliate of a person solely by reason of being an employee of such person, thereby enabling employees of a fiduciary adviser to take advantage of investment advice arrangements offered by their employer under the exemption.

A number of commenters requested that the authorizing language of both the statutory exemption and class exemption be modified to permit a fiduciary adviser to provide investment advice for the adviser's own plan. The Department does not believe it is necessary or appropriate to limit a fiduciary adviser's employee's choice of investment advice providers to only competitors of the fiduciary adviser. Accordingly, the Department has modified the authorization provisions of the final regulation and class exemption to permit a fiduciary adviser to provide advice to its own employees (or employees of an affiliate) pursuant to an arrangement under the final rule, provided that the fiduciary adviser or affiliate offers the same arrangement to participants and beneficiaries of unaffiliated plans in the ordinary course of its business. (See paragraphs (b)(5)(ii) and (d)(5)(ii) of the final rule). The Department notes, however, that neither the statutory exemption nor the class exemption provides relief for the selection of the fiduciary adviser or the arrangement pursuant to which advice will be provided. Accordingly, plan fiduciaries must nonetheless be prudent in their selection and may not, in contravention of section 406(b), use their position to benefit themselves. In this regard, the Department has indicated that if a fiduciary provides services to a plan without the receipt of compensation or other consideration (other than reimbursement of direct expenses properly and actually incurred in the performance of such services) the provision of such services does not, in and of itself, constitute an act described in section 406(b) of the Act.[13]

One commenter requested a clarification that, for purposes of the authorization provision, a plan sponsor-fiduciary would not be treated as the person providing a designated investment option under the plan with respect to an option that is designed to invest in qualifying employer securities. The Department did not intend, nor does it believe Congress intended, to exclude employer-plan fiduciaries from authorizing investment advice arrangements solely because the plan for which the arrangement is being authorized offers participants the opportunity to invest in qualifying employer securities. The Department has added a provision to both the regulation and class exemption for purposes of such clarification (see paragraphs (b)(5)(iii) and (d)(5)(iii), respectively, of the final rule).

One commenter asked for a clarification as to whether an authorizing plan fiduciary can rely on the representations of a fiduciary adviser with respect to whether a computer model meets the requirements of the regulation. Plan fiduciaries have an obligation to prudently select, and periodically review that selection, fiduciary advisers.[14] In connection with an otherwise prudent and reasonable selection and review process, the Department believes that an authorizing plan fiduciary, in the absence of any information to the contrary, may rely on the representations of a fiduciary adviser regarding the fiduciary adviser's compliance with the requirements of this rule.

e. Annual Audit

Paragraph (b)(6) of the final rule sets forth the annual audit requirements for the statutory exemption.[15] Paragraph (b)(6)(i), like the proposal, provides that the fiduciary adviser shall, at least annually, engage an independent auditor, who has appropriate technical training or experience and proficiency, and so represents in writing to the fiduciary adviser, to conduct an audit of the investment advice arrangements for compliance with the requirements of the regulation and, within 60 days

[13] *See* 29 CFR 2550.408b–2(e)(3).

[14] *See* discussion in Field Assistance Bulletin 2007–01.

[15] The audit provisions are set forth in section 408(g)(6) of ERISA.

following completion of the audit, to issue a written report to the fiduciary adviser and, except with respect to an arrangement with an IRA, to each fiduciary who authorized the use of the investment advice arrangement, setting forth the specific findings of the auditor regarding compliance of the arrangement with the requirements of the regulation.

Given the significant number of reports that an auditor would be required to send if the written report was required to be furnished to all IRA beneficiaries, the Department framed an alternative requirement for investment advice arrangements with IRAs. This alternative is set forth in paragraph (b)(6)(ii) of the final rule. The final rule, like the proposal, provides that, with respect to an arrangement with an IRA, the fiduciary adviser shall, within 30 days following receipt of the report from the auditor, furnish a copy of the report to the IRA beneficiary or make such report available on its Web site, provided that such beneficiaries are provided information, along with other required disclosures (*see* paragraph (b)(7) of the final rule), concerning the purpose of the report, and how and where to locate the report applicable to their account. With respect to making the report available on a Web site, the Department believes that this alternative to furnishing reports to IRA beneficiaries satisfies the requirement of section 104(d)(1) of the Electronic Signatures in Global and National Commerce Act (E–SIGN) [16] that any exemption from the consumer consent requirements of section 101(c) of E–SIGN must be necessary to eliminate a substantial burden on electronic commerce and will not increase the material risk of harm to consumers. The Department solicited comments on this finding in the proposal, and received no comments in response.

Obtaining consent from each IRA holder or participant before publication on the Web site would be a tremendous burden on the plan or IRA provider. This element, along with the broad availability of internet access and the lack of any direct consequences to any particular participant for a failure to review the audit for the participants and beneficiaries, supports these findings.

Paragraph (b)(6)(ii) of the final rule also provides, like the proposal, that, when the report of the auditor identifies noncompliance with the requirements of the regulation, the fiduciary adviser must send a copy of the report to the Department. The final rule, like the proposal, requires that the fiduciary adviser submit the report to the Department within 30 days following receipt of the report from the auditor. This report will enable the Department to monitor compliance with the statutory or class exemption.

For purposes of paragraph (b)(6), an auditor is considered independent if it does not have a material affiliation or material contractual relationship with the person offering the investment advice arrangement to the plan or any designated investment options under the plan. *See* paragraph (b)(6)(iii). The terms ''material affiliation'' and ''material contractual relationship'' are defined in paragraphs (c)(6) and (7) of the final rule, respectively.

With regard to the scope of the audit, paragraph (b)(6)(iv) of the final rule provides that the auditor shall review sufficient relevant information to formulate an opinion as to whether the investment advice arrangements, and the advice provided pursuant thereto, offered by the fiduciary adviser during the audit period were in compliance with the regulation. Paragraph (b)(6)(iv) further provides that it is not intended to preclude an auditor from using information obtained by sampling, as reasonably determined appropriate by the auditor, investment advice arrangements, and the advice pursuant thereto, during the audit period. The final rule, like the proposal, does not require an audit of every investment advice arrangement at the plan or fiduciary adviser-level or of all the advice that is provided under the exemption. In general, the final rule appropriately leaves to the auditor the determination as to the appropriate scope of its review and the extent to which it can rely on representative samples for determining compliance with the exemption.

While the audit provisions contained in the final rule are, with respect to both the statutory exemption and the class exemption, identical to the proposed audit requirements, the final rule does contain new provisions making clear that, like the selection of an eligible investment expert to certify a computer model, the selection of the required auditor, for purposes of both the statutory exemption and the class exemption, is a fiduciary act governed by section 404(a)(1) of ERISA. *See* paragraphs (b)(6)(v) and (d)(9)(v) of the final rule.

A number of commenters raised issues or requested clarifications regarding various aspects of the audit requirements.

One commenter requested that the Department establish that the first annual audit required by the statutory exemption would not be required to be completed until the end of 2009. Inasmuch as the audit and other provisions of the regulation relating to the statutory exemption closely track the provisions of the statutory exemption, the Department is not persuaded that there is a basis for deferring the completion of any otherwise required annual audit until the end of 2009. However, for purposes of any audits required to be completed prior to the effective date of the final rule, the auditor may take into account good faith compliance with the statute in the absence of regulatory guidance.

One commenter requested that the Department should lessen the burden on small advisers by modifying the audit requirement by, for example, requiring an audit only every three years, rather than annually. It is the view of the Department that the audit requirements of both the statutory and class exemption are critical protections for participants and beneficiaries in investment advice arrangements with respect to which there is a possibility that an adviser may act in its own self-interest rather than the interest of the plan's participants and beneficiaries. No information or data has been furnished to the Department that would support a finding that this risk to participants and beneficiaries is any less from small advisers than large adviser. Thus, the Department has no basis on which to determine what, if any, special relief should be afforded small advisers. The final rule, therefore, contains no special provisions for small advisers.

Another commenter suggested that rather than furnishing copies of the audit report to authorizing fiduciaries and IRA beneficiaries, fiduciary advisers should be required to inform the parties of the availability of the reports and furnish such reports only in response to requests. The Department did not adopt this suggestion. The Department believes that, as with the audit, the reports of the auditor are important and should be furnished to each authorizing plan fiduciary. On the other hand, the Department recognizes that, in the case of IRAs, furnishing a report to every IRA beneficiary may be unduly burdensome and expensive, and, accordingly, provided a special rule that permits the making available of the report on the fiduciary adviser's Web site.

One commenter requested that fiduciary advisers have an additional 30 days to furnish the audit report to the authorizing plan fiduciaries. Another commenter requested that the final rule provide 60 days for the furnishing of IRA-related audit reports. The Department did not adopt these

[16] 15 U.S.C. 7004(d)(1) (2000).

suggestions. The Department notes, however, that the 60-day period referenced in paragraphs (b)(6)(i)(B) and (d)(9)(i)(B) of the final rule is the period following completion of the audit during which *the auditor* is required to furnish its report to the fiduciary adviser and, with the exception of an arrangement with an IRA, to each authorizing fiduciary. The exception for arrangements with IRAs serves to relieve the auditor from furnishing reports to the authorizing IRA beneficiaries. Paragraphs (b)(6)(ii)(A) and (d)(9)(ii)(A) of the final rule, applicable to arrangements with IRAs, place the obligation to furnish the auditor's report on the fiduciary adviser and, in that regard, require that the fiduciary adviser furnish the report or make it available on its Web site within 30 days following receipt of the report from the auditor. The Department did not receive any information or data that would indicate that the aforementioned time frames afforded the auditor and the fiduciary adviser are inadequate.

With regard to the qualifications of an auditor, one commenter recommended that the auditor should be treated as a fiduciary. Other commenters requested clarification that the audit is not required to be conducted by an accountant or a lawyer. Another commenter requested clarification as to the credentials necessary to conduct an audit. As with the requirements for an ''eligible investment expert,'' the Department does not believe that there is necessarily one set of credentials, such as certified public accountant, auditor, or lawyer, that is required or, conversely, by themselves qualifies an individual to conduct the required audits. In addition to any licenses, certifications or other evidence of professional or technical training, a fiduciary adviser will want to consider the relevance of that training to the required audit, as well as the individual or organization's experience and proficiency in conducting similar types of audits. In this regard, it is the view of the Department that the selection of an auditor is a fiduciary act and, therefore, must be carried out in a manner consistent with the prudence requirements of section 404(a)(1), taking into account the nature and scope of the audit and the expertise and experience necessary to conduct such an audit. The Department also notes that, in its view, the performance of an audit under the final rule would not, by itself, cause an auditor to be a fiduciary under ERISA.

A number of comments requested clarification of the scope of the audit, as now set forth in paragraphs (b)(6)(iv) and (d)(9)(iv) of the final rule. In this regard, commenters requested clarification that the permissible sampling of audits would be conducted at the fiduciary adviser level and not the plan level, such that a sampling of each plan's or IRA's transactions would not have to be audited. One commenter requested clarification as to whether the audit could be performed by a review of the audits conducted by the fiduciary adviser's own personnel. As discussed above, the audit provisions of the final rule require that the auditor review sufficient information to formulate an opinion as to whether the investment advice arrangements, and the advice provided pursuant thereto, are in compliance with the final rule. In the case of the class exemption, the auditor is further required to review compliance with the fiduciary adviser's policies and procedures, adopted in accordance with paragraph (d)(7), designed to assure compliance with the exemption's requirements. Accordingly, the precise nature and scope of the audit, as well as how it is conducted, is to be determined by the auditor. The Department does note, however, that nothing in these provisions precludes the auditor from using sampling, as determined reasonably appropriate by the auditor, of investment advice arrangements and investment advice.

While the Department believes that internal audits conducted by the personnel of a fiduciary adviser are important to reducing the risks of noncompliance with the conditions of the final rule, the Department does not believe that it would be appropriate for an auditor to limit, in any way, the scope of its audit based on such audits. Moreover, in the view of the Department, the fiduciary adviser has a fiduciary duty in selecting and monitoring an auditor to ensure that the required audits are complete and fully independent of any audits conducted internally by personnel of the fiduciary adviser. The Department notes, however, that there is nothing in the final rule that would preclude the independent auditor from working with the fiduciary adviser to establish policies and procedures designed to enhance or ensure compliance with the requirements of the statutory or class exemption, provided that determinations of compliance with the statutory and class exemption can be made without regard to such services.

Some commenters asked for a clarification of the ''independence'' requirements applicable to the auditor. Paragraphs (b)(6)(iii) and (d)(9)(iii) of the final rule provide that an auditor is considered independent if it does not have a material affiliation or material contractual relationship with the fiduciary adviser or any person offering designated investment options.

One commenter requested clarification that independence would not be lost merely because the auditor performs other services for the fiduciary adviser or its affiliates, such as performing audits or certifying computer models, as an eligible investment expert. In defining the term ''material contractual relationship,'' the Department contemplated that there may be instances in which an auditor might be performing other services for a fiduciary adviser or affiliates. While one commenter recommended that the definition of material contractual relationship be revised to preclude receipt of any compensation, the Department believes that the 10% test set forth in paragraph (c)(7) of the final rule, defining ''material contractual relationship,'' is sufficient to minimize any influence on the part of the fiduciary adviser that would serve to compromise the independence of the auditor. Accordingly, the Department has not changed the final rule in this regard.

A number of commenters expressed concern about the requirement, now at paragraphs (b)(6)(ii)(B) and (d)(9)(ii)(B) of the final rule, that, in the case of arrangements involving IRAs, the fiduciary adviser must send a copy of the auditor's report to the Department if that report identifies instances of noncompliance. Some commenters recommended that reports only be required to be filed with the Department when there is ''material'' noncompliance, other commenters recommended that fiduciary advisers be afforded a period within which to self-correct prior to the reporting of noncompliance. As explained in the preamble to the proposal, this filing requirement will enable the Department to monitor compliance with the exemptions in those instances where there is no authorizing ERISA plan fiduciary to carry out that function. While the Department recognizes that not every instance of noncompliance would, itself, affect the quality of the advice provided, the Department also believes that, given the overall significance of the audit as a protection for participants and beneficiaries, all reports that identify noncompliance in this area should be furnished to the Department for review, thereby, leaving to the Department the opportunity to evaluate the significance of the noncompliance, the function that an authorizing plan fiduciary would carry out for its plan. Accordingly, the

Department is adopting the filing requirement as proposed.

f. Disclosure

The disclosure provisions are set forth in paragraph (b)(7) of the final rule as they relate to the statutory exemption and paragraph (d)(8) as they relate to the class exemption. In general, the disclosure requirements for both the statutory and class exemption are identical,[17] and the provisions of the final rule, like the proposal, track the requirements set forth in section 408(g)(6) of ERISA.

The final rule, at paragraphs (b)(7)(i) and (d)(8)(i), generally requires that the fiduciary adviser provide to participants and beneficiaries, prior to the initial provision of investment advice with regard to any security or other property offered as an investment option, a written notification describing: The role of any party that has a material affiliation or material contractual relationship with the fiduciary adviser in the development of, in the case of the statutory exemption, the investment advice program or, in the case of the class exemption, if applicable, the computer model or materials described in paragraph (d)(3)(i) or (ii) of the final rule, and in the selection of investment options available under the plan; the past performance and historical rates of return of the designated investment options available under the plan, to the extent that such information is not otherwise provided; all fees or other compensation relating to the advice that the fiduciary adviser or any affiliate thereof is to receive (including compensation provided by any third party) in connection with the provision of the advice or in connection with the sale, acquisition, or holding of the security or other property pursuant to such advice; and any material affiliation or material contractual relationship of the fiduciary adviser or affiliates thereof in the security or other property.

The notification to participants and beneficiaries also is required to explain: The manner, and under what circumstances, any participant or beneficiary information provided under the arrangement will be used or disclosed; the types of services provided by the fiduciary adviser in connection with the provision of investment advice by the fiduciary adviser, including, with respect to an arrangement utilizing a computer model, any limitations on the ability of the model to take into account an investment primarily in qualifying employer securities; that the adviser is acting as a fiduciary of the plan in connection with the provision of the advice; and that a recipient of the advice may separately arrange for the provision of advice by another adviser that could have no material affiliation with and receive no fees or other compensation in connection with the security or other property.

Paragraphs (b)(7)(ii)(A) and (d)(8)(ii)(A) of the final rule require that the notification furnished to participants and beneficiaries must be written in a clear and conspicuous manner and in a manner calculated to be understood by the average plan participant and must be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of the information required to be provided in the notification.

Paragraphs (b)(7)(ii)(B) and (d)(8)(ii)(B) of the final rule reference the availability of a model disclosure form in the appendix to the final rule. As with the proposals, the model disclosure form may be used for purposes of satisfying the requirements set forth in paragraphs (b)(7)(i)(C) and (d)(8)(i), as well as the requirements of paragraphs (b)(7)(ii)(A) and (d)(8)(ii)(A) of the final rule. The final rule, like the proposals, makes clear, however, that the use of the model disclosure form is not mandatory. In response to several comments addressing the general readability of the model form, the Department has made minor changes to the form's organization and language.

Other commenters also made specific suggestions regarding the content of the model disclosure form. Four commenters made suggestions relating to the disclosure of fiduciary adviser cross-selling practices, such as fees received by an adviser in connection with rollovers to IRAs. As discussed below, given the potential for abuse in this area, the text of the final rule has been modified to require the disclosure of all fees or other compensation that a fiduciary adviser or any affiliate might receive in connection with any rollover or other distribution of plan assets or the investment of distributed assets. Language has been added to the model form to reflect this disclosure requirement.

Commenters presented a number of issues concerning the timing and content of the proposed disclosure requirements. With regard to the timing of the required disclosures, some commenters suggested that the notifications be provided whenever advice is rendered; other commenters argued that the annual disclosures should be required only when there are material changes to the information furnished in advance of the advice. Other commenters recommended that required notifications be furnished quarterly. The Department did not adopt these recommendations. The Department believes that the statutory disclosure framework, reflected in both the proposal and final rule, strikes the appropriate balance in terms of ensuring participants and beneficiaries have the information to assess the potential for conflicts of interest and compensation of the fiduciary adviser. In this regard, the final rule, like the proposal, requires notifications to be furnished in advance of the advice, and annually thereafter, except that material changes to such information are required to be furnished at a time reasonably contemporaneous with the change in the information.

Commenters also raised issues concerning the content of the required notifications. One commenter recommended that the Department clarify that the required disclosure of fees and compensation was not limited to designated investment options, but included fees and compensation received in connection with investments made through open brokerage windows and directed brokerage accounts. The disclosure obligation set forth in paragraph (b)(7)(i)(C)(*2*) of the final rule is very broad and includes any fees and other compensation that the fiduciary adviser or affiliate might receive in connection with the sale, acquisition, or holding of *any* security or other property pursuant to the investment advice. There is nothing in this provision which limits or is intended to limit the required disclosures to compensation and fees in connection with designated investment options. It is clear, therefore, that any compensation and fees to be received in connection with investments through an open brokerage window or directed brokerage account must be included in the required disclosures.

Some commenters suggested that the required disclosure be required to contain information pertaining to compensation and fees in connection with rollovers or other distributions or the investment of assets in connection with a rollover or other distribution. Given the potential for abuse in this area, the Department agrees that such information should be furnished to participants and beneficiaries. In this regard, the final rule contains a specific provision that serves to require the disclosure of all fees or other compensation that a fiduciary adviser or any affiliate might receive in connection

[17] *See* paragraph (d)(8)(i)(C) that incorporates in the class exemption compliance with the disclosure requirements under the statutory exemption provisions as set forth in paragraphs (b)(7)(i)(A) through (E), (G) and (H).

with any rollover or other distribution of plan assets or the investment of distributed assets in any security or other property pursuant to the investment advice. See paragraph (b)(7)(i)(C)(*3*) of the final rule, and paragraph (d)(8)(i)(C) of the final rule, which applies several disclosures required for the statutory exemption to the class exemption.

With regard to the practice of ''cross-selling,'' i.e., using existing clients, plan participants and beneficiaries in this case, to market additional services or products, the Department notes that, while advising a participant or beneficiary to take an otherwise permissible plan distribution would not normally constitute ''investment advice'' within the meaning of 29 CFR 2510.3–21(c), the Department has taken a different position with respect to such activities when the person making such recommendations is already a plan fiduciary, as would be the case with a fiduciary adviser.[18] When a person is already acting in a fiduciary capacity with respect to the plan, the Department has indicated that recommendations relating to the taking of a distribution or the investment of amounts withdrawn from the plan would constitute the exercise of discretionary authority respecting management of the plan and, therefore must be undertaken prudently and solely in the interest of the participant or beneficiary, consistent with section 404(a)(1). The Department further notes that if, for example, a fiduciary exercises control over plan assets to cause a participant or beneficiary to take a distribution and then to invest the proceeds in an IRA account managed by the fiduciary, the fiduciary may be using plan assets in his or her own interest, in violation of ERISA section 406(b)(1). The prohibited transaction relief offered by the statutory and class exemption, which apply to transactions related to the provision of investment advice to plan participants or beneficiaries, would not cover such a violation. Moreover, the Department is unable to conclude that the mere disclosure of fees or other compensation received in connection with such a distribution and investment, by itself, would be sufficient to avoid a violation of section 406(b)(1). Because a fiduciary adviser, in making recommendations related to the taking of a distribution or the investment of amounts so withdrawn from the plan, may violate ERISA section 404(a)(1) and/or 406(b)(1), authorizing plan fiduciaries, in carrying out their duties under section 404(a)(1) in selecting and periodically reviewing the adviser, may need to understand the extent to which such recommendations will be made.

A commenter also suggested that the Department require disclosure of information about the profitability of various plan investment options to the fiduciary adviser. In addressing the need for disclosure regarding plan investments being recommended by a fiduciary adviser under the statutory exemption, Congress appears to have concluded that the interests of participants and beneficiaries would be adequately protected, in the context of the exemption's other conditions, by information on all fees or other compensation that the fiduciary adviser or any affiliate is to receive. The conditions of the exemption, in general, focus on fees and compensation received in connection with investments recommended rather than profitability of those investments. Disclosures with respect to profitability of investments options may require significantly more information and effort to prepare than disclosures of fees and compensation, without adding significant benefits. The Department does not believe it would be appropriate, as part of this final rule, without further notice and comment, to include such a disclosure obligation. Accordingly, the Department has not adopted this suggestion.

A number of commenters requested that the Department confirm that to the extent that the required disclosures are contained in disclosure materials required to be prepared under securities and other laws, such materials may be used for purposes of the exemptions. It is the view of the Department that nothing in the final rule forecloses the use of other materials for making the disclosures required by the final rule, so long as the understandability and clarity of the disclosures is not compromised by virtue of their inclusion in such other materials and the requirements of paragraphs (b)(7)(ii)(A) and (d)(8)(ii)(A) are satisfied.

The proposed regulation and class exemption provided that the required notifications may, in accordance with 29 CFR 2520.104b–1, be furnished in either written or electronic form. Several commenters requested that the Department provide greater flexibility for notices by electronic means, noting that the safe harbor for electronic distributions, at § 2520.104b–1(c), is not workable. The Department currently is reviewing its rules relating to the use of electronic media for disclosures under title I of ERISA. The Department notes that, pending the issuance of further guidance, its current rule, at 29 CFR 2520.104b–1(c), is a safe harbor and, accordingly, represents merely one permissible means by which documents under title I of ERISA may be furnished to participants and beneficiaries electronically. Nothing in that rule, therefore, forecloses other means by which documents may, consistent with ERISA and the E–SIGN Act, be furnished to participants and beneficiaries electronically.

Paragraphs (b)(7)(iv) and (d)(8)(iv) of the final rule set forth miscellaneous recordkeeping and furnishing responsibilities of the fiduciary adviser under the statutory and class exemption. Specifically, these paragraphs require that, at all times during the provision of advisory services to the participant or beneficiary pursuant to the arrangement, the fiduciary adviser must: maintain the information required to be disclosed to participants and beneficiaries in accurate form; provide, without charge, accurate, up-to-date disclosures to the recipient of the advice no less frequently than annually; provide, without charge, accurate information to the recipient of the advice upon request of the recipient; and provide, without charge, to the recipient of the advice any material change to the required information at a time reasonably contemporaneous to the change in information. These provisions are being adopted in the final rule without substantive change from the proposal.

g. Other Conditions

Paragraphs (b)(8) and (d)(10) of the final rule, like the proposals, incorporate a series of miscellaneous, although important, conditions set forth in section 408(g)(7) of ERISA. These requirements are as follows: the fiduciary adviser must provide appropriate disclosure, in connection with the sale, acquisition, or holding of the security or other property, in accordance with all applicable securities laws; any sale, acquisition, or holding of a security or other property occurs solely at the direction of the recipient of the advice; the compensation received by the fiduciary adviser and affiliates thereof in connection with the sale, acquisition, or holding of the security or other property is reasonable; and the terms of the sale, acquisition, or holding of the security or other property are at least as favorable to the plan as an arm's length transaction would be.

The Department received a number of comments requesting clarification of the requirement that sales, acquisitions, or the holding of securities or other

[18] *See* AO 2005–23A (Dec. 7, 2005).

property occurs solely at the direction of the recipient of the advice. In particular, commenters requested that the Department confirm that the ''solely at the direction'' requirement is not violated solely by virtue of a participant or beneficiary providing advance authorization for a fiduciary adviser to periodically take steps to rebalance the portfolio of the participant or beneficiary. One commenter requested clarification that the ''solely at the direction'' requirement would not be violated where, pursuant to an agreement with the participant or beneficiary, investment advice recommendations will be acted upon by the fiduciary adviser unless the participant or beneficiary objects with the allotted period of time, typically 30 days.

In general, it is the view of the Department that a pre-authorization for a fiduciary adviser to maintain a particular asset allocation structure for a participant's portfolio by periodic rebalancing of investments would not violate the ''solely at the direction'' requirements of the final rule, provided that such maintenance does not involve the exercise of discretion on the part of the fiduciary adviser, that is, when a participant is informed of and approves, at the time of the authorization, the specific circumstances under which a rebalancing of his or her portfolio will take place and the particular investments that will be utilized for such rebalancing. If, on the other hand, the particular investments that might be utilized for purposes of rebalancing a participant's account are not known and the fiduciary adviser is given the discretion to select the required investments, it is the view of the Department that the participant must be afforded advance notice of the fiduciary adviser's intended investments and a reasonable opportunity, at least 30 days, to object to the investments in order to comply with the ''solely at the direction'' requirements of the final rule. With respect to a recommendation involving a different asset allocation structure, the Department believes that the participant or beneficiary must make an affirmative direction for its implementation.

3. Definitions

Paragraph (c) sets forth definitions applicable to both the statutory exemption and class exemption contained in the final rule. Paragraph (c)(1) defines the term ''designated investment option.'' Paragraph (c)(2) defines the term ''fiduciary adviser.'' Paragraph (c)(3) defines the term ''registered representative.'' Paragraph (c)(4) defines the terms ''individual retirement account'' or ''IRA'' for purposes of the final rule. Paragraph (c)(5) defines the term ''affiliate.'' And, paragraphs (c)(6) and (c)(7) define the terms ''material affiliation'' and ''material contractual relationship,'' respectively. Lastly, paragraph (c)(8) defines the term ''control.'' With the exception of a clarification in the definition of ''material contractual relationship'' in paragraph (c)(7), the definitions were adopted without change from the proposals.

One commenter requested that the Department clarify that the term ''agent'', as that term is used in the definition of ''fiduciary adviser'' (see paragraph (c)(2)(i)(F) of the final rule), is not limited to insurance agents. Another commenter requested that the Department clarify that ''agents'' must be registered under the Investment Advisers Act of 1940, unless otherwise exempt from registration. It is the view of the Department that the term ''agent'' as used in the fiduciary adviser definition is not limited to insurance agents or necessarily those registered under the Investment Advisers Act, but rather encompasses persons acting on behalf of a fiduciary adviser, applying agency law principles. The Department notes that the definition, consistent with the statutory definition, requires that any such agent satisfy the requirements of applicable insurance, banking and securities laws relating to the provision of advice.

One commenter recommended a separate provision for investment adviser representatives. It was not clear how such a separate definition would substantively change the application of the fiduciary adviser definition, at paragraph (c)(2); accordingly, the Department did not adopt this suggestion.

One comment recommended that the Department adopt the definition of ''affiliate'' as set forth in 29 CFR 2510.3–21, rather than the definition contained in the proposed rule. Section 408(g)(11)(C) of ERISA provides that an ''affiliate'' of another entity means an affiliated person of the entity as defined in section 2(a)(3) of the Investment Company Act of 1940. The Department, therefore, adopted, as discussed in the preamble to the proposal, the Investment Company Act definition for purposes of both the proposal and this final rule, not the definition set forth in § 2510.3–21.

Finally, in order to clarify that the 10% gross revenue test, applied for purposes of determining whether persons have a ''material contractual relationship'' under the final rule, is not limited to amounts paid pursuant to contracts or arrangements that have been reduced to writing, the Department has deleted the word ''written'' from the definition contained in paragraph (c)(7).

4. Class exemption

A number of the issues pertaining to the conditions applicable to the class exemption were raised and addressed in the above discussion of the rules implementing the statutory exemption. The following overview, therefore, will focus on those provisions and comments unique to the class exemption and not previously addressed.

a. Authority and Findings

A number of commenters questioned the Department's authority to grant the proposed class exemption arguing, in effect, that the proposed class exemption is inconsistent with Congressional intent, suggesting that enactment of the statutory exemption for investment advice precluded or otherwise limited the Department's authority to grant an administrative exemption under section 408(a). The Department has carefully considered this issue and in so considering has been unable to find anything in ERISA, the PPA, the Technical Explanation of the PPA prepared by the staff of the Joint Committee on Taxation,[19] or the case law that would serve to limit or otherwise restrict the Department's ability to grant, in accordance with its authority in section 408(a), an administrative exemption relating to the provision of investment advice.

In fact, the Department has very broad authority under section 408(a) to grant conditional or unconditional exemptions for any fiduciary or transaction or class of fiduciaries or transactions, from all or part of the restrictions imposed by sections 406 and 407(a), provided that the Secretary finds that such exemption is administratively feasible, in the interests of the plan and its participants and beneficiaries, and protective of the rights of participants and beneficiaries.

The Department views the class exemption as necessary to provide more comprehensive relief for fiduciary investment advice and to address certain aspects of the statutory exemption that were unclear or that did not extend relief to certain arrangements. For example, the flush language in section 408(g)(3)(D) of

[19] Technical Explanation of H.R. 5, The ''Pension Protection Act of 2006'', as passed by the House on July 28, 2006, and as considered by the Senate on August 3, 2006, prepared by the Staff of the Joint Committee on Taxation, August 3, 2006, JCX 38–06.

ERISA specifically permits participants to request individualized advice after receipt of computer model-based advice, but does not indicate whether any prohibited transaction relief would apply. In addition, although the Department concluded that computer model-based advice was feasible for IRAs to the extent that the advice takes into account generally recognized asset classes, some IRAs do not limit investment choices in this fashion. The class exemption therefore provides substitute relief for advisers that may not be able to take full advantage of computer model-based advice as to some IRAs.

Taking into account the intent of the Congress and the administration to dramatically expand the availability of affordable, quality investment advice for millions of America's workers participating in participant-directed individual account plans and IRAs, the Department concluded that the best approach to addressing the ambiguities and issues presented by the PPA and statutory exemption was to exercise its authority under section 408(a) of ERISA, building on the carefully crafted safeguards of the statutory exemption established by the Congress, safeguards that the Congress itself determined to be administratively feasible, in the interests of the plan and its participants and beneficiaries, and protective of the rights of participants and beneficiaries.

A few commenters questioned whether the Department could make the findings required by section 408(a) with respect to the class exemption. As noted above, section 408(a) conditions exemptive relief on a finding by the Department that the exemption is administratively feasible, in the interests of the plan and its participants and beneficiaries, and protective of the rights of participants and beneficiaries. With regard to the class exemption contained in this document, the Department finds that the exemption is administratively feasible with respect to both compliance by fiduciary advisers electing to provide investment advice to participants and beneficiaries and enforcement by the Department. The Department finds that the exemption is in the interest of plans and their participants and beneficiaries because the availability of the exemption will significantly expand the opportunities for millions of participants and beneficiaries in participant-directed individual account plans and IRAs to obtain affordable, quality investment advice that might otherwise not be available to them. The Department further finds that the exemption is protective of the rights of participants and beneficiaries because of the conditions contained in the exemption intended to mitigate conflicts of interest that might otherwise affect the quality of investment advice. As noted above, the conditions of the class exemption build on the protections Congress determined to be administratively feasible, in the interest of plans and their participants and beneficiaries, and protective of the rights of those participants and beneficiaries for purposes of the statutory exemption set forth in section 408(g). The specifics of these conditions are discussed below, if not previously addressed in connection with the statutory exemption provisions.

b. General

The final class exemption, like the statutory exemption described in paragraph (b) of the final rule, provides relief from otherwise prohibited transactions relating to the provision of investment advice to a plan participant or beneficiary or IRA beneficiary; the acquisition, holding or sale of a security or other property pursuant to the investment advice; and the direct or indirect receipt of compensation by a fiduciary adviser or affiliate in connection with the provision of investment advice or the acquisition, holding or sale of a security or other property pursuant to the investment advice.

Unlike the statutory exemption, however, the final class exemption, like the proposed class exemption, provides relief for investment advice provided to individuals following the furnishing of recommendations generated by a computer model or, in instances where computer modeling under the statutory exemption is not feasible, the furnishing of investment education material. As explained in the preamble to the proposal, the computer generated advice recommendations and investment education materials are intended to provide individual account plan participants and beneficiaries and IRA beneficiaries with a context for assessing and evaluating the individualized investment advice contemplated by the class exemption. Also, unlike the statutory exemption, the final class exemption, like the proposal, applies the fee-leveling limits solely to the compensation received by the employee, agent or registered representative providing the advice on behalf of the fiduciary adviser, as distinguished from compensation received by the fiduciary adviser on whose behalf the employee, agent or registered representative is providing such advice.

In general, the class exemption is intended to complement the adoption of regulations implementing the statutory exemption by furthering the availability of individualized investment advice to both participants and beneficiaries in participant-directed individual account plans and IRA beneficiaries under circumstances not clearly encompassed by the statutory exemption or implementing regulations, as described below.

c. Scope of Exemption

Paragraph (d)(1) of the final rule sets forth the scope of the class exemption. Specifically paragraph (d)(1)(i) provides that, with respect to the provision of advice to participants and beneficiaries of individual account plans, the restrictions of sections 406(a) and 406(b) of ERISA and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply to the provision of investment advice described in section 3(21)(A)(ii) of the Act by a fiduciary adviser to a participant or beneficiary of an individual account plan that permits such participant or beneficiary to direct the investment of their individual accounts; the acquisition, holding, or sale of a security or other property pursuant to the investment advice; and, except as otherwise provided in the exemption, the direct or indirect receipt of fees or other compensation by the fiduciary adviser (or any employee, agent, registered representative or affiliate thereof) in connection with the provision of the advice or in connection with an acquisition, holding, or sale of a security or other property pursuant to the investment advice. Paragraph (d)(1)(ii) of the final rule provides the same relief with respect to the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, for investment advice to beneficiaries of IRAs.

d. Conditions for Relief

Paragraph (d)(2) of the final rule provides that the relief described in paragraph (d)(1) is available if a fiduciary adviser provides advice in accordance with paragraph (d)(3), relating to the use of computer models and investment education materials, or paragraph (d)(4), relating to the use of fee-level arrangements, or both. In addition the fiduciary adviser must satisfy the conditions described in paragraphs: (d)(5), requiring authorization by a plan fiduciary or IRA beneficiary; (d)(6), relating to the basis for advice; (d)(7), requiring policies and

procedures; (d)(8), requiring disclosure of specified information; (d)(9), requiring an annual audit; and (d)(10), specifying other miscellaneous conditions. With the exception of paragraph (d)(7), relating to the adoption of policies and procedures, the aforementioned requirements are modeled after, and were discussed in conjunction with, the conditions of the statutory exemption and, accordingly, will not again be described or reviewed in this section.

e. Post-computer Model—Investment Education Advice

Paragraph (d)(3) of the final rule, like the provision of the proposed class exemption, requires that, in advance of a participant or beneficiary being provided individualized investment advice, the participant or beneficiary must be furnished investment recommendations generated by either a computer model that meets the requirements of the statutory exemption or a computer model developed by a person independent of the fiduciary adviser. The proposal contained an exception to the general computer modeling requirement for IRAs with respect to which types or number of investment choices reasonably precludes the use of a computer model that meets certain requirements of the regulations under the statutory exemption.

The Department received a number of comments on this condition of the proposal. One commenter requested that the Department clarify whether a fiduciary adviser providing individualized advice to a participant can utilize the recommendations generated by the computer model of another fiduciary adviser. For example, according to this commenter, a plan recordkeeper might offer participants access to a proprietary computer model that complies with the statutory exemption, and the plan sponsor might also provide access through a second advice provider. The commenter asked whether the second advice provider could, for purposes of the class exemption, rely on the computer model advice furnished to a participant by the plan recordkeeper. The Department does not believe one fiduciary adviser would necessarily be precluded from using another fiduciary adviser's computer modeled recommendations for a particular participant, provided that the requirements of exemption for both the computer model and individualized advice are otherwise satisfied and the individualized advice is reasonably contemporaneous with the computer modeled advice.

One commenter suggested that, given the other safeguards contained in the exemption, the requirement for computer modeled advice in advance of individualized advice should be eliminated, noting that the computer modeled advice will only confuse participants and limit the advisers. The Department disagrees. The Department continues to believe that the furnishing of computer modeled investment recommendations is an important protection and tool for participants in assessing and evaluating the individualized recommendations of the fiduciary adviser. The computer modeled advice provides participants and beneficiaries a means by which they can assess and question, in advance of an investment decision, the extent to which the recommendations of the fiduciary adviser deviate from modeled advice. For this reason, the Department did not adopt the commenter's suggestion.

One commenter recommended that post-model/education advice be subject to a fee-leveling requirement. The Department did not adopt this suggestion. First, the Department believes that the class exemption contains sufficient safeguards without a fee-leveling requirement to protect participants and beneficiaries against biased, inappropriate investment advice. Second, given such safeguards, the Department does not believe it is appropriate to favor one business model for providing investment advice over another business model, i.e., those fiduciary advisers that use fee-leveling over those that do not, particularly when doing so may only serve to limit the availability of investment advice to participants and beneficiaries.

Several commenters argued that the exception from the class exemption's computer modeling requirement that was provided to certain IRAs (i.e., where the types or number of investment choices reasonably precludes use of computer model meeting the requirements of the statutory exemption) be extended to brokerage windows and similar arrangements with respect to which the computer modeling of investment recommendations is not feasible and that, without such an exception, plan participants and beneficiaries utilizing such windows or accounts may not have access to the investment advice they need. The Department is persuaded that brokerage windows and similar arrangements that permit participants to invest beyond a plan's designated investment options present the same computer modeling difficulties that are encountered by IRAs that impose few restrictions on a beneficiary's investment choices. However, with regard to plans that offer participants and beneficiaries both designated investment options and a brokerage window or similar arrangement, the Department believes participants and beneficiaries electing to utilize such arrangements would, in addition to investment education materials, also benefit from receiving computer modeled investment recommendations with respect to the plan's designated investment options in advance of being provided individualized investment advice. As with those participants and beneficiaries whose investment options, either by plan design or choice, are limited to designated investment options, the Department believes that computer modeled investment recommendations will help participants and beneficiaries considering the use of a brokerage window or similar arrangement assess the investment choices available through both the brokerage window and the plan, as well as the individualized investment recommendations and strategies of the fiduciary adviser. The exception contained in the final class exemption, at paragraph (d)(3)(ii)(A) of the final rule, reflects this position.

Specifically, paragraph (d)(3)(ii)(A) provides that, in the case of a plan that offers a ''brokerage window'', ''self-directed brokerage account'' or similar arrangement that enables participants and beneficiaries to select investments beyond those designated by the plan, if any, before providing investment advice with respect to any investment utilizing such arrangement, the participant or beneficiary shall be furnished the investment education material described in paragraph (d)(3)(ii)(B) and, if the plan offers designated investment options, the participant or beneficiary also shall be furnished the recommendations generated by a computer model, as required by paragraph (d)(3)(i), with regard to such options.

Some commenters, while supporting the exception from computer modeling for IRAs, requested that the Department provide further guidance concerning when the types or number of investment choices would reasonably preclude the use of a computer model to generate investment recommendations. The Department believes that there are a variety of factors that may serve to reasonably preclude use of a computer model for generating recommendations with respect to the investments available under an IRA, including the number of investment options offered, the type of investment options (such as

investments in individual securities), and the relative costs of developing and maintaining such computer models and benefits of offering such model-generated advice services to IRA beneficiaries. The Department believes this will be an evolving, rather than static, standard. As computer modeling of investment advice develops, the Department anticipates that the feasibility of developing models to take into account a wider variety of investment choices also will change. The Department has retained the IRA exception without change from the proposal. See paragraph (d)(3)(ii)(B) of the final rule.

The investment education material required to be furnished under the final rule is identical to that described in the proposal. Specifically, paragraph (d)(3)(ii)(B) of the final rule requires that participants and beneficiaries be furnished with material, such as graphs, pie charts, case studies, worksheets, or interactive software or similar programs, that reflect or produce asset allocation models taking into account the age (or time horizon) and risk profile of the beneficiary, to the extent known. As with the proposal, the final rule makes clear that nothing precludes the furnishing of material, in addition to the foregoing, reflecting asset allocation portfolios of hypothetical individuals with different time horizons and risk profiles.

Also like the proposal, the final rule also requires that: (A) Models must be based on generally accepted investment theories that take into account the historic returns of different asset classes (e.g., equities, bonds, or cash) over defined periods of time; (B) such models must operate in a manner that is not biased in favor of investments offered by the fiduciary adviser or a person with a material affiliation or material contractual relationship with the fiduciary adviser; and (C) all material facts and assumptions on which such models are based (e.g., retirement ages, life expectancies, income levels, financial resources, replacement income ratios, inflation rates, and rates of return) accompany the models.

The proposal further required that the provided individualized, rather than computer modeled, investment advice (post-model/investment education advice) not recommend investment options that may generate for the fiduciary adviser, or certain other persons, greater income than other options of the same asset class, unless the fiduciary adviser prudently concludes that the recommendation is in the best interest of the participant or beneficiary and explains the basis for that conclusion to the participant or beneficiary. The proposal further required that the advice provider document the basis of any advice given to the participant or beneficiary within 30 days following the provision of the advice.

One commenter objected to the requirement that the furnished advice be documented, arguing that the advisers are required to comply with both ERISA prudence standards and FINRA suitability standards and that the documentation requirement does not add any additional protection. Another commenter argued that such explanations were not sufficiently protective of participants and beneficiaries. The Department disagrees with these comments. One of the many protections encompassed in the class exemption is the audit requirement. The Department expects that a critical part of the audit will involve a review of the explanations required to be documented by the fiduciary adviser. Without such documentation, auditors would have no basis for assessing compliance with a number of the conditions of the class exemption, including those set forth in paragraphs (d)(3)(ii)(A) and (B) and (d)(6) of the final rule.

One comment misconstrued the requirement, reading the proposal as not requiring the fiduciary adviser to provide an explanation regarding investments that might generate higher fees until 30 days after the provision of the advice. Under the proposal, the explanation was required to be provided in advance of the advice, but that explanation was not required to be documented for the fiduciary adviser's records, as well as for the required audit, until 30 days after the provision of the advice. The Department believes that it may not always be practical for a fiduciary adviser to document the advice they provide contemporaneously with the provision of that advice and, therefore, provided a limited period within which such advice must be documented.

In an effort to address both ambiguity and confusion with respect to the aforementioned requirement, the Department has combined and simplified the requirement for purposes of the final class exemption. Further, because the Department believes that this requirement, in its revised form, would offer additional protections to participants and beneficiaries without being unnecessarily burdensome on fiduciary advisers, the Department is making it a general requirement of the final class exemption. In this regard, paragraph (d)(6)(ii) of the final rule provides that, in connection with the provision of any investment advice covered by the class exemption, the fiduciary adviser must conclude that the advice to be provided is prudent and in the best interest of the participant or beneficiary, and explain to the participant or beneficiary the basis for the conclusion, including, if applicable, why and how the advice deviates from or relates to the computer modeled recommendations or investment education materials furnished in satisfaction of paragraph (d)(3)(i) or (ii), and why the advice includes an option(s) with higher fees than other options in the same asset class(es) available under the plan. Further under paragraph (d)(6)(ii), not later than 30 days following such explanation, the employee, agent or registered representative providing the advice on behalf of the fiduciary adviser must document the explanation. The final rule, like the proposal, also requires this documentation to be retained in accordance with the record retention requirements of paragraph (e) of the final rule. See paragraph (d)(6)(ii)(C) of the final rule.

f. Use of Fee-Leveling

Paragraph (d)(4) of the final rule addresses the fee-leveling requirement of the class exemption. As proposed, the class exemption applied the fee-leveling requirement only to the individuals who provide the investment advice on behalf of the fiduciary adviser, namely, employees, agents, and registered representatives. This is in contrast to the fee-leveling requirement under the statutory exemption, as described above with respect to paragraph (b) of the final rule, which applied the fee-leveling requirement at both the entity (fiduciary adviser)-level and the individual (employee, agent, registered representative)-level. In this regard, the Department was persuaded that the additional safeguards provided for in the class exemption were sufficient to permit the application of the fee-leveling requirement at the individual-level, rather than fiduciary adviser-entity level, without compromising the availability of informed, unbiased, and objective investment advice for participants and beneficiaries. As explained in the discussion relating to the fee-leveling provisions of the statutory exemption, some commenters objected to the limited scope of the fee-leveling requirement and other commenters requested that the breadth of the fee-leveling requirement be narrowed. The Department continues to believe it reached the appropriate balance of protections and flexibility in the proposal and, accordingly is

adopting the fee-leveling framework of the proposed class exemption without modification in the final rule.

g. Policies and Procedures

The proposed exemption contained a requirement that the fiduciary adviser adopt and follow written policies and procedures that are designed to assure compliance with the conditions of the exemption. As explained in the preamble to the proposal, the Department believes that the maintenance of such policies and procedures will help ensure compliance with the exemption, as well as support a finding that, for purposes of section 408(a)(1), the exemption is administratively feasible. The Department has not changed its view in this regard and, in the absence of any comments objecting to this provision of the proposal, is adopting this requirement without change in the final rule. See paragraph (d)(7). The Department also notes that the auditor engaged to conduct an audit pursuant to paragraph (d)(9) of the final rule, discussed earlier, is required, as part of that audit, to review a fiduciary adviser's compliance with its policies and procedures.

5. Retention of Records

Both the proposed regulation implementing the statutory exemption and the proposed class exemption had record retention requirements, with respect to which there were no comments. Paragraph (e) of the final rule sets forth the record retention requirements now applicable to both investment advice arrangements relying on the statutory exemption, as set forth in paragraph (b), and investment advice provided pursuant to the class exemption, as set forth in paragraph (d), of the final rule. Paragraph (e) provides that the fiduciary adviser must maintain, for a period of not less than 6 years after the provision of investment advice under the section any records necessary for determining whether the applicable requirements of the final rule have been met, noting that a transaction prohibited under section 406 of ERISA shall not be considered to have occurred solely because the records are lost or destroyed prior to the end of the 6-year period due to circumstances beyond the control of the fiduciary adviser.

6. Noncompliance

The proposed class exemption specifically addressed the effects of noncompliance with the exemption. In this regard, the proposal explained that the class exemption would not apply to any covered transaction in connection with the provision of investment advice to an individual participant or beneficiary with respect to which the conditions of the exemption have not been satisfied. The proposal also indicated that, in the case of a pattern or practice of noncompliance with any of the conditions, the exemption would not apply to any transaction in connection with the provision of investment advice provided by the fiduciary adviser during the period over which the pattern or practice extended.

Several commenters objected to the ''pattern or practice'' provision, arguing that because non-compliant advice is already subject to an excise tax under the Code, extending the penalty to all advice provided during a period, without regard to it being compliant advice, is unnecessary and punitive. Commenters also argued that the concept of a ''pattern or practice'' was unclear. Some commenters suggested the penalty should be prospective only, while others argued there should be a de minimus rule or period for correcting such noncompliance before losing the relief of the exemption for compliant advice. On the other side, one commenter argued that increased penalties for noncompliance would make the exemption more protective.

The Department believes that one of the most significant deterrents to noncompliance with the conditions of the statutory and class exemption is the potentially significant excise taxes applicable to transactions that fail to satisfy the conditions of the exemptions. The Department believes that the ''pattern or practice'' provision creates additional incentives on the part of fiduciary advisers taking advantage of the exemptive relief to be vigilant in designing and following policies, procedures and practices that will assure compliance. The Department, therefore, has retained this provision in the final rule. Unlike the proposal, however, the provision now applies to both relief under the statutory exemption and the class exemption. As revised, paragraph (f) of the final rule provides that: (1) The relief from the prohibited transaction provisions of section 406 of ERISA and the sanctions resulting from the application of section 4975 of the Code described in paragraphs (b) and (d) of the final rule shall not apply to any transaction described in such paragraphs in connection with the provision of investment advice to an individual participant or beneficiary with respect to which the applicable conditions of the final rule have not been satisfied; and (2), in the case of a pattern or practice of noncompliance with any of the applicable conditions of the final rule, the relief described in paragraph (b) or (d) shall not apply to any transaction in connection with the provision of investment advice provided by the fiduciary adviser during the period over which the pattern or practice extended.

With respect to what the Department might view as a ''pattern or practice'' of noncompliance with the exemptions, the Department believes that it is important to identify both individual violations and patterns of such violations. Isolated, unrelated, or accidental occurrences would not themselves constitute a pattern or practice. However, intentional, regular, deliberate practices involving more than isolated events or individuals, or institutionalized practices will almost always constitute a pattern or practice. In determining whether a pattern or practice exists, the Department will consider whether the noncompliance appears to be part of either written or unwritten policies or established practices, whether there is evidence of similar noncompliance with respect to more than one plan or arrangement, and whether the noncompliance is within a fiduciary adviser's control.

7. Effective Date

The Department proposed that the regulation would be effective 60 days after the date of publication of the final rule and that the class exemption would be effective 90 days after the date of publication of the final exemption. One commenter suggested that the 60 day effective date would not constitute sufficient time to comply with the final rule. One commenter suggested that the final rule should be effective no earlier than the later of July 1, 2009, or 180 days after publication of the final rule. Another commenter requested that rule be made effective upon publication.

Given the importance of investment advice to participants and beneficiaries generally and given that the exemptions contained in this final rule will expand the opportunity for participant and beneficiaries to obtain affordable, quality investment advice, the Department believes that the final rule should be effective on the earliest possible date. Accordingly, the final rule contained in this document will be effective 60 days after the date of publication in the **Federal Register** and will apply to transactions described in paragraphs (b) and (d) of the final rule occurring on or after that date.

8. General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act. Section 404 requires, among other things, that a fiduciary discharge its duties with respect to the plan prudently and solely in the interests of the plan's participants and beneficiaries. A transaction's qualification for an exemption also does not affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The exemptions contained herein are supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules; and

(3) In accordance with section 408(a) of ERISA and section 4975(c)(2) of the Code, and based on the entire record, the Department finds that, as discussed above, the class exemption contained in this document is administratively feasible, in the interests of the plan(s) and IRAs and of its participants and beneficiaries, and protective of the rights of the participants and beneficiaries of the plan and IRAs.

C. Overview of Final § 2550.408g–2

Section 408(g)(11)(A) of ERISA provides that, with respect to an arrangement that relies on use of a computer model to qualify as an ''eligible investment advice arrangement'' under the statutory exemption, a person who develops the computer model, or markets the investment advice program or computer model, shall be treated as a fiduciary of a plan by reason of the provision of investment advice referred to in ERISA section 3(21)(A)(ii) to the plan participant or beneficiary, and shall be treated as a ''fiduciary adviser'' for purposes of ERISA sections 408(b)(14) and 408(g), except that the Secretary of Labor may prescribe rules under which only one fiduciary adviser may elect to be treated as a fiduciary with respect to the plan. Section 4975(f)(8)(J)(i) of the Code contains a parallel provision to ERISA section 408(g)(11)(A) that applies for purposes of Code sections 4975(d)(17) and 4975(f)(8).

In conjunction with the proposed regulation implementing the statutory exemption for investment advice, the Department also proposed a rule, § 2550.408g–2, governing the requirements for electing to be treated as a fiduciary and fiduciary adviser by reason of developing or marketing a computer model or an investment advice program used in an eligible investment advice arrangement. Section 2550.408g–2 sets forth requirements that must be satisfied in order for one such fiduciary adviser to elect to be treated as a fiduciary under such an eligible investment advice arrangement. See paragraph (a) of § 2550.408g–2.

Paragraph (b)(1) of § 2550.408g–2 provides that, if an election meets the requirements of paragraph (b)(2) of the proposal, then the person identified in the election shall be the sole fiduciary adviser treated as a fiduciary by reason of developing or marketing a computer model, or marketing an investment advice program, used in an eligible investment advice arrangement. Paragraph (b)(2) requires that the election be in writing and that the writing: identify the arrangement, and person offering the arrangement, with respect to which the election is to be effective; and identify the person who is the fiduciary adviser, the person who develops the computer model or markets the computer model or investment advice program with respect to the arrangement, and the person who elects to be treated as the only fiduciary, and fiduciary adviser, by reason of developing such computer model or marketing such computer model or investment advice program. Paragraph (b)(2) of § 2550.408g–2 also requires that the election be signed by the person acknowledging that it elects to be treated as the only fiduciary and fiduciary adviser; that a copy of the election be furnished to the plan fiduciary who authorized use of the arrangement; and that the writing be retained in accordance with the record retention requirements of § 2550.408g–1(e).

The Department received no substantive comments on this regulation and, therefore, is adopting the regulation substantially as proposed. This regulation, like § 2550.408g–1, will be effective 60 days after the date of publication of the final rule in the **Federal Register**.

D. Regulatory Impact Analysis

1. Summary

In the regulatory impact analysis (RIA) for the proposed regulation and class exemption (hereafter, ''the proposals''), the Department noted that, historically, many participants and beneficiaries in participant-directed defined contribution plans and beneficiaries of individual retirement accounts (IRAs) (collectively hereafter, ''participants'') have made investment mistakes. The Department anticipates that full implementation of the PPA under this final regulation, together with this class exemption (hereafter, the ''final rule''), by extending quality, expert investment advice to a greater number of participants will improve investment decisions and results. This improvement in investment results reflects reductions in investment errors, including poor trading strategies and inadequate diversification. The Department further anticipates that the increased investment advice resulting from the final rule also will reduce participants' investment related expenses, further improving their overall investment results, and will improve the welfare of participants by better aligning participant investments and their risk tolerances.

The provisions of the final rule are designed to promote the availability of affordable, quality investment advice.

2. Public Comments

The Department received several comments on the regulatory impact analysis of the proposals. The following is a summary of the major comments and the Department's response thereto.

a. Trading Strategies

A number of commenters objected to the Department's contention that participants' active attempts to ''time the market'' constitute inferior trading strategies that result in losses. According to these commenters, the term ''market timing'' ''no longer defines investment strategies providing investors with enhanced risk-adjusted returns'' and professionals are proficient in actively managing clients' portfolios. The commenters further asserted that the Department should not favor one investment strategy over another.

The Department continues to believe that automatic rebalancing is likely to be superior on average to participants' own efforts (without benefit of expert advice) to time the market (meaning to reallocate assets in anticipation of future market movements). However, this says nothing about the relative merits of active professional account management. The Department is unaware of any studies that measure the performance of managed accounts relative to that of target date funds or other automatic rebalancing arrangements, and proffers no view as to whether one strategy is superior to another.

b. Permissible Arrangements

The Department included in its analysis of the proposals a table summarizing how compensation of fiduciary advisers can vary in advice arrangements operating under the following three scenarios: Absent any exemptive relief, pursuant to the PPA statutory exemption, and pursuant to the proposed class exemption. As requested in comments, the Department advises that the table was not intended to exhaustively list all permissible advice arrangements. Some arrangements might operate pursuant to other exemptive relief. Participants and plans continue to have the option of obtaining advice under arrangements that were permitted prior to enactment of the PPA and promulgation of this final rule. Furthermore, the Department does not favor any particular permissible arrangement over any other.

c. Preferences for Computer Models v. Contact With Advisers

In response to commenters, the Department is modifying its assertion that some participants are dissatisfied with advice from computer models. Rather, the cited authorities indicate that plan sponsors rate arrangements that include contact with advisers as more effective than those that rely exclusively on computer models, and provide some evidence that more participants make use of the former than the latter.

d. Revenue Sources and Active Marketing

In its analysis of the proposals the Department suggested that advisers with revenue sources other than level [20] fees paid directly by participants, plans or sponsors might market their advisory services more actively to certain participant market segments than independent advisers do. Some commenters disputed this suggestion. These commenters pointed out that independent advisers may receive alternative revenue sources such as revenue sharing and may not rely exclusively on level fees, and emphasized that plan sponsors mediate adviser efforts to market to participants.

First, the Department clarifies that in this context ''independence'' was meant to reference exclusive reliance on level fees rather than a lack of affiliation. Second, the Department notes that other commenters strongly suggested that alternative sources of compensation for investment advisory services may facilitate sales of such services where exclusive reliance on level fees would not—particularly sales of adviser consultations (as distinct from computer models alone) to small account holders. Therefore, the Department continues to believe that some advisers with such alternative sources of compensation for investment advice services will be more inclined than independent advisers to market such services to some participant market segments. Finally, the Department notes that active marketing could target plan sponsors as well as plan participants and IRA beneficiaries.

e. Audit Requirement

In response to comments, the Department notes that its assumption that audits would be outsourced to an independent legal professional was intended only as a proxy to estimate the cost of compliance with the audit requirement. In fact, as discussed earlier in the preamble, the Department is not persuaded that there is necessarily one set of credentials, such as experience as certified public account or auditor or lawyer, that, in and of itself, qualifies an individual or organization to conduct the audits required by the statutory and class exemptions. Likewise, the Department's assumptions regarding the sample of transactions to be audited were adopted for purposes of cost estimation and should not be construed as guidance as to how sampling should be conducted. Having said that, the assumptions are consistent with compliant sampling at the level of the financial institution acting as the fiduciary adviser.

f. Advice Quality

The Department's RIA of the proposals devoted considerable attention to the question of whether adviser conflicts might taint advice. As detailed there, there is evidence to suggest that conflicted advisers sometimes reap profit at investors' expense. The proposals' conditions were intended to prevent conflicts from tainting advice. Accordingly, the RIA assumed that advice arrangements operating pursuant to the proposals would be as effective as arrangements operating without need for exemptive relief, notwithstanding the conflicts that are attendant to the former.

As noted earlier in this preamble, some commenters maintained that the proposals' conditions, together with the threat of substantial excise tax penalties for noncompliance, are sufficiently protective and that consequently advice provided pursuant to the proposals will be of high quality and reflect the participants' best interests. The Department can be confident that advice arrangements operating pursuant to the proposals will satisfy the applicable conditions because advisers are scrupulous about compliance, the commenters said. Some of these commenters suggested that some of the conditions were more stringent than necessary and should be relaxed. For example, some commenters objected to the proposed condition denying exemptive relief to all transactions under an arrangement where there is a pattern or practice of failures to satisfy applicable conditions. Relief should be denied only to particular transactions for which conditions were not satisfied, the commenters said. Some commenters argued that the proposals' limits on compensation that can be paid under level fee arrangements should be relaxed to permit certain types of performance based rewards, bonuses and promotions.

Also as noted earlier in this preamble, other commenters questioned the Department's assumption that advice arrangements operating pursuant to the proposals would be as effective as arrangements operating without need for exemptive relief, predicting that the former will too often be tainted by attendant conflicts. Most of these commenters expressed deepest concern with the proposed class exemption, arguing that the fiduciary adviser and the person providing the advice may be conflicted. Some commenters also expressed concern with the proposed regulation's interpretation of the statutory exemption, arguing that the fiduciary advisers' affiliates may be conflicted. These commenters maintained that the proposals' conditions are not sufficiently protective. Persons providing advice on behalf of fiduciary adviser entities cannot be fully insulated from conflicts affecting the entities or their affiliates, the commenters said, and the proposals' procedural safeguards, including disclosure and independent audits, together with available enforcement mechanisms, are not sufficient to ensure compliance with the proposals' substantive conditions, such as unbiasedness and adherence to investment theories. Some commenters cautioned that investors are vulnerable to manipulation.

The Department continues to believe, as it did in connection with the proposals, that, in the absence of adequate protections, an adviser's conflicts may result in biased advice.[21]

[20] ''Level'' in this context means invariant with respect to associated investment decisions.

[21] Since promulgating the proposals the Department has considered additional evidence

Continued

However, the Department also believes that the safeguards included in this final rule, together with associated enforcement mechanisms including the potentially significant excise taxes [22] for noncompliance and for patterns and practice of noncompliance, effectively minimize the possibility that fiduciary advisers will act on their conflicts. Provisions expected to deter noncompliance include the annual audit requirement, disclosure of noncompliant activities identified in the course of an audit to authorizing plan fiduciaries and, in the case of IRAs, to the Department, and the pattern or practice provision.

Because the conditions and enforcement mechanisms constitute adequate safeguards, the Department believes that any impact of conflicts on advice provided pursuant to the statutory and class exemptions will be minimal. The Department stands by its assumption that advice arrangements operating pursuant to the final rule will be as effective as arrangements operating without need for exemptive relief.

g. Effect on Expenses

Two distinct types of inefficiency can result in higher than optimal consumer expenditures for a particular type of good. The first is prices that are higher than would be efficient. Efficient markets require vigorous competition. Sellers with market power can command inefficiently high prices, thereby capturing consumer surplus and imposing a ''dead weight loss'' of welfare on society. Efficient markets also require perfect information and rational, utility maximizing consumers. Imperfect information, search costs and consumers' behavioral biases likewise can allow some sellers to command inefficiently high prices. The Department accordingly has considered whether such conditions might exist in the market for investment products and services bought by or on behalf of participants.

The second type of inefficiency is suboptimal consumer choices among available products. Even if goods are priced competitively, welfare will be lost if consumers make poor purchasing decisions. Imperfect information, search costs and behavioral biases can compromise purchasing decisions, and the Department has considered whether participants' purchases of investment products and services might be so compromised.

In its RIA of the proposals, the Department estimated that fees and expenses paid by unadvised participants are higher than necessary by 11.3 basis points on average. Some commenters on the proposals, as well as some commenters on the Department's proposed regulation governing disclosure to participant-directed defined contribution (DC) plan participants,[23] disputed this estimate. The commenters pointed to evidence that the pricing of investment products and related services is competitive and efficient, and contended that there is no credible evidence to the contrary.

The commenters raised several specific challenges to the Department's analysis. First, they contended that the Department's estimate relies inappropriately on dispersion in mutual fund expenses as evidence that such expenses are sometimes higher than necessary and as a basis for estimating the degree to which this is so. Dispersion in expenses reflects differences among the investment products or the services bundled with them, the commenters said, and therefore such dispersion is consistent with competitive, efficient pricing. Second, the commenters argued that the analysis draws incorrect inferences about fees and expenses in DC plans. The analysis overlooks the role of DC plan fiduciaries in choosing reasonably priced investments and relies too much on research that examined retail rather than DC plan experience, they said. Third, the commenters highlighted what they say are technical flaws in some of the research that the Department had cited as supporting the conclusion that fees and expenses are sometimes higher than necessary, and they took issue with the Department's interpretation of some of the research.

In response to these commenters, the Department undertook to refine and strengthen its analysis. First, the Department agrees that the RIA of the proposals relied too heavily on mere dispersion of fees and expenses as a basis for estimating whether and to what degree they might be higher than necessary. The estimate that they are on average 11.3 basis points higher than necessary lacks adequate basis and should be disregarded. Second, the Department agrees that fees and expenses paid by DC plan participants can differ from those paid by retail investors. Any evidence of higher than necessary expenses in the retail sector might suggest similar circumstances in DC plans, but would not demonstrate it. Third, the Department reviewed available research literature in light of the commenters, and refined its analysis and conclusions accordingly, as summarized immediately below.

(i) *Expense sensitivity*—Surveys and studies strongly suggest gaps in awareness of and sensitivity to expenses.[24] Other studies consider whether investors with different levels of sophistication make different decisions about fees. If more sophisticated investors are more sensitive to fees, less sophisticated ones might be paying more than would be optimal. Alternatively, they might be paying more in order to obtain sophisticated help. Much literature suggests a negative relationship between sophistication and expenses paid,[25] but some does not.[26] Overall this literature leaves open the question of whether investment prices are sometimes inefficiently high, but suggests that even if prices are efficient investors may make poor purchasing decisions. The Department believes that many individual investors, including both DC plan participants and IRA beneficiaries,

suggesting that adviser conflicts can taint advice. *See, e.g.*, U.S. SEC, *Protecting Senior Investors: Report of Examinations of Securities Firms Providing ''Free Lunch'' Sales Seminar* (Sept. 2007).

[22] Under Code section 4975, fiduciaries participating in prohibited transactions may be subject to an excise tax of 15 percent of the amount involved for each year in the taxable period, in addition to which an excise tax of 100 percent of the amount involved may be added depending on whether the prohibited transactions are timely corrected.

[23] *See* 73 FR 43013 (July 23, 2008).

[24] *See e.g.*, James J. Choi *et al., Why Does the Law of One Price Fail? An Experiment on Index Mutual Funds,* National Bureau of Economic Research Working Paper W12261 (May 2006); Jeff Dominitz *et al., How Do Mutual Funds Fees Affect Investor Choices? Evidence from Survey Experiments* (May 2008) (unpublished, on file with the Department) (Dominitz); and John Turner & Sophie Korczyk, *Pension Participant Knowledge About Plan Fees,* AARP Pub ID: DD–105 (Nov. 2004). Commenters pointed out that net flows are concentrated in mutual funds with low expenses. However it is unclear whether this reflects investor fee sensitivity or brand name recognition and successful marketing by large, established funds whose low fees are attributable to economies of scale.

[25] Sebastian Müller & Martin Weber, *Financial Literacy and Mutual Fund Investments: Who Buys Actively Managed Funds?,* Social Science Research Network Abstract 1093305 (Feb. 14, 2008) found that more financially literate investors pay lower front-end loads but similar management fees, and suggest that investors who know about management fees appear not to care about them. Dominitz finds that financially literate individuals are better able to estimate fees, and better estimates are associated with more optimal investment choices. Brad M. Barber *et al., Out of Sight, Out of Mind, The Effects of Expenses on Mutual Fund Flows,* Journal of Business, Volume 79, Number 6, 2095–2119 (2005) found that repeat investors are more sensitive to load fees than expense ratios, but commenters point out that this finding may be an artifact of industry load setting practices.

[26] Mark Grinblatt *et al., Are Mutual Fund Fees Competitive? What IQ-Related Behavior Tells Us,* Social Science Research Network Abstract 1087120 (Nov. 2007) found that investors with different IQs pay similar fees, which ''suggests that fees are set competitively.''

historically have not factored expenses optimally into their investment choices.

(ii) *Sector differences*—Some studies lend insight to the question of whether investment prices are efficient by comparing prices paid or performance in different market segments.[27] The Department believes that taken together, this literature suggests that there are unexplained differences in prices and performance across sectors but fails to demonstrate conclusively whether such differences are systematically attributable to inefficiently high investment prices.

(iii) *Market power*—At least one study suggests that mutual funds may wield market power to mark up prices to inefficient levels.[28]

(iv) *What expenses buy*—A number of studies considered the degree to which expense dispersion is a function of product features and bundled services, and if it is, whether that dispersion is justified by differences in observable attendant financial benefits such as performance. Some of this literature also considered the degree to which investors choose investments where expenses are so justified. In the Department's view this literature taken together suggests that a substantial portion of expense dispersion is attributable to distribution expenses, including compensation of intermediaries and advertising.[29] It casts doubt on whether such expenses are duly offset by observable financial benefits. Most studies are consistent with the possibility that such expenses are at least partly offset by unobserved benefits such as reduced search costs and other support for novice and unsophisticated investors, but most are also consistent with the possibility that some expenses are not so offset and that investors, especially unsophisticated ones, sometimes pay inefficiently high prices.[30] The authors of some studies expressly interpreted their failure to identify offsetting financial benefits as evidence that prices are inefficiently high. Some suggested that conflicted intermediaries may serve their own and fund managers' interests, thereby generating inefficiently high profits for either or both. Others disagreed, believing that investors efficiently derive a combination of financial and intangible benefits for their expense dollars.[31]

[27] John P. Freeman & Stewart L. Brown, *Mutual Fund Advisory Fees: The Cost of Conflicts of Interest,* The Journal of Corporate Law, Volume 26, 609–673 (Spring 2001), found that the price paid by mutual funds for equity fund management is higher than that paid by pension funds. Based on this and other evidence they argue that mutual fund fees are often excessive. John C. Coates & R. Glenn Hubbard, *Competition in the Mutual Fund Industry: Evidence and Implications for Policy,* Social Science Research Network Abstract 1005426 (Aug. 2007), challenged Freeman and Brown's methods and conclusions, arguing that these differences in prices are attributable to differences in services for which Freeman and Brown did not account. They offer evidence that fees are competitive. Alicia H. Munnell *et al., Investment Returns: Defined Benefits vs. 401(k) Plans,* Center for Retirement Research Issue Brief Number 52 (Sept. 2006), found higher returns in defined benefit (DB) plans than in DC plans and offered that ''part of the explanation may rest with higher fees'' that are paid by DC plan participants. Rob Bauer & Rik G.P. Frehen, *The Performance of U.S. Pension Funds,* Social Science Research Network Abstract 965388 (Jan. 2008), found that DC and DB plans both perform close to benchmarks while mutual funds underperform, and point to hidden costs in mutual funds as the most likely reason. Diane Del Guercio & Paula A. Tkac, *The Determinants of the Flow of Funds of Managed Portfolios: Mutual Funds* vs. *Pension Funds,* The Journal of Financial and Quantitative Analysis, Volume 37, Number 4, 523–557 (Dec. 2002), found that ''in contrast to mutual fund investors, pension clients punish poorly performing managers by withdrawing assets under management and do not flock disproportionately to recent winners.''

[28] Guo Ying Luo, *Mutual Fund Fee-Setting, Market Structure and Mark-Ups,* Economica, Volume 69, Number 274, 245–271 (May 2002), exploited differences in market concentration across different narrow mutual funds categories, and found that mark-ups average 30 percent of fees across all categories of no load funds and more than 70 percent across load funds (assuming a 5-year holding period).

[29] The literature also attributed much expense dispersion to differences in the cost of managing different types of funds. For example, active equity management is more expensive than passive and management of foreign or small cap equity funds is more expensive than management of large cap domestic equity funds. Investors therefore might optimally diversify across funds with different levels of investment management expense. Some studies questioned whether active management delivers observable financial benefits commensurate to the associate expense. For example, Kenneth R. French, *The Cost of Active Investing,* Social Science Research Network Abstract 1105775 (Apr. 2008), found that investors spend 0.67 percent of aggregate U.S. stock market value each year searching for superior return, and characterized this as society's cost of price discovery.

[30] Both of these hypotheses are also consistent with literature finding a negative link between sophistication and expenses.

[31] The following is a sampling of findings and interpretations reported in various studies that the Department reviewed. The Department observes that some of these studies have been published in peer-reviewed journals, while others have not. Some are working papers subject to later revision. Some research is visibly supported by industry or other interests, and some may be independent. Very little of this research separately examines DC plan investing. Nearly all of it examines mutual fund markets to the exclusion of certain competing insurance company or bank products. Some of it examines foreign experience. The Department believes it must be cautious in drawing inferences from this research as to whether investment prices paid by participants are efficient.

Daniel B. Bergstresser *et al., Assessing the Costs and Benefits of Brokers in the Mutual Fund Industry,* Social Science Research Network Abstract 616981 (Sept. 2007), found that investors who pay to purchase funds via intermediaries realize inferior returns, and said this result is consistent with either intangible benefits for investors or inefficiently high prices due to conflicts.

Ralph Bluethgen *et al., Financial Advice and Individual Investors' Portfolios,* Social Science Research Network Abstract 968197 (Mar. 2008), found that advisers (who are mostly compensated by commission) improve diversification and allocation across classes while increasing fees and turnover. They said these findings are consistent with ''honest advice.''

Mercer Bullard *et al., Investor Timing and Fund Distribution Channels,* Social Science Research Network Abstract 1070545 (Dec. 2007), found that investors who transact through conflicted advisers incur timing underperformance.

Susan Christoffersen *et al., The Economics of Mutual-Fund Brokerage: Evidence from the Cross Section of Investment Channels,* Science Research Network Abstract 687522 (Dec. 2005), identified some financial benefits reaped by investors who pay to invest through intermediaries.

Sean Collins, *Fees and Expenses of Mutual Funds, 2006,* Investment Company Institute Research Fundamentals, Volume 16, Number 2 (June 2007), reported that mutual fund fees and expenses are declining.

Sean Collins, *Are S&P 500 Index Mutual Funds Commodities?,* Investment Company Institute Perspective, Volume 11, Number 3 (Aug. 2005), argued that S&P 500 index funds are not uniform commodities. For example, they are distributed in different ways. He found that 91 percent of the variation in these funds' expense ratios can be explained by a combination of fund asset size, investor account size, fee waivers and separate fees, and investor advice that is bundled into expense ratios. He argued that these funds competitively pass economies of scale along to investors, and reported that assets and flows are concentrated in low-cost funds.

Henrik Cronqvist, *Advertising and Portfolio Choice,* Social Science Research Network Abstract 920693 (July 26, 2006), found that fund advertising steered investors toward ''portfolios with higher fees, more risk, more active management, more 'hot' sectors, and more home bias.'' He suggested that ''with the use of advertising, funds can differentiate themselves and therefore charge investors higher fees than the lowest-cost supplier in the industry.''

Daniel N. Deli, *Mutual Fund Advisory Contracts: An Empirical Investigation,* The Journal of Finance, Volume 57, Number 1, 109–133 (Feb. 2002), found that differences in investment advisers' marginal compensation reflected differences in their marginal product, difficulty in measuring adviser performance, control environments, and scale economies. Based on this finding, he suggested that investment prices are efficient and recommended caution in any regulatory effort to influence such prices.

Edwin J. Elton *et al., Are Investors Rational? Choices Among Index Funds,* The Journal of Finance, Volume 59, Number 1, 261–288 (Feb. 2004), found that flows into high-expense (and therefore predictably low performance) S&P 500 index mutual funds were higher than would be expected in an efficient market. They concluded that, because investors are not perfectly informed and rational, inferior products can prosper. Commenters, however, contended that, because the authors scaled flows by fund size and smaller funds have higher expenses, these findings exaggerated the degree to which flows are directed to high-expense funds.

Javier Gil-Bazo & Pablo Ruiz-Verdú, *Yet Another Puzzle? Relation Between Price and Performance in the Mutual Fund Industry,* Social Science Research Network Abstract 947448 (March 2007), found that ''funds with worse before-fee performance charge higher fees.'' They hypothesized that lower-performing funds lose sophisticated investors to higher performing funds, then are left with relatively unsophisticated investors who are not as responsive to price.

Continued

In light of this literature and public commenters, the Department believes that the available research provides an insufficient basis to confidently determine whether or to what degree participants pay inefficiently high investment prices. Market conditions that may lead to inefficiently high prices—namely imperfect information, search costs and investor behavioral biases—certainly exist in the retail IRA market and likely exist to some degree in particular segments of the DC plan market. The Department believes there is a strong possibility that at least some participants, especially IRA beneficiaries, pay inefficiently high investment prices. If so, the Department would expect these actions to reduce that inefficiency. This would increase participants' welfare by transferring surplus from producers of investment products and services to them and by reducing dead weight loss. The Department additionally believes that even where investment prices are efficient, participants often make bad investment decisions with respect to expenses—that is, they buy investment products and services whose marginal cost exceed the associated marginal benefit to them.[32]

The Department expects these actions to reduce such investment errors, improving participant and societal welfare. However, the Department has no basis on which to quantify such errors or improvements.

3. Impact Assessment

Although the Department anticipates that these actions will increase the availability of investment advice to DC plan participants and the use of advice by IRA beneficiaries, the Department is uncertain how changing market conditions might affect the incidence and magnitude of investment errors, as well as the availability, use, and effect of investment advice. Recent developments in financial markets and in the market for financial products and services underscore this uncertainty. However, given that the costs of this regulation are due to the cost of providing (or paying for) investment advice, it will be incurred only to the extent that participants seek advice and anticipate improved returns on their investments. Thus, the Department remains confident that these actions will yield positive net benefits though we are uncertain of the magnitude. The Department believes that the approach used in the analysis for the proposed rule could reflect the long-term effects of these actions and can be viewed as a reasonable upper bound. The Department's assumptions are summarized in Tables 1, 2, and 3.

TABLE 1—AVAILABILITY OF ADVICE TO DC PLAN PARTICIPANTS

Policy context	Any advice (computer or live)	Live adviser
Pre-PPA	40%	20%
PPA	50	25
Class exemption	60	35

Note: There are approximately 66 million DC participants.

TABLE 2—NUMBER OF ENTITIES

	Pre PPA	PPA	CE
DC:			
Plans offering (000s)	209.46	261.82	314.19
Participants offered (MM)	26.44	33.05	39.66
Participants using (MM)	6.61	8.26	10.25
IRA:			
IRAs using (MM)	16.81	25.47	33.97

John A. Haslem *et al., Performance and Characteristics of Actively Managed Retail Equity Mutual Funds with Diverse Expense Ratios,* Financial Services Review, Volume 17, Number 1, 49–68 (2008), found that funds with lower expenses have superior returns. John A. Haslem *et al., Identification and Performance of Equity Mutual Funds with High Management Fees and Expense Ratios,* Journal of Investing, Volume 16, Number 2 (2007), found that certain performance measures vary negatively with fees and, on that basis, suggested that mutual funds do not compete strongly on price and that expenses are too high.

Sarah Holden & Michael Hadley, *The Economics of Providing 401(k) Plans: Services, Fees and Expenses 2006,* Investment Company Institute Research Fundamentals, Volume 16, Number 4 (Sept. 2007), reported that 401(k) mutual fund investors tended to pay lower than average expenses and that 401(k) assets were concentrated in low-cost funds.

Ali Hortacsu & Chad Syverson, *Product Differentiation, Search Costs, and Competition in the Mutual Fund Industry: A Case Study of S&P 500 Index Funds,* Quarterly Journal of Economics, 403 (May 2004), documented dispersion in S&P 500 Index Fund expense ratios, and reported that low-cost funds had a dominant, but falling, market share. They concluded that an influx of novice investors who must defray search costs explained dispersion in expenses and flows to high-expense funds.

Todd Houge & Jay W. Wellman, *The Use and Abuse of Mutual Fund Expenses,* Social Science Research Network Abstract 880463 (Jan. 2006), found that load funds charge higher 12b-1 and management fees. They attributed this to abusive market segmentation that extracted excessive fees from unsophisticated investors.

Giuliano Iannotta & Marco Navone, *Search Costs and Mutual Fund Fee Dispersion,* Social Science Research Network Abstract 1231843 (Aug. 2008), analyzed the effect of search costs on mutual fund fees with data on broad U.S. domestic equity funds. They estimated the portion of the expense ratio that was not justified by the quality of service provided, by the cost structure of the investment company, or by the specificities of the clientele served by the fund and found that its dispersion was lower for highly visible funds and for funds that invested heavily in marketing. In the case of the U.S. mutual fund market, they argued, the dispersion of this residual demonstrated the extent to which some firms can charge a ''non-marginal'' (that is higher than competitive) price.

Marc M. Kramer, *The Influence of Financial Advice on Individual Investor Portfolio Performance,* Social Science Research Network Abstract 1144702 (Mar. 2008), found that advised investors took less risk and thereby reaped lower returns. Risk-adjusted performance was similar. Adjusting further for investor characteristics, advised investors performed slightly worse.

Erik R. Sirri & Peter Tufano, *Costly Search and Mutual Fund Flows,* The Journal of Finance, Volume 53, Number 5, 1589–1622 (Oct. 1998), found that investors were ''fee sensitive in that lower-fee funds and funds that reduce fees grow faster.'' Investors' fee sensitivity was not symmetric, however.

Edward Tower & Wei Zheng, *Ranking Mutual Fund Families: Minimum Expenses and Maximum Loads as Markers for Moral Turpitude,* Social Science Research Network Abstract 1265103 (Sept. 2008), found a negative relationship between expense ratios and gross performance. The *Division of Investment Management: Report on Mutual Fund Fees and Expenses,* U.S. Securities and Exchange Commission (Dec. 2000), *at http://www.sec.gov/news/studies/feestudy.htm,* described mutual fund fees and expenses and identified major factors that influenced fee levels but did not assess whether prices were efficient.

Xinge Zhao, *The Role of Brokers and Financial Advisors Behind Investment Into Load Funds,* China Europe International Business School Working Paper (Dec. 2005), *at http://www.ceibs.edu/faculty/zxinge/brokerrole-zhao.pdf,* found that funds with higher loads received higher flows, and suggested that conflicted intermediaries enriched themselves at investors' expense.

[32] It is possible that the converse could sometimes occur: participants might fail to buy efficiently priced products and services whose marginal cost lags the associated marginal benefit to them. In that case advice, by correcting this error, might lead to higher expenses, but would still improve welfare. Because research suggests that participants are insensitive to fees rather than excessively sensitive to them, the Department believes that this converse situation is likely to be rare.

TABLE 3—USE OF ADVICE BY DC PLAN AND IRA PARTICIPANTS

Policy context	Share of participants advised		Dollars advised ($ trillions)			
	DC plans		IRA	DC plans	IRAs	Combined
	Where offered	Overall				
Pre-PPA	25%	10%	33%	$0.30	$1.40	$1.70
PPA	25	13	50	0.30	2.10	2.50
Class exemption	26	16	67	0.40	2.80	3.20

Note: There are approximately 66 million DC participants and approximately 51 million IRA beneficiaries.

As in its RIA of the proposals, the Department assumes here that advised participants make investment errors at one-half the rate of unadvised participants. The remaining errors reflect participant failures to follow advice, together with possible flaws in some advice. Advice arrangements operating without need for exemptive relief, pursuant to the PPA statutory exemption, and pursuant to the class exemption are equally effective on average, the Department assumes.

The Department expects the PPA as implemented by this regulation, together with this class exemption, to reduce investment errors to the benefit of participants. The Department's estimates of investment errors and reductions from investment advice are summarized in Table 4.

TABLE 4—LONG TERM INVESTMENT ERRORS AND IMPACT OF ADVICE

[$ billions, annual]

Policy context	Remaining errors	Errors eliminated by advice	
		Incremental	Cumulative
No advice	$115	$0	$0
Pre-PPA advice only	101	14	14
PPA	95	7	20
Class exemption	88	7	27

In the RIA of the proposals, the Department estimated costs of $1.8 billion for advice arrangements operating under the PPA statutory exemption and $2.3 billion for advice arrangements under the class exemption. As the requirement to document and keep records on the basis of advice provided under the class exemption was broadened, costs of about $610 million were added to the costs of the class exemption, leading to a new estimate of $2.9 billion. The current cost estimates are summarized in Table 5.

TABLE 5—COST OF ADVICE

	Pre-PPA	PPA	Class exemption
Incremental			
Advice cost ($ billions)	$3.80	$1.80	$2.90
Advice cost rate (bps, average)	23	23	37
Cumulative (combined with policies to the left)			
Advice cost ($ billions)	$3.80	$5.60	$8.50
Advice cost rate (bps, average)	23	23	26

4. Alternatives

In formulating this final rule, the Department considered several alternative approaches, which it detailed in its RIA of the proposals. The Department in these final actions did not adopt any of the alternatives discussed in its RIA of the proposals, having received no sufficiently persuasive comments suggesting that it should. Some public commenters on the proposals suggested alternatives the Department had not yet considered. The furthest reaching commenters, expressing concern that conflicts permitted under the proposals would taint advice, suggested that the Department should either withdraw the proposals or modify them to require stricter and/or broader fee leveling. As detailed above, the Department believes these actions' conditions are sufficiently protective to safeguard the quality of advice. Accordingly, the Department did not pursue these alternatives. Other commenters suggested more incremental revisions to the proposals. The Department's decisions whether to adopt these suggestions are discussed earlier in this preamble.

5. Uncertainty

As previously stated, the Department is uncertain how changing market conditions might affect the incidence and magnitude of investment errors, as well as the availability, use, and effect of investment advice. Recent developments in financial markets and in the market for financial products and

services underscore this uncertainty. On one hand, falling account balances might reduce the magnitude of both investment errors and potential gains from corrective advice. On the other hand, volatility and losses in financial markets might amplify these, and might increase plan sponsors' propensity to make advice available and participants' propensity to seek and follow advice. At the same time, restructuring and consolidation among suppliers of financial products and services might alter the cost and availability of advice. The Department intends its quantitative estimates to reflect the long-term effects that will encompass a variety of market circumstances. The literature and experience underlying the Department's estimates reflect a variety of historical market contexts and conditions. However, given the uncertainty, we now present the estimate as a plausible upper bound for the possible effects.

Regardless, the Department remains highly confident in its conclusion expressed in its RIA of the proposals that investment errors are common and often large, producing large avoidable losses (including foregone earnings) in the long run for participants. It likewise remains confident that participants can reduce errors substantially by obtaining and following good advice. Public comments on the proposals reinforce these conclusions.

The Department also remains confident that these actions, by relaxing rules governing arrangements under which advice can be delivered, will promote wider use of advice. However, the Department is uncertain to what extent advice will reach participants and to what extent advice that does reach them will reduce errors. To illustrate that uncertainty, the Department conducted sensitivity tests of how its estimates of the reduction in investment errors attributable to the PPA and this class exemption would change in response to alternative assumptions regarding the availability, use, and quality of advice. Table 6 summarizes the results of these tests.

TABLE 6—UNCERTAINTY IN ESTIMATE OF INVESTMENT ERROR REDUCTION

[$ billions annually]

Scenarios	Impact of PPA	Impact of class exemption	Impact of all advice	Remaining errors
Advice eliminates:				
75% of errors	$10	$10	$43	$80
50% of errors	7	7	27	88
25% of errors	3	3	13	96
After PPA/class exemption, advice reaches:				
15%/21% of DC and 60%/80% of IRA	11	8	33	82
13%/16% of DC and 50%/67% of IRA	7	7	27	88
11%/13% of DC and 40%/50% of IRA	3	4	20	95

The Department remains uncertain whether the magnitude and incidence of investment errors and the potential for correction of such errors in the context of IRAs might differ from that in the context of ERISA-covered DC plans. If a DC plan's menu of investment options is efficient then the incidence and/or magnitude of errors might be smaller than in the IRA context. If it is inefficient then errors might be more numerous and/or larger, but the potential for correcting them might be constrained. Commenters that address this issue mostly suggest that menus are efficient.

The Department remains uncertain about the mix of advice and other support arrangements that will compose the market, and about the relative effectiveness of alternative investment advice arrangements or other means of supporting participants' investment decisions. As discussed above, comments on these questions are mixed and provide no basis for the Department to revise its baseline assumption that all arrangements will be equally effective.

The Department is uncertain about the potential magnitude of any transitional costs associated with this final rule. These might include costs associated with efforts of prospective fiduciary advisers to adapt their business practices to the applicable conditions. They might also include transaction costs associated with initial implementation of investment recommendations by newly advised participants. The Department's concern over this uncertainty is modest because commenters on the proposals emphasize the industry's willingness to comply with these actions' conditions and the benefits to investors of implementing sound recommendations.

Another source of uncertainty involves potential indirect downstream effects of this final rule. Investment advice may sometimes come packaged with broader financial advice, which may include advice on how much to contribute to a DC plan. The Department has no basis to estimate the incidence of such broad advice or its effects, but notes that those effects could be large. The opening of large new markets to a variety of investment advice arrangements to which they were heretofore closed may affect the evolution of investment advice products and services and related technologies and their distribution channels and respective market shares. Other possible indirect effects that the Department lacks bases to estimate include financial market impacts of changes in investor behavior and related macroeconomic effects.

However, given that the costs of this regulation are due to the cost of providing (or paying for) investment advice, it will be incurred only to the extent that participants seek advice and anticipate improved returns on their investments. Thus, the Department remains confident that these actions will yield positive net benefits though we are uncertain of the magnitude.

E. Executive Order 12866

Under Executive Order 12866, the Department must determine whether a regulatory action is significant and therefore subject to the requirements of the Executive Order and review by the Office of Management and Budget (OMB). This action, comprising this final rule, is economically significant under section 3(f)(1) of the Executive Order because it is likely to have an effect on the economy of $100 million or more in any one year. Accordingly, the Department undertook the foregoing analysis of the action's impact. On that basis the Department believes that the action's benefits justify its costs.

F. Regulatory Flexibility Act

In the notice of proposed rulemaking, the Department certified that the proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. For purposes of the analysis, the Department proposed to continue its usual practice of considering a small entity to be an employee benefit plan with fewer than 100 participants. The Department consulted with the Small Business Administration Office of Advocacy concerning use of this participant count standard for Regulatory Flexibility Act purposes and requested public commenters on this issue. The Department did not receive any comments that address its use of the participant count standard and continues to consider a small entity to be an employee benefit plan with fewer than 100 participants.

The Department received a comment from a small investment advisory firm that provides investment management services to IRA beneficiaries. The commenter expressed concern that it will incur substantial cost to comply with the PPA's statutory exemption in order to continue providing investment advisory services for its IRA clients. The Department observes, however, that investment advice arrangements that were permissible before enactment of the PPA remain permissible without respect to whether they satisfy the conditions of the PPA's statutory exemption. Therefore the Department does not detect in this comment evidence of a substantial impact on a small entity.

Another commenter stated that small plan sponsors will bear an additional fiduciary burden under the statutory exemption, because it allows them to enter into investment advice arrangements with conflicted fiduciary advisers. Therefore, the commenter opined, the Department should have completed an Initial Regulatory Flexibility Analysis when proposing the regulation. The Department notes, however, that the permissibility of such arrangements is established by statute and not by this implementing regulation. The Department also notes that small plan sponsors remain free to enter into advice arrangements that are free from conflicts. Therefore the Department does not detect in this comment evidence of a substantial impact on a significant number of small entities.

In light of the foregoing, the Department hereby certifies that the final rule will not have a significant impact on a substantial number of small entities.

G. Congressional Review Act

This final rule is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and will be transmitted to the Congress and the Comptroller General for review.

H. Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, the final rule does not include any federal mandate that will result in expenditures by state, local, or tribal governments in the aggregate of more than $100 million, adjusted for inflation, or increase expenditures by the private sector of more than $100 million, adjusted for inflation.

I. Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires the adherence to specific criteria by federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the States, the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This final rule does not have federalism implications because it has no 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. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. The requirements implemented in the rule do not alter the fundamental provisions of the statute with respect to employee benefit plans, and as such would have no implications for the States or the relationship or distribution of power between the national government and the States.

J. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)), the notice of proposed rulemaking (NPRM) solicited commenters on the information collections included therein. The Department also submitted an information collection request (ICR) to OMB in accordance with 44 U.S.C. 3507(d), contemporaneously with the publication of the NPRM, for OMB's review. No public comments were received that specifically addressed the paperwork burden analysis of the information collections.

The Department submitted an ICR to OMB for its request of a new information collection. OMB approved the ICR on January 9, 2009, under OMB Control Number 1210–0134, which will expire on January 31, 2012.

In order to use the statutory exemption and/or the class exemption to provide investment advice to participants and beneficiaries in participant-directed DC plans and beneficiaries of IRAs (collectively hereafter, ''participants''), investment advisory firms are required to make disclosures to participants and hire an independent auditor to conduct a compliance audit and issue an audit report every year. Investment advice firms following the conditions of the exemption based on disclosure of computer model-generated investment advice are required to obtain certification of the model from an eligible investment expert. The class exemption conditions its relief on establishing written policies and procedures, and both exemptions impose recordkeeping requirements. These paperwork requirements are designed to safeguard the interests of participants in connection with investment advice covered by the exemptions.

The calculation of the estimated hour and cost burden of the ICRs under the statutory and class exemption were discussed in detail in the NPRM and are summarized below.[33]

1. Final Statutory Exemption Hour and Cost Burden

The Department estimates that the third-party disclosures, computer model certification, and audit requirements for

[33] Changes made to the disclosure requirements in the final rule are specifically identified below. In addition to the disclosure requirements contained in the NPRM, the final statutory and class exemption provide that, if a computer model does not make recommendations with respect to investment options that constitute certain investment funds, products, or services, the fiduciary adviser must provide the participant or beneficiary with information explaining such funds, products, or services when the investment advice generated by the computer model is presented. For purposes of this analysis, the Department assumes that this information is readily available to the fiduciary advisor and will not necessarily have to be given to the participant in paper form. Therefore, no additional paperwork burden was added. The numbers presented also reflect a very minor update of the number of DC plan participants utilizing advice.

the final statutory exemption will require approximately 4.0 million burden hours with an equivalent cost of approximately $416.8 million and a cost burden of approximately $579.4 million in the first year. In each subsequent year the total labor burden hours are estimated to be approximately 2.1 million hours with an equivalent cost of approximately $215.6 million and the cost burden is estimated at approximately $430.1 million per year.

2. Final Class Exemption Hour and Cost Burden

The Department estimates that the third-party disclosures, the written policies and procedures, and the recordkeeping and audit requirements for the final class exemption will require a total of approximately 12.1 million burden hours with an equivalent cost of approximately $991.3 million and a total cost burden of approximately $63.2 million in the first year. In each subsequent year, the total burden hours are estimated at approximately 11.4 million hours with an equivalent cost of approximately $905.6 million and a total cost burden of approximately $63.2 million per year.

These numbers include an additional 7.7 million burden hours ($610 million in equivalent costs) in all years due to the extension in the final class exemption of the requirement that fiduciary advisers in arrangements using fee-leveling conclude that the provided advice is in the best interest of the participant or beneficiary, explain the basis of this conclusion, document the explanation within 30 days, and retain the documentation. Under the proposed class exemption, this requirement only applied to arrangements involving post-computer model or post-investment education investment advice.

3. Overall Exemption Hour and Cost Burden

The Department estimates that the third-party disclosures, the computer model certification, the written policies and procedures, and the recordkeeping and audit requirements for the statutory and class exemptions require approximately 16.1 million burden hours with an equivalent cost of approximately $1.41 billion and a cost burden of approximately $642.6 million in the first year. The labor burden hours in each subsequent year are approximately 13.5 million hours with an equivalent cost of approximately $1.12 billion and the cost burden in each subsequent year is approximately $493.3 million per year. These paperwork burden estimates are summarized as follows:

Type of Review: New collection (Request for new OMB Control Number).

Agency: Employee Benefits Security Administration, Department of Labor.

Titles: (1) Proposed Class Exemption for the Provision of Investment Advice to Participants and Beneficiaries of Self-Directed Individual Account Plans and IRAs, and (2) Proposed Investment Advice Regulation.

OMB Control Number: 1210–NEW.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 16,000.

Estimated Number of Annual Responses: 20,789,000.

Frequency of Response: Initially, Annually, Upon Request, when a material change.

Estimated Total Annual Burden Hours: 16,126,000 hours in the first year; 13,504,000 hours in each subsequent year.

Estimated Total Annual Burden Cost: $642,552,000 for the first year; $493,253,000 for each subsequent year.

List of Subjects in 29 CFR Part 2550

Employee benefit plans, Exemptions, Fiduciaries, Investments, Pensions, Prohibited transactions, Reporting and recordkeeping requirements, and Securities.

■ For the reasons set forth in the preamble, the Department amends Chapter XXV, subchapter F, part 2550 of Title 29 of the Code of Federal Regulations as follows:

SUBCHAPTER F—FIDUCIARY RESPONSIBILITY UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

PART 2550—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

■ 1. The authority citation for part 2550 is revised to read as follows:

Authority: 29 U.S.C. 1135; and Secretary of Labor's Order No. 1–2003, 68 FR 5374 (Feb. 3, 2003). Sec. 2550.401b–1 also issued under sec. 102, Reorganization Plan No. 4 of 1978, 43 FR 47713 (Oct. 17, 1978), 3 CFR, 1978 Comp. 332, effective Dec. 31, 1978, 44 FR 1065 (Jan. 3, 1978), 3 CFR, 1978 Comp. 332. Sec. 2550.401c–1 also issued under 29 U.S.C. 1101. Sections 2550.404c–1 and 2550.404c–5 also issued under 29 U.S.C. 1104. Sec. 2550.407c–3 also issued under 29 U.S.C. 1107. Sec. 2550.404a–2 also issued under 26 U.S.C. 401 note (sec. 657, Pub. L. 107–16, 115 Stat. 38). Sec. 2550.408b–1 also issued under 29 U.S.C. 1108(b)(1) and sec. 102, Reorganization Plan No. 4 of 1978, 3 CFR, 1978 Comp. p. 332, effective Dec. 31, 1978, 44 FR 1065 (Jan. 3, 1978), and 3 CFR, 1978 Comp. 332. Sec. 2550.408b–19 also issued under sec. 611, Public Law 109–280, 120 Stat. 780, 972, and sec. 102, Reorganization Plan No. 4 of 1978, 3 CFR, 1978 Comp. p. 332, effective Dec. 31, 1978, 44 FR 1065 (Jan. 3, 1978), and 3 CFR, 1978 Comp. 332. Sec. 2550.408g–1 also issued under sec. 102, Reorganization Plan No. 4 of 1978, 3 CFR, 1978 Comp. p. 332, effective Dec. 31, 1978, 44 FR 1065 (Jan. 3, 1978), and 3 CFR, 1978 Comp. 332. Sec. 2550.408g–2 also issued under 29 U.S.C. 1108(g) and sec. 102, Reorganization Plan No. 4 of 1978, 3 CFR, 1978 Comp. p. 332, effective Dec. 31, 1978, 44 FR 1065 (Jan. 3, 1978), and 3 CFR, 1978 Comp. 332. Sec. 2550.412–1 also issued under 29 U.S.C. 1112.

■ 2. Add § 2550.408g–1 to read as follows:

§ 2550.408g–1 Investment advice—participants and beneficiaries.

(a) *In general.* (1) This section provides relief from the prohibitions of section 406 of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act), and section 4975 of the Internal Revenue Code of 1986, as amended (the Code), for certain transactions in connection with the provision of investment advice to participants and beneficiaries. This section, at paragraph (b), implements the statutory exemption set forth at sections 408(b)(14) and 408(g)(1) of ERISA and sections 4975(d)(17) and 4975(f)(8) of the Code. This section, at paragraph (d), prescribes, pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code, a class exemption for certain transactions not otherwise covered by the statutory exemption. The requirements and conditions set forth in this section apply solely for the relief described in paragraphs (b) and (d) of this section and, accordingly, no inferences should be drawn with respect to requirements applicable to the provision of investment advice not addressed by this section.

(2) Nothing contained in ERISA section 408(g)(1), Code section 4975(f)(8), this regulation or the class exemption contained herein imposes an obligation on a plan fiduciary or any other party to offer, provide or otherwise make available any investment advice to a participant or beneficiary.

(3) Nothing contained in ERISA section 408(g)(1), Code section 4975(f)(8), this regulation or the class exemption contained herein invalidates or otherwise affects prior regulations, exemptions, interpretive or other guidance issued by the Department of Labor pertaining to the provision of investment advice and the circumstances under which such advice may or may not constitute a prohibited

transaction under section 406 of ERISA or section 4975 of the Code.

(b) *Statutory exemption.* (1) General. Sections 408(b)(14) and 408(g)(1) of ERISA provide an exemption from the prohibitions of section 406 of ERISA for transactions described in section 408(b)(14) of ERISA in connection with the provision of investment advice to a participant or a beneficiary if the investment advice is provided by a fiduciary adviser under an ''eligible investment advice arrangement.'' Sections 4975(d)(17) and (f)(8) of the Code contain parallel provisions to ERISA sections 408(b)(14) and (g)(1).

(2) Eligible investment advice. For purposes of section 408(g)(1) of ERISA and section 4975(f)(8) of the Code, an ''eligible investment advice arrangement'' means an arrangement that meets either the requirements of paragraph (b)(3) of this section or paragraph (b)(4) of this section, or both.

(3) Arrangements that use fee-leveling. For purposes of this section, an arrangement is an eligible investment advice arrangement if—

(i)(A) Any investment advice is based on generally accepted investment theories that take into account the historic returns of different asset classes over defined periods of time, although nothing herein shall preclude any investment advice from being based on generally accepted investment theories that take into account additional considerations;

(B) Any investment advice takes into account investment management and other fees and expenses attendant to the recommended investments;

(C) Any investment advice takes into account, to the extent furnished by a plan, participant or beneficiary, information relating to age, time horizons (e.g., life expectancy, retirement age), risk tolerance, current investments in designated investment options, other assets or sources of income, and investment preferences of the participant or beneficiary. A fiduciary adviser shall request such information, but nothing in this paragraph (b)(3)(i)(C) shall require that any investment advice take into account information requested, but not furnished by a participant or beneficiary, nor preclude requesting and taking into account additional information that a plan or participant or beneficiary may provide;

(D) Any fees or other compensation (including salary, bonuses, awards, promotions, commissions or other things of value) received, directly or indirectly, by any employee, agent or registered representative that provides investment advice on behalf of a fiduciary adviser does not vary depending on the basis of any investment option selected by a participant or beneficiary;

(E) Any fees (including any commission or other compensation) received by the fiduciary adviser for investment advice or with respect to the sale, holding, or acquisition of any security or other property for purposes of investment of plan assets do not vary depending on the basis of any investment option selected by a participant or beneficiary; and

(ii) The requirements of paragraphs (b)(5), (6), (7), and (8) and paragraph (e) of this section are met.

(4) Arrangements that use computer models. For purposes of this section, an arrangement is an eligible investment advice arrangement if the only investment advice provided under the arrangement is advice that is generated by a computer model described in paragraphs (b)(4)(i) and (ii) of this section under an investment advice program and with respect to which the requirements of paragraphs (b)(5), (6), (7), and (8) and paragraph (e) are met.

(i) A computer model shall be designed and operated to—

(A) Apply generally accepted investment theories that take into account the historic returns of different asset classes over defined periods of time, although nothing herein shall preclude a computer model from applying generally accepted investment theories that take into account additional considerations;

(B) Take into account investment management and other fees and expenses attendant to the recommended investments;

(C) Request from a participant or beneficiary and, to the extent furnished, utilize information relating to age, time horizons (e.g., life expectancy, retirement age), risk tolerance, current investments in designated investment options, other assets or sources of income, and investment preferences; provided, however, that nothing herein shall preclude a computer model from requesting and taking into account additional information that a plan or a participant or beneficiary may provide;

(D) Utilize appropriate objective criteria to provide asset allocation portfolios comprised of investment options available under the plan;

(E) Avoid investment recommendations that:

(*1*) Inappropriately favor investment options offered by the fiduciary adviser or a person with a material affiliation or material contractual relationship with the fiduciary adviser over other investment options, if any, available under the plan; or

(*2*) Inappropriately favor investment options that may generate greater income for the fiduciary adviser or a person with a material affiliation or material contractual relationship with the fiduciary adviser; and

(F)(*1*) Except as provided in clause (*2*) of this paragraph (F), take into account all designated investment options, within the meaning of paragraph (c)(1) of this section, available under the plan without giving inappropriate weight to any investment option.

(*2*) A computer model shall not be treated as failing to meet the requirements of this paragraph merely because it does not make recommendations relating to the acquisition, holding or sale of an investment option that:

(*i*) Constitutes an investment primarily in qualifying employer securities;

(*ii*) Constitutes an investment fund, product or service that allocates the invested assets of a participant or beneficiary to achieve varying degrees of long-term appreciation and capital preservation through equity and fixed income exposures, based on a defined time horizon (such as retirement age or life expectancy) or level of risk of the participant or beneficiary, provided that, contemporaneous with the provision of investment advice generated by the computer model, the participant or beneficiary is also furnished a general description of such funds, products or services and how they operate; or

(*iii*) Constitutes an annuity option with respect to which a participant or beneficiary may allocate assets toward the purchase of a stream of retirement income payments guaranteed by an insurance company, provided that, contemporaneous with the provision of investment advice generated by the computer model, the participant or beneficiary is also furnished a general description of such options and how they operate.

(ii) Prior to utilization of the computer model, the fiduciary adviser shall obtain a written certification, meeting the requirements of paragraph (b)(4)(iv) of this section, from an eligible investment expert, within the meaning of paragraph (b)(4)(iii) of this section, that the computer model meets the requirements of paragraph (b)(4)(i) of this section. If, following certification, a computer model is modified in a manner that may affect its ability to meet the requirements of paragraph (b)(4)(i), the fiduciary adviser shall, prior to utilization of the modified model,

obtain a new certification from an eligible investment expert that the computer model, as modified, meets the requirements of paragraph (b)(4)(i).

(iii) The term ''eligible investment expert'' means a person that, through employees or otherwise, has the appropriate technical training or experience and proficiency to analyze, determine and certify, in a manner consistent with paragraph (b)(4)(iv) of this section, whether a computer model meets the requirements of paragraph (b)(4)(i) of this section; except that the term ''eligible investment expert'' does not include any person that has any material affiliation or material contractual relationship with the fiduciary adviser, with a person with a material affiliation or material contractual relationship with the fiduciary adviser, or with any employee, agent, or registered representative of the foregoing.

(iv) A certification by an eligible investment expert shall—

(A) Be in writing;

(B) Contain—

(*1*) An identification of the methodology or methodologies applied in determining whether the computer model meets the requirements of paragraph (b)(4)(i) of this section;

(*2*) An explanation of how the applied methodology or methodologies demonstrated that the computer model met the requirements of paragraph (b)(4)(i) of this section;

(*3*) A description of any limitations that were imposed by any person on the eligible investment expert's selection or application of methodologies for determining whether the computer model meets the requirements of paragraph (b)(4)(i) of this section;

(*4*) A representation that the methodology or methodologies were applied by a person or persons with the educational background, technical training or experience necessary to analyze and determine whether the computer model meets the requirements of paragraph (b)(4)(i); and

(*5*) A statement certifying that the eligible investment expert has determined that the computer model meets the requirements of paragraph (b)(4)(i) of this section; and

(C) Be signed by the eligible investment expert.

(v) The selection of an eligible investment expert as required by this section is a fiduciary act governed by section 404(a)(1) of ERISA.

(5) Arrangement must be authorized by a plan fiduciary. (i) Except as provided in paragraph (b)(5)(ii), the arrangement pursuant to which investment advice is provided to participants and beneficiaries pursuant to this section must be expressly authorized by a plan fiduciary (or, in the case of an Individual Retirement Account (IRA), the IRA beneficiary) other than: The person offering the arrangement; any person providing designated investment options under the plan; or any affiliate of either. Provided, however, that for purposes of the preceding, in the case of an IRA, an IRA beneficiary will not be treated as an affiliate of a person solely by reason of being an employee of such person.

(ii) In the case of an arrangement pursuant to which investment advice is provided to participants and beneficiaries of a plan sponsored by the person offering the arrangement or a plan sponsored by an affiliate of such person, the authorization described in paragraph (b)(5)(i) may be provided by the plan sponsor of such plan, provided that the person or affiliate offers the same arrangement to participants and beneficiaries of unaffiliated plans in the ordinary course of its business.

(iii) For purposes of the authorization described in paragraph (b)(5)(i), a plan sponsor shall not be treated as a person providing a designated investment option under the plan merely because one of the designated investment options of the plan is an option that permits investment in securities of the plan sponsor or an affiliate.

(6) Annual audit. (i) The fiduciary adviser shall, at least annually, engage an independent auditor, who has appropriate technical training or experience and proficiency, and so represents in writing to the fiduciary adviser, to:

(A) Conduct an audit of the investment advice arrangements for compliance with the requirements of this section; and

(B) Within 60 days following completion of the audit, issue a written report to the fiduciary adviser and, except with respect to an arrangement with an IRA, to each fiduciary who authorized the use of the investment advice arrangement, in accordance with paragraph (b)(5) of this section, setting forth the specific findings of the auditor regarding compliance of the arrangement with the requirements of this section.

(ii) With respect to an arrangement with an IRA, the fiduciary adviser:

(A) Within 30 days following receipt of the report from the auditor, as described in paragraph (b)(6)(i)(B) of this section, shall furnish a copy of the report to the IRA beneficiary or make such report available on its Web site, provided that such beneficiaries are provided information, with the information required to be disclosed pursuant to paragraph (b)(7) of this section, concerning the purpose of the report, and how and where to locate the report applicable to their account; and

(B) In the event that the report of the auditor identifies noncompliance with the requirements of this section, within 30 days following receipt of the report from the auditor, shall send a copy of the report to the Department of Labor at the following address: Investment Advice Exemption Notification—Statutory, U.S. Department of Labor, Employee Benefits Security Administration, Room N–1513, 200 Constitution Ave., NW., Washington, DC 20210.

(iii) For purposes of this paragraph (b)(6), an auditor is considered independent if it does not have a material affiliation or material contractual relationship with the person offering the investment advice arrangement to the plan or with any designated investment options under the plan.

(iv) For purposes of this paragraph (b)(6), the auditor shall review sufficient relevant information to formulate an opinion as to whether the investment advice arrangements, and the advice provided pursuant thereto, offered by the fiduciary adviser during the audit period were in compliance with this section. Nothing in this paragraph shall preclude an auditor from using information obtained by sampling, as reasonably determined appropriate by the auditor, investment advice arrangements, and the advice pursuant thereto, during the audit period.

(v) The selection of an auditor for purposes of this paragraph (b)(6) is a fiduciary act governed by section 404(a)(1) of ERISA.

(7) Disclosure. (i) The fiduciary adviser must provide, without charge, to a participant or a beneficiary before the initial provision of investment advice with regard to any security or other property offered as an investment option, a written notification of:

(A) The role of any party that has a material affiliation or material contractual relationship with the fiduciary adviser in the development of the investment advice program, and in the selection of investment options available under the plan;

(B) The past performance and historical rates of return of the designated investment options available under the plan, to the extent that such information is not otherwise provided;

(C) All fees or other compensation that the fiduciary adviser or any affiliate thereof is to receive (including

compensation provided by any third party) in connection with—

(*1*) The provision of the advice;

(*2*) The sale, acquisition, or holding of any security or other property pursuant to such advice; or

(*3*) Any rollover or other distribution of plan assets or the investment of distributed assets in any security or other property pursuant to such advice;

(D) Any material affiliation or material contractual relationship of the fiduciary adviser or affiliates thereof in the security or other property;

(E) The manner, and under what circumstances, any participant or beneficiary information provided under the arrangement will be used or disclosed;

(F) The types of services provided by the fiduciary adviser in connection with the provision of investment advice by the fiduciary adviser, including, with respect to a computer model arrangement referred to in paragraph (b)(4) of this section, any limitations on the ability of a computer model to take into account an investment primarily in qualifying employer securities;

(G) The adviser is acting as a fiduciary of the plan in connection with the provision of the advice; and

(H) That a recipient of the advice may separately arrange for the provision of advice by another adviser that could have no material affiliation with and receive no fees or other compensation in connection with the security or other property.

(ii)(A) The notification required under paragraph (b)(7)(i) of this section must be written in a clear and conspicuous manner and in a manner calculated to be understood by the average plan participant and must be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of the information required to be provided in the notification.

(B) The appendix to this section contains a model disclosure form that may be used to provide notification of the information described in paragraph (b)(7)(i)(C) of this section. Use of the model form is not mandatory. However, use of an appropriately completed model disclosure form will be deemed to satisfy the requirements of paragraphs (b)(7)(i) and (ii) of this section with respect to such information.

(iii) The notification required under paragraph (b)(7)(i) of this section may, in accordance with 29 CFR 2520.104b-1, be provided in written or electronic form.

(iv) With respect to the information required to be disclosed pursuant to paragraph (b)(7)(i) of this section, the fiduciary adviser shall, at all times during the provision of advisory services to the participant or beneficiary pursuant to the arrangement,—

(A) Maintain accurate, up-to-date information in a form that is consistent with paragraph (b)(7)(ii) of this section,

(B) Provide, without charge, accurate, up-to-date information to the recipient of the advice no less frequently than annually,

(C) Provide, without charge, accurate information to the recipient of the advice upon request of the recipient, and

(D) Provide, without charge, to the recipient of the advice any material change to the information described in paragraph (b)(7)(i) at a time reasonably contemporaneous to the change in information.

(8) Other Conditions. The requirements of this paragraph are met if-

(i) The fiduciary adviser provides appropriate disclosure, in connection with the sale, acquisition, or holding of the security or other property, in accordance with all applicable securities laws,

(ii) Any sale, acquisition, or holding of a security or other property occurs solely at the direction of the recipient of the advice,

(iii) The compensation received by the fiduciary adviser and affiliates thereof in connection with the sale, acquisition, or holding of the security or other property is reasonable, and

(iv) The terms of the sale, acquisition, or holding of the security or other property are at least as favorable to the plan as an arm's length transaction would be.

(c) *Definitions.* For purposes of this section:

(1) The term ''designated investment option'' means any investment option designated by the plan into which participants and beneficiaries may direct the investment of assets held in, or contributed to, their individual accounts. The term ''designated investment option'' shall not include ''brokerage windows,'' ''self-directed brokerage accounts,'' or similar plan arrangements that enable participants and beneficiaries to select investments beyond those designated by the plan.

(2)(i) The term ''fiduciary adviser'' means, with respect to a plan, a person who is a fiduciary of the plan by reason of the provision of investment advice referred to in section 3(21)(A)(ii) of ERISA by the person to the participant or beneficiary of the plan and who is—

(A) Registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*) or under the laws of the State in which the fiduciary maintains its principal office and place of business,

(B) A bank or similar financial institution referred to in section 408(b)(4) of ERISA or a savings association (as defined in section 3(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1)), but only if the advice is provided through a trust department of the bank or similar financial institution or savings association which is subject to periodic examination and review by Federal or State banking authorities,

(C) An insurance company qualified to do business under the laws of a State,

(D) A person registered as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*),

(E) An affiliate of a person described in any of clauses (A) through (D), or

(F) An employee, agent, or registered representative of a person described in paragraphs (c)(2)(i)(A) through (E) of this section who satisfies the requirements of applicable insurance, banking, and securities laws relating to the provision of advice.

(ii) Except as provided under 29 CFR 2550.408g–2, a fiduciary adviser includes any person who develops the computer model, or markets the computer model or investment advice program, utilized in satisfaction of paragraph (b)(4) of this section.

(3) A ''registered representative'' of another entity means a person described in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) (substituting the entity for the broker or dealer referred to in such section) or a person described in section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(17)) (substituting the entity for the investment adviser referred to in such section).

(4) ''Individual Retirement Account'' or ''IRA'' means—

(i) An individual retirement account described in section 408(a) of the Code;

(ii) An individual retirement annuity described in section 408(b) of the Code;

(iii) An Archer MSA described in section 220(d) of the Code;

(iv) A health savings account described in section 223(d) of the Code;

(v) A Coverdell education savings account described in section 530 of the Code; or

(vi) A trust, plan, account, or annuity which, at any time, has been determined by the Secretary of the Treasury to be described in any of paragraphs (c)(4)(i) through (v) of this section.

(5) An ''affiliate'' of another person means—

(i) Any person directly or indirectly owning, controlling, or holding with

power to vote, 5 percent or more of the outstanding voting securities of such other person;

(ii) Any person 5 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person;

(iii) Any person directly or indirectly controlling, controlled by, or under common control with, such other person; and

(iv) Any officer, director, partner, copartner, or employee of such other person.

(6)(i) A person with a ''material affiliation'' with another person means—

(A) Any affiliate of the other person;

(B) Any person directly or indirectly owning, controlling, or holding, 5 percent or more of the interests of such other person; and

(C) Any person 5 percent or more of whose interests are directly or indirectly owned, controlled, or held, by such other person.

(ii) For purposes of paragraph (c)(6)(i) of this section, ''interest'' means with respect to an entity—

(A) The combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of stock of the entity if the entity is a corporation;

(B) The capital interest or the profits interest of the entity if the entity is a partnership; or

(C) The beneficial interest of the entity if the entity is a trust or unincorporated enterprise.

(7) Persons have a ''material contractual relationship'' if payments made by one person to the other person pursuant to contracts or agreements between the persons exceed 10 percent of the gross revenue, on an annual basis, of such other person.

(8) ''Control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) *Class exemption*. (1) General. Pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code—

(i) The restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply to:

(A) The provision of investment advice described in section 3(21)(A)(ii) of the Act by a fiduciary adviser to a participant or beneficiary of an individual account plan that permits such participant or beneficiary to direct the investment of their individual accounts;

(B) The acquisition, holding, or sale of a security or other property pursuant to the investment advice; and

(C) except as otherwise provided in this exemption, the direct or indirect receipt of fees or other compensation by the fiduciary adviser (or any employee, agent, registered representative or affiliate thereof) in connection with the provision of the advice or in connection with an acquisition, holding, or sale of a security or other property pursuant to the investment advice, provided that the conditions set forth in paragraph (d)(2) are met;

(ii) The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply to:

(A) The provision of investment advice described in section 4975(e)(3)(B) of the Code by a fiduciary adviser to a beneficiary of an IRA that permits such beneficiary to direct the investment of the assets of his or her IRA;

(B) The acquisition, holding, or sale of a security or other property pursuant to the investment advice; and

(C) Except as otherwise provided in this exemption, the direct or indirect receipt of fees or other compensation by the fiduciary adviser (or any employee, agent, registered representative or affiliate thereof) in connection with the provision of the advice or in connection with an acquisition, holding, or sale of a security or other property pursuant to the investment advice, provided that the conditions set forth in paragraph (d)(2) of this section are met.

(2) Conditions. The relief described in paragraph (d)(1) shall be available if the fiduciary adviser—

(i) Provides investment advice in accordance with paragraphs (d)(3) or (4), or both; and

(ii) Satisfies the requirements of paragraphs (d)(5) through (10).

(3) Use of computer model or investment education. The requirements of this paragraph (d)(3) will be satisfied if:

(i) Except as provided in paragraph (d)(3)(ii), before providing other investment advice covered by this exemption, the participant or beneficiary shall be furnished with investment recommendations generated by a computer model that—

(A) Meets the requirements of paragraphs (b)(4)(i) and (ii); or

(B) Meets the requirements of paragraph (b)(4)(i) and was designed and is maintained by a person independent of the fiduciary adviser (and any of the adviser's affiliates) and utilizes methodologies and parameters determined appropriate solely by the independent person, without influence from the fiduciary adviser (or any of the adviser's affiliates); for purposes of this paragraph (d)(3)(i), a person is ''independent'' of another person if it is not an affiliate of the other person, and does not have a material affiliation or material contractual relationship with the other person.

(ii)(A) In the case of a plan that offers a ''brokerage window,'' ''self-directed brokerage account'' or similar arrangement that enables participants and beneficiaries to select investments beyond those designated by the plan, if any, before providing investment advice with respect to any investment utilizing such arrangement, the participant or beneficiary shall be furnished the material described in paragraph (d)(3)(ii)(B) and, if the plan offers designated investment options, the participant or beneficiary also shall be furnished the recommendations described in paragraph (d)(3)(i) with regard to such options.

(B) In the case of an IRA with respect to which the types or number of investment choices reasonably precludes the use of a computer model meeting the requirements of section 408(g)(3)(B) of ERISA to generate recommendations, before providing other investment advice covered by this exemption, the participant or beneficiary shall be furnished with material, such as graphs, pie charts, case studies, worksheets, or interactive software or similar programs, that reflect or produce asset allocation models taking into account the age (or time horizon) and risk profile of the beneficiary, to the extent known. Nothing shall preclude the furnishing of material, in addition to the foregoing, reflecting asset allocation portfolios of hypothetical individuals with different time horizons and risk profiles. For purposes of any materials provided pursuant to this paragraph (d)(3)(ii):

(*1*) Models must be based on generally accepted investment theories that take into account the historic returns of different asset classes (e.g., equities, bonds, or cash) over defined periods of time;

(*2*) Such models must operate in a manner that is not biased in favor of investments offered by the fiduciary adviser or a person with a material affiliation or material contractual relationship with the fiduciary adviser; and

(*3*) All material facts and assumptions on which such models are based (e.g., retirement ages, life expectancies, income levels, financial resources, replacement income ratios, inflation

rates, and rates of return) accompany the models.

(iii) The fiduciary adviser shall retain the information furnished pursuant to paragraph (d)(3)(i) or (ii) in accordance with paragraph (e) of this section.

(4) Use of fee-leveling. Any fees or other compensation (including salary, bonuses, awards, promotions, commissions or any other thing of value) received, directly or indirectly, by an employee, agent or registered representative providing advice on behalf of the fiduciary adviser pursuant to this exemption (as distinguished from any compensation received by the fiduciary adviser on whose behalf the employee, agent or registered representative is providing such advice) do not vary depending on the basis of any investment option selected by a participant or beneficiary.

(5) Authorized by a plan fiduciary or IRA beneficiary. (i) Except as provided in paragraph (d)(5)(ii), the arrangement pursuant to which investment advice is provided to participants and beneficiaries is expressly authorized in advance by a plan fiduciary (or, in the case of an IRA, the IRA beneficiary) other than: The person offering the investment advice arrangement; any person providing designated investment options under the plan; or any affiliate of either. Provided, however, that for purposes of the preceding, in the case of an IRA, an IRA beneficiary will not be treated as an affiliate of a person solely by reason of being an employee of such person.

(ii) In the case of an arrangement pursuant to which investment advice is provided to participants and beneficiaries of a plan sponsored by the person offering the arrangement or a plan sponsored by an affiliate of such person, the authorization described in paragraph (d)(5)(i) may be provided by the plan sponsor of such plan, provided that the person or affiliate offers the same arrangement to participants and beneficiaries of unaffiliated plans in the ordinary course of its business.

(iii) For purposes of the authorization described in paragraph (d)(5)(i), a plan sponsor shall not be treated as a person providing a designated investment option under the plan merely because one of the designated investment options of the plan is an option that permits investment in securities of the plan sponsor or an affiliate.

(6) Basis for advice. (i) The investment advice—

(A) Is based on generally accepted investment theories that take into account the historic returns of different asset classes over defined periods of time; provided, however, that nothing herein shall preclude any investment advice from being based on generally accepted investment theories that take into account additional considerations;

(B) Takes into account investment management and other fees and expenses attendant to the recommended investments; and

(C) Takes into account, to the extent furnished by a plan, participant or beneficiary, information relating to age, time horizons (e.g., life expectancy, retirement age), risk tolerance, current investments in designated investment options, other assets or sources of income, and investment preferences of the participant or beneficiary. A fiduciary adviser shall request such information, but nothing in this paragraph (d)(6)(i)(C) shall require that any investment advice take into account information requested, but not furnished by a participant or beneficiary, nor preclude requesting and taking into account additional information that a plan or participant or beneficiary may provide.

(ii) In connection with the provision of the investment advice—

(A) The fiduciary adviser concludes that the advice to be provided is prudent and in the best interest of the participant or beneficiary, and explains to the participant or beneficiary—

(*1*) The basis for the conclusion,

(*2*) If applicable, why the advice includes an option(s) with higher fees than other options in the same asset class(es) available under the plan, and

(*3*) If applicable, in the case of investment advice provided pursuant to paragraph (d)(3)(i) or (ii), how the advice deviates from or relates to the information provided pursuant to such paragraphs;

(B) Not later than 30 days following the explanation described in paragraph (d)(6)(ii)(A), the employee, agent, or registered representative providing the advice on behalf of the fiduciary adviser shall document such explanation; and

(C) The fiduciary adviser retains the documentation developed pursuant to paragraph (d)(6)(ii)(B) in accordance with paragraph (e) of this section.

(7) Policies and procedures. The fiduciary adviser adopts and follows written policies and procedures that are designed to assure compliance with the conditions of this exemption.

(8) Disclosure. (i) The fiduciary adviser provides, without charge, to the participant or beneficiary before the initial provision of investment advice under the class exemption, written notification of:

(A) The role of any party that has a material affiliation or material contractual relationship with the fiduciary adviser in the development of the computer model described in paragraph (d)(3)(i) of this section or, if applicable, the materials described in paragraph (d)(3)(ii) of this section, and, to the extent applicable, in the selection of investment options available under the plan;

(B) The types of services provided by the fiduciary adviser in connection with the provision of investment advice by the fiduciary adviser, including, with respect to a computer model arrangement referred to in paragraph (d)(3)(i) of this section, any limitations on the ability of a computer model to take into account an investment primarily in qualifying employer securities; and

(C) The information described in paragraphs (b)(7)(i)(B) through (E), (G) and (H);

(ii)(A) Such notification must be written in a clear and conspicuous manner and in a manner calculated to be understood by the average plan participant and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of the information required to be disclosed;

(B) The appendix to this section contains a model disclosure form that may be used to provide the notification of information described in paragraph (b)(7)(i)(C). Use of the model disclosure form is not mandatory. However, use of an appropriately completed model disclosure form will be deemed to satisfy the requirements of paragraphs (d)(8)(i)(C) and (d)(8)(ii)(A) with respect to such information.

(iii) Such notification may, in accordance with 29 CFR 2520.104b–1, be provided in written or electronic form.

(iv) With respect to the information required to be disclosed pursuant to paragraph (d)(8)(i) of this section, the fiduciary adviser shall, at all times during the provision of advisory services to the participant or beneficiary pursuant to the arrangement—

(A) Maintain accurate, up-to-date information in a form that is consistent with paragraph (d)(8)(ii) of this section,

(B) Provide, without charge, accurate, up-to-date information to the recipient of the advice no less frequently than annually,

(C) Provide, without charge, accurate information to the recipient of the advice upon request of the recipient, and

(D) Provide, without charge, to the recipient of the advice any material change to the information described in paragraph (d)(8)(i) at a time reasonably

contemporaneous to the change in information.

(9) Annual audit. (i) The fiduciary adviser shall, at least annually, engage an independent auditor, who has appropriate technical training or experience and proficiency and so represents in writing to the fiduciary adviser, to:

(A) Conduct an audit for compliance with the policies and procedures of paragraph (d)(7) of this section and the requirements of paragraph (d) of this section; and

(B) Within 60 days following the completion of the audit, issue a written report to the fiduciary adviser, and, except with respect to an arrangement with an IRA, to each fiduciary who authorized the arrangement, in accordance with paragraph (d)(5), setting forth the specific findings of the auditor regarding compliance of the arrangement with the policies and procedures of paragraph (d)(7) and the requirements of paragraph (d) of this section.

(ii) With respect to an arrangement with an IRA, the fiduciary adviser:

(A) Within 30 days following receipt of the report from the auditor, shall furnish a copy of the report to the IRA beneficiary or make such report available on its Web site, provided that such beneficiaries are provided information, with the information required to be disclosed pursuant to paragraph (d)(8) of this section, concerning the purpose of the report, and how and where to locate the report applicable to their account; and

(B) In the event that the report of the auditor identifies noncompliance with the policies and procedures required by paragraph (d)(7) or the conditions of paragraph (d) of this section, within 30 days following receipt of the report from the auditor, sends a copy of the report to the Department of Labor at the following address: Investment Advice Notification—Class Exemption, U.S. Department of Labor, Employee Benefits Security Administration, Room N–1513, 200 Constitution Ave., NW., Washington, DC 20210.

(iii) For purposes of paragraph (d)(9)(i), an auditor is considered independent if it does not have a material affiliation or material contractual relationship with the person offering the investment advice arrangement to the plan or IRA or any designated investment options under the plan or IRA.

(iv) For purposes of the audit described in paragraph (d)(9)(i), the auditor shall review sufficient relevant information to formulate an opinion as to whether the investment advice arrangements, and the advice provided pursuant thereto, offered by the fiduciary adviser during the audit period were in compliance with the policies and procedures of paragraph (d)(7) of this section and the requirements of this paragraph (d); provided, however, that nothing in this subparagraph shall preclude an auditor from using information obtained by sampling, as reasonably determined appropriate by the auditor, investment advice arrangements, and the advice pursuant thereto, during the audit period.

(v) The selection of an auditor for purposes of this paragraph (d)(9) is a fiduciary act governed by section 404(a)(1) of ERISA.

(10) Other. The requirements of paragraph (b)(8), relating to other conditions, and paragraph (e), relating to retention of records, of this section are met.

(e) *Retention of records*. The fiduciary adviser must maintain, for a period of not less than 6 years after the provision of investment advice under this section any records necessary for determining whether the applicable requirements of this section have been met. A transaction prohibited under section 406 of ERISA shall not be considered to have occurred solely because the records are lost or destroyed prior to the end of the 6-year period due to circumstances beyond the control of the fiduciary adviser.

(f) *Noncompliance*. (1) The relief from the prohibited transaction provisions of section 406 of ERISA and the sanctions resulting from the application of section 4975 of the Code described in paragraphs (b) and (d) of this section shall not apply to any transaction described in such paragraphs in connection with the provision of investment advice to an individual participant or beneficiary with respect to which the applicable conditions of this section have not been satisfied.

(2) In the case of a pattern or practice of noncompliance with any of the applicable conditions of this section, the relief described in paragraph (b) or (d) shall not apply to any transaction in connection with the provision of investment advice provided by the fiduciary adviser during the period over which the pattern or practice extended.

(g) *Applicability date*. This section shall apply to transactions described in paragraphs (b) and (d) of this section occurring on or after March 23, 2009.

Appendix to § 2550.408g–1

Fiduciary Adviser Disclosure

This document contains important information about [enter name of Fiduciary Adviser] and how it is compensated for the investment advice provided to you. You should carefully consider this information in your evaluation of that advice.

[enter name of Fiduciary Adviser] has been selected to provide investment advisory services for the [enter name of Plan]. [enter name of Fiduciary Adviser] will be providing these services as a fiduciary under the Employee Retirement Income Security Act (ERISA). [enter name of Fiduciary Adviser], therefore, must act prudently and with only your interest in mind when providing you recommendations on how to invest your retirement assets.

Compensation of the Fiduciary Adviser and Related Parties

[enter name of Fiduciary Adviser] (is/is not) compensated by the plan for the advice it provides. (if compensated by the plan, explain what and how compensation is charged (e.g., asset-based fee, flat fee, per advice)). (If applicable, [enter name of Fiduciary Adviser] is not compensated on the basis of the investment(s) selected by you.)

Affiliates of [enter name of Fiduciary Adviser] (if applicable enter, and other parties with whom [enter name of Fiduciary Adviser] is related or has a material financial relationship) also will be providing services for which they will be compensated. These services include: [enter description of services, e.g., investment management, transfer agent, custodial, and shareholder services for some/all the investment funds available under the plan.]

When [enter name of Fiduciary Adviser] recommends that you invest your assets in an investment fund of its own or one of its affiliates and you follow that advice, [enter name of Fiduciary Adviser] or that affiliate will receive compensation from the investment fund based on the amount you invest. The amounts that will be paid by you will vary depending on the particular fund in which you invest your assets and may range from __% to __%. Specific information concerning the fees and other charges of each investment fund is available from [enter source, such as: your plan administrator, investment fund provider (possibly with Internet Web site address)]. This information should be reviewed carefully before you make an investment decision.

(if applicable enter, [enter name of Fiduciary Adviser] or affiliates of [enter name of Fiduciary Adviser] also receive compensation from non-affiliated investment funds as a result investments you make as a result of recommendations of [enter name of Fiduciary Adviser]. The amount of this compensation also may vary depending on the particular fund in which you invest. This compensation may range from __% to __%. Specific information concerning the fees and other charges of each investment fund is available from [enter source, such as: your plan administrator, investment fund provider (possibly with Internet Web site address)]. This information should be reviewed carefully before you make an investment decision.

(if applicable enter, In addition to the above, [enter name of Fiduciary Adviser] or affiliates of [enter name of Fiduciary Adviser]

also receive other fees or compensation, such as commissions, in connection with the sale, acquisition or holding of investments selected by you as a result of recommendations of [enter name of Fiduciary Adviser]. These amounts are: [enter description of all other fees or compensation to be received in connection with sale, acquisition or holding of investments]. This information should be reviewed carefully before you make an investment decision.

(if applicable enter, When [enter name of Fiduciary Adviser] recommends that you take a rollover or other distribution of assets from the plan, or recommends how those assets should subsequently be invested, [enter name of Fiduciary Adviser] or affiliates of [enter name of Fiduciary Adviser] will receive additional fees or compensation. These amounts are: [enter description of all other fees or compensation to be received in connection with any rollover or other distribution of plan assets or the investment of distributed assets]. This information should be reviewed carefully before you make a decision to take a distribution.

Consider Impact of Compensation on Advice

The fees and other compensation that [enter name of Fiduciary Adviser] and its affiliates receive on account of assets in [enter name of Fiduciary Adviser] (enter if applicable, and non-[enter name of Fiduciary Adviser]) investment funds are a significant source of revenue for the [enter name of Fiduciary Adviser] and its affiliates. You should carefully consider the impact of any such fees and compensation in your evaluation of the investment advice that [enter name of Fiduciary Adviser] provides to you. In this regard, you may arrange for the provision of advice by another adviser that may have not material affiliation with or receive compensation in connection with the investment funds or products offered under the plan. This type of advice is/is not available through your plan.

Investment Returns

While understanding investment-related fees and expenses is important in making informed investment decisions, it is also important to consider additional information about your investment options, such as performance, investment strategies and risks. Specific information related to the past performance and historical rates of return of the investment options available under the plan (has/has not) been provided to you by [enter source, such as: your plan administrator, investment fund provider]. (If applicable enter. If not provided to you, the information is attached to this document.)

For options with returns that vary over time, past performance does not guarantee how your investment in the option will perform in the future; your investment in these options could lose money.

Parties Participating in Development of Advice Program or Selection of Investment Options

Name, and describe role of, affiliates or other parties with whom the fiduciary adviser has a material affiliation or contractual relationship that participated in the development of the investment advice program (if this is an arrangement that uses computer models) or the selection of investment options available under the plan.

Use of Personal Information

Include a brief explanation of the following—

What personal information will be collected;

How the information will be used;

Parties with whom information will be shared;

How the information will be protected; and

When and how notice of the Fiduciary Adviser's privacy statement will be available to participants and beneficiaries.

Should you have any questions about [enter name of Fiduciary Adviser] or the information contained in this document, you may contact [enter name of contact person for fiduciary adviser, telephone number, address].

■ 3. Add § 2550.408g–2 to read as follows:

§ 2550.408g–2 Investment advice—fiduciary election.

(a) *General.* Section 408(g)(11)(A) of the Employee Retirement Income Security Act, as amended (ERISA), provides that a person who develops a computer model or who markets a computer model or investment advice program used in an ''eligible investment advice arrangement'' shall be treated as a fiduciary of a plan by reason of the provision of investment advice referred to in ERISA section 3(21)(A)(ii) to the plan participant or beneficiary, and shall be treated as a ''fiduciary adviser'' for purposes of ERISA sections 408(b)(14) and 408(g), except that the Secretary of Labor may prescribe rules under which only one fiduciary adviser may elect to be treated as a fiduciary with respect to the plan. Section 4975(f)(8)(J)(i) of the Internal Revenue Code, as amended (the Code), contains a parallel provision to ERISA section 408(g)(11)(A) that applies for purposes of Code sections 4975(d)(17) and 4975(f)(8). This section sets forth requirements that must be satisfied in order for one such fiduciary adviser to elect to be treated as a fiduciary with respect to a plan under an eligible investment advice arrangement.

(b)(1) If an election meets the requirements in paragraph (b)(2) of this section, then the person identified in the election shall be the sole fiduciary adviser treated as a fiduciary by reason of developing or marketing the computer model, or marketing the investment advice program, used in an eligible investment advice arrangement.

(2) An election satisfies the requirements of this subparagraph with respect to an eligible investment advice arrangement if the election is in writing and such writing—

(i) Identifies the investment advice arrangement, and the person offering the arrangement, with respect to which the election is to be effective;

(ii) Identifies a person who—

(A) Is described in any of 29 CFR 2550.408g–1(c)(2)(i)(A) through (E);

(B) Develops the computer model, or markets the computer model or investment advice program, utilized in satisfaction of 29 CFR 2550.408g–1(b)(4) with respect to the arrangement, and

(C) Acknowledges that it elects to be treated as the only fiduciary, and fiduciary adviser, by reason of developing such computer model, or marketing such computer model or investment advice program;

(iii) Is signed by the person identified in paragraph (b)(2)(ii) of this section;

(iv) Is furnished to the fiduciary who authorized the arrangement, in accordance with 29 CFR 2550.408g–1(b)(5); and

(v) Is maintained in accordance with 29 CFR 2550.408g–1(e).

Signed at Washington, DC, this 9th day of January, 2009.

Bradford P. Campbell,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. E9–710 Filed 1–16–09; 8:45 am]

BILLING CODE 4510–29–P

Federal Register

Wednesday,
January 21, 2009

Part IV

Department of Agriculture

Commodity Credit Corporation

7 CFR Part 1415
Grassland Reserve Program; Final Rule

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1415

RIN 0578–AA38

Grassland Reserve Program

AGENCY: Commodity Credit Corporation (CCC), United States Department of Agriculture (USDA).

ACTION: Interim final rule with request for comments.

SUMMARY: The Grasslands Reserve Program (GRP) assists landowners and operators in protecting grazing uses and other related conservation values by restoring and conserving eligible grassland and certain other lands through rental contracts and easements. This interim final rule sets forth how USDA, using the funds, facilities, and authorities of the Commodity Credit Corporation (CCC), will implement GRP in response to the changes made to the program by section 2403 of the Food, Conservation, and Energy Act of 2008. In addition, this interim final rule incorporates other changes to the regulation for clarification or program administrative improvement.

DATES: *Effective date:* The rule is effective January 21, 2009.

Comment date: Submit comments on or before March 23, 2009.

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

- *Government-wide rulemaking Web site: Go to http://www.regulations.gov* and follow the instructions for sending comments electronically.
- *Mail:* Easements Programs Division, Natural Resources Conservation Service, Grassland Reserve Program Comments, P.O. 2890, Room 6819–S, Washington, DC 20013.
- *E-mail: grp2008@wdc.usda.gov*.
- *Fax:* 1–202–720–9689.
- *Hand Delivery:* Room 6819–S of the USDA South Office Building, 1400 Independence Avenue, SW., Washington, DC 20250, between 9 a.m. and 4 p.m., Monday through Friday, except Federal Holidays. Please ask the guard at the entrance to the South Office Building to call 202–720–4527 in order to be escorted into the building.
- This interim final rule may be accessed via Internet. Users can access the NRCS homepage at *http://www.nrcs.usda.gov/*; select the *Farm Bill* link from the menu; select the *Interim final* link from beneath the *Final and Interim Final Rules Index* title. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA TARGET Center at: (202) 720–2600 (voice and TDD).

FOR FURTHER INFORMATION CONTACT: Robin Heard, Director, Easement Programs Division, U.S. Department of Agriculture, Natural Resources Conservation Service, Room 6819, P.O. Box 2890, Washington, DC 20013–2890; phone (202) 720–1875; fax (202) 720–9689.

SUPPLEMENTARY INFORMATION:

Regulatory Certifications

Executive Order 12866

Pursuant to Executive Order 12866, this interim final rule with request for comment was reviewed by the Office of Management and Budget (OMB) and determined that this interim final rule is a significant regulatory action. The administrative record is available for public inspection in Room 5831 South Building, USDA, 14th and Independence Avenue, SW., Washington, DC. Pursuant to Executive Order 12866, NRCS conducted an economic analysis of the potential impacts associated with this program.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this interim final rule because the CCC is not required by 5 U.S.C. 553, or by any other provision of law, to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Analysis

A programmatic environmental assessment has been prepared in association with this rulemaking. NRCS has determined that there will not be a significant impact to the human environment and as a result an Environmental Impact Statement is not required to be prepared (40 CFR part 1508.13). The EA and FONSI are available for review and comment for 60 days from the date of publication of this interim final rule in the **Federal Register**. A copy of the Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) may be obtained from the following Web site: *http://www.nrcs.usda.gov/programs/Env_Assess/*. A hard copy may also be requested from the following address and contact: National Environmental Coordinator, Natural Resources Conservation Service, Ecological Sciences Division, 1400 Independence Ave., SW., Washington, DC 20250. Comments from the public should be specific and reference that comments provided are on the EA and FONSI. Public comment may be submitted by any of the following means: (1) E-mail comments to *NEPA2008@wdc.usda.gov*, (2) E-mail to egov Web site—*http://www.regulations.gov*, or (3) written comments to: National Environmental Coordinator, Natural Resources Conservation Service, Ecological Sciences Division, 1400 Independence Ave., SW., Washington, DC 20250.

Civil Rights Impact Analysis

USDA has determined through a Civil Rights Impact Analysis that the issuance of this interim final rule discloses no disproportionately adverse impacts for minorities, women, or persons with disabilities. Copies of the Civil Rights Impact Analysis are available, and may be obtained from the Director, Easement Programs Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013–2890, or electronically at *http://www.nrcs.usda.gov/programs/GRP*.

Paperwork Reduction Act

Section 2904 of the Food, Conservation and Energy Act of 2008 requires that the implementation of programs authorized under Title II of the Act be made without regard to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Therefore, USDA is not reporting recordkeeping or estimated paperwork burden associated with this interim final rule.

Government Paperwork Elimination Act

NRCS is committed to compliance with the Government Paperwork Elimination Act and the Freedom to E-File Act, which require government agencies in general and NRCS in particular, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Executive Order 12988

This interim final rule has been reviewed in accordance with Executive Order 12988. The provisions of this interim final rule are not retroactive. Furthermore, the provisions of this interim final rule preempt State and local laws to the extent such laws are inconsistent with this interim final rule. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at 7 CFR parts 11, 614, and 780 must be exhausted.

Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994

Pursuant to section 304 of the Federal Crop Insurance Reform Act of 1994

(Pub. L. 103–354), USDA classified this rule as non-major. Therefore, a risk analysis was not conducted.

Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), USDA assessed the effects of this interim final rule on State, local, and Tribal governments, and the public. This action does not compel the expenditure of $100 million or more by any State, local, or Tribal government, or anyone in the private sector; therefore, a statement under section 202 of the Unfunded Mandates Reform Act is not required.

Small Business Regulatory Enforcement Fairness Act of 1996

This interim final rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This interim final rule will not result in an annual effect on the economy of $100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based companies to compete in domestic and export markets.

Executive Order 13132

This interim final rule has been reviewed in accordance with the requirements of Executive Order 13132, Federalism. USDA has determined that this interim final rule conforms with the Federalism principles set forth in the Executive Order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities on the various levels of government. Therefore, USDA concludes that this interim final rule does not have Federalism implications.

Executive Order 13175

This interim final rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. USDA has concluded that this rule will not negatively affect communities of Indian Tribal governments. The rule will neither impose substantial direct compliance costs on tribal governments, nor preempt tribal law.

Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

Section 2904(c) of the Food, Conservation, and Energy Act of 2008 requires that the Secretary use the authority in section 808(2) of title 5, United States Code, which allows an agency to forgo SBREFA's usual Congressional Review delay of the effective date of a regulation if the agency finds that there is a good cause to do so. NRCS hereby determines that it has good cause to do so in order to meet the Congressional intent to have the conservation programs authorized or amended by Title II in effect as soon as possible. Accordingly, this rule is effective upon filing for public inspection by the Office of the Federal Register.

Economic Analysis—Executive Summary

Pursuant to Executive Order 12866, Regulatory Planning and Review, the Natural Resources Conservation Service (NRCS) has conducted a benefit-cost analysis of the Grassland Reserve Program (GRP) as formulated for the Interim Final Rule. This requirement provides decision makers with the opportunity to develop and implement a program that is beneficial, cost effective and that minimizes negative impacts to health, human safety, and the environment.

GRP is a voluntary program for landowners and operators to protect, restore, and enhance grassland, including rangeland, pastureland, shrubland, and certain other lands. The program emphasizes support for grazing operations; enhancement of plant and animal biodiversity; and protection of grassland and land containing shrubs and forbs under threat of conversion.

GRP is one tool in the suite of agricultural land retention mechanisms available to agricultural producers and local communities. Producers and local communities are the main drivers in agricultural land retention efforts and incur the greatest costs and potential benefits. These efforts are driven by local decision makers and involve site-specific impacts which affect a host of non-use valued attributes (scenic views, environmental amenities, etc), making it difficult to accurately quantify the costs and benefits of various policy alternatives. This analysis recognizes these problems and offers an analysis weighed heavily on identifying the main costs and benefits in qualitative terms to explore policy and program alternatives.

The main costs of this agricultural land retention effort include the restriction on the range of activities placed on the grazing land on landowners and the initial contract cost (in the case of easements) and annual payments (in the case of rental contracts) to the government. These costs must then be compared with the benefits of preserving its current land use in grazing or forage production. These benefits include: the maintenance (and possible improvement) of the flow of ecological goods and services (EGS) emanating from its current use in agriculture; the possibility of increased forage production; and difficult to quantify non-use values associated with the provision of scenic views and recreational opportunities; wildlife habitat; and the preservation of current land-use patterns.

In many cases, the funding provided through GRP leverages landowner donations, local governmental monies, and non-governmental contributions to preserve its' current land use in grazing. This qualitative benefit-cost analysis suggests that GRP assistance to local agricultural land preservation programs can bear positive net benefits. A main determinant of the realization of positive net benefits would be the actual fate of the current land use (grazing) in the future with respect to its conversion to non-agricultural and non-grazing agricultural use. Programs such as GRP could play an important role in keeping this land in its most highly valued grazing use (taking into account its non-use value attributes).

Administrative Requirements for Conservation Programs

Section 2708, ''Compliance and Performance'', of the 2008 Act added a paragraph to section 1244(g) of the 1985 Act entitled, ''Administrative Requirements for Conservation Programs,'' which states the following:

''(g) Compliance and performance.—For each conservation program under Subtitle D, the Secretary shall develop procedures—

(1) To monitor compliance with program requirements;

(2) To measure program performance;

(3) To demonstrate whether long-term conservation benefits of the program are being achieved;

(4) To track participation by crop and livestock type; and

(5) To coordinate activities described in this subsection with the national conservation program authorized under section 5 of the Soil and Water Resources Conservation Act of 1977 (16 U.S.C. 2004).''

This new provision presents in one place the accountability requirements placed on the Agency as it implements conservation programs and reports on program results. The requirements apply to all programs under Subtitle D, including the Wetlands Reserve program, the Conservation Security Program, the Conservation Stewardship

Program, the Farm and Ranch Lands Protection Program, the Grassland Reserve Program, the Environmental Quality Incentives Program (including the Agricultural Water Enhancement Program), the Wildlife Habitat Incentive Program, and the Chesapeake Bay Watershed initiative. These requirements are not directly incorporated into these regulations, which set out requirements for program participants. However, certain provisions within these regulations relate to elements of section 1244(g) of the 1985 Act and the Agency's accountability responsibilities regarding program performance. NRCS is taking this opportunity to describe existing procedures that relate to meeting the requirements of section 1244(g) of the 1985 Act, and Agency expectations for improving its ability to report on each program's performance and achievement of long-term conservation benefits. Also included is reference to the sections of these regulations that apply to program participants and that relate to the Agency accountability requirements as outlined in section 1244(g) of the 1985 Act.985,

Monitor compliance with program requirements. NRCS has established application procedures to ensure that participants and eligible entities meet eligibility requirements, and follow-up procedures to ensure that participants and eligible entities are complying with the terms and conditions of their contractual arrangement with the government and that the installed conservation measures are operating as intended. These and related program compliance evaluation policies will be set forth in Agency guidance.

The program requirements applicable to participants and eligible entities that relate to compliance are set forth in these regulations in § 1415.4, ''Program requirements,'' § 1415.11, ''Restoration agreements,'' and § 1415.17, ''Cooperative agreements.'' These sections make clear the general program requirements, as well as participant and entity obligations.

Measure program performance. Pursuant to the requirements of the Government Performance and Results Act of 1993 (Pub. L. 103–62, Sec. 1116) and guidance provided by OMB Circular A–11, NRCS has established performance measures for its conservation programs. Program-funded conservation activity is captured through automated field-level business tools and the information is made publicly available at: *http://ias.sc.egov.usda.gov/PRSHOME/*. Program performance also is reported annually to Congress and the public through the annual performance budget, annual accomplishments report and the USDA Performance Accountability Report. Related performance measurement and reporting policies are set forth in Agency guidance (GM_340_401 and GM_340_403 (*http://directives.sc.egov.usda.gov/*)). The conservation actions undertaken by participants are the basis for measuring program performance—specific actions are tracked and reported annually, while the effects of those actions relate to whether the long-term benefits of the program are being achieved. The program requirements applicable to participants that relate to undertaking conservation actions are set forth in these regulations in § 1415.4, ''Program requirements,'' § 1415.11, ''Restoration agreements, and § 1415.17'', ''Cooperative agreements.'' These sections make clear participant and eligible entity obligations for implementing, operating, and maintaining GRP-funded conservation improvements, which in aggregate result in the program performance that is reflected in Agency performance reports.

Demonstrate whether long-term conservation benefits of the program are being achieved. Demonstrating the long-term natural resource benefits achieved through conservation programs is subject to the availability of needed data, the capacity and capability of modeling approaches, and the external influences that affect actual natural resource condition. While NRCS captures many measures of ''output'' data, such as acres of conservation practices, it is still in the process of developing methods to quantify the contribution of those outputs to environmental outcomes. NRCS currently uses a mix of approaches to evaluate whether long-term conservation benefits are being achieved through its programs. Since 1982, NRCS has reported on certain natural resource status and trends through the National Resources Inventory (NRI), which provides statistically reliable, nationally consistent land cover/use and related natural resource data. However, lacking has been a connection between these data and specific conservation programs. In the future, the interagency Conservation Effects Assessment Project (CEAP), which has been underway since 2003, will provide nationally consistent estimates of environmental effects resulting from conservation practices and systems applied. CEAP results will be used in conjunction with performance data gathered through Agency field-level business tools to help produce estimates of environmental effects accomplished through Agency programs, such as GRP. In 2006 a Blue Ribbon panel evaluation of CEAP strongly endorsed the project's purpose, but concluded ''CEAP must change direction'' to achieve its purposes. In response, CEAP has focused on priorities identified by the Panel and clarified that its purpose is to quantify the effects of conservation practices applied on the landscape. Information regarding CEAP, including reviews and current status is available at (*http://www.nrcs.usda.gov/technical/NRI/ceap*). Since 2004 and the initial establishment of long-term performance measures by program, NRCS has been estimating and reporting progress toward long-term program goals. Natural resource inventory and assessment, and performance measurement and reporting policies set forth in Agency guidance (GM_290_400; GM_340_401; GM_340_403)) (*http://directives.sc.egov.usda.gov/*)).

Demonstrating the long-term conservation benefits of conservation programs is an Agency responsibility. Through CEAP, NRCS is in the process of evaluating how these long-term benefits can be achieved through the conservation practices and systems applied by participants under the program. The program requirements applicable to participants that relate to producing long-term conservation benefits are described previously under ''measuring program performance.''

Track participation by crop and livestock type. NRCS' automated field-level business tools capture participant, land, and operation information. This information is aggregated in the National Conservation Planning database and is used in a variety of program reports. Additional reports will be developed to provide more detailed information on program participation to meet congressional needs. These and related program management procedures supporting program implementation will be set forth in Agency guidance.

The program requirements applicable to participants that relate to tracking participation by crop and livestock type are put forth in these regulations in § 1415.4, ''Program Requirements,'' which makes clear program eligibility requirements, including the requirement to provide NRCS the information necessary to implement GRP.

Coordinate these actions with the national conservation program authorized under the Soil and Water Resources Conservation Act (RCA). The 2008 Act reauthorized and expanded on a number of elements of the RCA related

to evaluating program performance and conservation benefits. Specifically, the 2008 Farm Bill added a provision stating, ''Appraisal and inventory of resources, assessment and inventory of conservation needs, evaluation of the effects of conservation practices, and analyses of alternative approaches to existing conservation programs are basic to effective soil, water, and related natural resources conservation.''

The program, performance, and natural resource and effects data described previously will serve as a foundation for the next RCA, which will also identify and fill, to the extent possible, data and information gaps. Policy and procedures related to the RCA are set forth in Agency guidance (GM_290_400; M_440_525; GM_130_402) (*http://directives.sc.egov.usda.gov/*).

The coordination of the previously described components with the RCA is an Agency responsibility and is not reflected in these regulations. However, it is likely that results from the RCA process will result in modifications to the program and performance data collected, to the systems used to acquire data and information, and potentially to the program itself. Thus, as the Secretary proceeds to implement the RCA in accordance with the statute, the approaches and processes developed will improve existing program performance measurement and outcome reporting capability and provide the foundation for improved implementation of the program performance requirements of section 1244(g) of the 1985 Act.

Background

The Grassland Reserve Program is a voluntary program to assist landowners and agricultural operators in restoring and protecting eligible grassland, land that contains forbs, or shrublands for which grazing is the predominant use through rental contracts and easements. The Farm Security and Rural Investment Act of 2002 (the 2002 Act), Public Law 107–171, 116 Stat. 237, authorized GRP by adding sections 1238N through 1238Q to the Food Security Act of 1985, as amended, 16 U.S.C. 3801 *et seq.;* and providing $254 million through fiscal year (FY) 2007 to enroll no more than 2 million acres of restored or improved grassland, rangeland, shrubland, and pastureland. USDA promulgated an interim final rule on May 21, 2004 (69 FR 29173), and a final rule on March 6, 2006 (71 FR 11139). The program regulations are set forth at 7 CFR part 1415. Section 2403 of the Food, Conservation, and Energy Act of 2008 (the 2008 Act), Public Law 110–246, 122 Stat. 1819, reauthorized GRP and made several amendments. The 2008 Act authorized the enrollment of an additional 1.22 million acres of eligible land from FY 2009 through FY 2012.

The Secretary of Agriculture delegated the authority to administer GRP on behalf of the CCC, to the Chief, NRCS, who is a CCC Vice President, and the Administrator, Farm Service Agency (FSA), who is the CCC Executive Vice President. NRCS has the lead responsibility on regulatory matters, technical issues, and easement administration, and FSA has the lead responsibility for rental contract administration and financial activities. The agencies consult on regulatory and policy matters pertaining to both rental contracts and easements. At the State level, the NRCS State Conservationist and the FSA State Executive Director determine how best to utilize the human resources of both agencies to deliver the program and implement National policies in an efficient manner given the general responsibilities of each agency.

Summary of 2008 Act Changes

The 2008 Act amended the Grassland Reserve Program to:

- Change the program's focus from protecting, conserving and restoring grassland resources on private lands to assisting owners and operators of private and tribal land in protecting grazing uses and related conservation values by restoring and conserving eligible land;
- Change rental agreements to rental contracts;
- Remove the 30-year rental agreement and 30-year easement enrollment options;
- Remove the minimum acreage enrollment requirement. Previously, applicants needed to submit 40 contiguous acres for enrollment to be eligible;
- Require the Secretary to offer enrollment priority for land previously enrolled in the Conservation Reserve Program providing certain conditions exist, such as: the land is eligible for GRP, the land is of high ecological value, and the land is under significant threat of conversion to uses other than grazing. The number of acres enrolled under this priority is limited to ten percent of the total acreage enrolled in that year;
- Expand land eligibility criteria to include land that has been historically dominated by grassland, forbs, or shrubland when it contains historical or archaeological resources, or when it would address issues raised by State, regional, and national conservation priorities;
- Require participants with rental contracts to suspend any existing cropland base and allotment history for the land under another program administered by the Secretary. Easement participants must ''eliminate'' base and allotment history;
- Allow for the inclusion of permissible and prohibited activities under a rental contract or easement;
- Include a separate payment limitation for restoration agreements and rental contracts;
- Establish the requirements for determining fair market value for easement compensation;
- Include a definition of eligible entity;
- Require implementation of a grazing management plan;
- Add the authority for the Secretary to enter into cooperative agreements with eligible entities to own, write, and enforce easements; and
- Establish that the entity shall pay an amount of the purchase price at least equivalent to the amount provided by the Secretary, when eligible entities are acquiring easements under cooperative agreements.

Description of Changes to the Regulations

Section 1415.1 Purpose

Section 1415.1(a) describes the purpose of GRP. Section 1415.1(a) is revised to emphasize that the purpose of GRP is to assist owners and operators of private lands in protecting grazing uses and related conservation values by restoring and conserving eligible land. The term ''rental agreements'' is changed to ''rental contracts'' in this section and throughout the regulation. The changes to § 1415.1(a) address the 2008 Act amendment of GRP to apply to operators as well as owners.

Section 1415.1(b) describes the objectives of GRP. Section 1415.1(b) is revised by replacing the phrase ''The objectives of GRP are to:'' with the phrase ''GRP emphasizes,'' consistent with the statutory changes in the 2008 Act. Paragraph (b)(1), which states that an objective of GRP is the preservation of native and naturalized grasslands and shrublands, is being removed to reflect the program purposes established by the 2008 Act. USDA continues to recognize the conservation value of native and naturalized grasslands and provide States the authority to prioritize such lands in program ranking criteria; however, the 2008 Act's purpose of protecting grazing uses and related conservation values are not limited to

native and naturalized grasslands. Paragraph (b)(2) describes the GRP objective of protecting grasslands and shrublands from the threat of conversion. Paragraph (b)(2), redesignated as paragraph (b)(3), is revised by adding ''to uses other than grazing'' following the term ''conversion,'' consistent with the 2008 Act. Paragraphs (b)(3) and (b)(4) are redesignated as paragraphs (b)(1) and (b)(2) respectively. This redesignation mirrors the order listed in statute.

Section 1415.2 Administration

Section 1415.2(a) describes the administration of GRP by NRCS and FSA. This rulemaking revises paragraph (a)(1) to replace ''State'' with ''National,'' which clarifies that the National office has responsibility for developing the allocation formula. Paragraph (a)(2) describes the use of a national allocation funding formula. Paragraph (a)(2) is revised to replace the term ''USDA State offices'' with ''NRCS State Conservationists and FSA State Executive Directors'' to make clear that they are the State level fund allowance holders. Additionally paragraph (a)(2) is changed to include the words ''to uses other than grazing'' after ''conversion.'' The revisions made to paragraph (a)(2) are to align GRP with the 2008 Act by emphasizing the protection of land that contains forbs and shrubland, and reflecting the program purposes of protecting grazing uses with the addition of ''conversion to uses other than grazing.''

Section 1415.2(b) describes the administration of GRP by NRCS and FSA at the state level. A new paragraph (b)(1) is added that emphasizes the role of the State Conservationist and State Executive Director in determining how GRP will be implemented at the State level. Subsequent paragraphs are redesignated. Former paragraph (b)(5), relating to the development of conservation plans and restoration agreements, is redesignated as paragraph (b)(6). In compliance with new language in 2008 Act, the term ''conservation plans'' is removed and the term ''grazing management plans'' is added. Former paragraph (b)(6), redesignated as paragraph (b)(7), relates to administering and enforcing the terms of easements and rental contracts. The paragraph is revised by replacing the ''third party'' with ''eligible entity.'' The term ''eligible entity'' is substituted for ''third party'' to avoid confusion because the term ''third party'' is also used to refer to technical service providers. A reference to § 1415.18 is added at the end of paragraph (b)(7), because a new section on cooperative agreements is added at § 1415.17, and the former section at § 1415.17, is redesignated as § 1415.18. Paragraph (b)(8), formerly (b)(7) in the 2006 GRP final rule, describes the consideration of State Technical Committee recommendations. The last sentence of this paragraph is removed because the language was redundant of provisions of the State Technical Committee regulation found in part 610 of this title.

Section 1415.2(e) describes the ability to modify or waive a provision of this part. This rulemaking replaces the term ''Secretary'' with the ''Chief, NRCS, or the Administrator, FSA'' to better align with how these determinations are made.

Section 1415.2(i) describes the acceptance of applications. A sentence is being added allowing NRCS to enter into cooperative agreements with eligible entities to own, write, and enforce easements. This addition is required by section 2403 of the 2008 Act, which now provides authority for NRCS to partner with eligible entities to purchase easements. This section is also being modified to provide that eligible entities may apply to participate in GRP through the cooperative agreement on a continuous basis. This change is discussed in detail in the description of changes for § 1415.17, cooperative agreements, of this regulation.

Section 1415.3 Definitions

Section 1415.3, ''Definitions,'' sets forth definitions for terms used throughout this regulation. New definitions are being added, others have been revised for clarity and consistency with other USDA-administered programs, and some have been removed as no longer relevant to these regulations. Specifically, this rulemaking makes the following changes to the definitions:

The definition of ''*activity*'' is added to § 1415.3 to describe an action that is not a conservation practice but alleviates resource problems or improves treatment and is included in a grazing management or conservation plan. This term is used throughout this USDA regulation, as well as other easement program regulations, and is intended to provide a consistent definition for the public. The definition was added to clarify a term that was previously used in the regulation but not defined.

The definition of ''*applicant*'' is added to describe ''a person, legal entity, joint operation, or Indian Tribe who applies to participate in the program.'' The definition is consistent with other USDA easement programs and is intended to provide a consistent definition for the public. The definition was added to clarify a term that was previously used in the regulation but not defined.

The definition of ''*common grazing practices*'' is revised to include ''browse'' as a forage resource that is utilized by grazing livestock for food. This change provides clarification of a grazing practice term based on technical recommendations. Other minor editorial corrections are made to the definition to improve the sentence structure.

The definition of ''*Conservation District*'' is modified to add ''natural resource district''. This change is intended to ensure that all types of conservation districts are included by expanding the list to include another commonly used name for conservation districts.

The definition of ''*conservation plan*'' is amended to clarify that for GRP purposes a conservation plan will only be required under certain circumstances. This new definition of conservation plan is being adopted to comport with the 2008 Act statute that requires a ''grazing management plan'' be implemented and specifies that the plan also include implementation and maintenance schedule for planned practices. The requirements of a conservation plan and the relationships between grazing management plan, conservation plan, and restoration plan are further discussed in the description of changes to § 1415.4 of this regulation.

The definition of ''*Conservation practice*'' is modified to include ''vegetative'' practices as a type of conservation practice, in addition to structural and land management practices, which were already included in the definition. In addition, the reference to ''standards and specifications'' is clarified to refer to ''NRCS Field Office Technical Guide standards and specifications''.

The definition of ''*conservation values*'' is revised to reflect ''those natural resource attributes that provide ecosystem functions and values of the grassland area.'' The 2008 Act changed the statutory purpose to focus on support for grazing uses and related conservation values. This statutory change requires the definition be expanded to include all conservation values rather than the existing focus on declining species.

The term ''*cost-share payment*'' is added to describe a type of payment made to a GRP participant. The term cost-share is associated with the GRP restoration plan, which is a part of the restoration agreement. The definition was added to clarify a term that was

previously used in the regulation but not defined.

The term ''*cultural practice*'' is removed. The term was used only in the context of common grazing practices, so the definition language is placed within the discussion of common grazing practices in § 1415.4(h)(1).

The term ''*Department*'' is removed. The term was only used in § 1415.20, Scheme or Device, the use of which has now been obviated by the substitution of ''U.S. Department of Agriculture,'' in that section.

The term ''*dedicated account*'' is added and describes a dedicated fund that can only be used for the purposes of management, monitoring, and enforcement of conservation easements. This term is added to ensure the qualifications of the non-governmental organizations to carry out their responsibilities under the program are clear. These responsibilities include the acquisition, monitoring, enforcement and implementation of management policies and procedures that ensure the long-term integrity of the easement protections.

The phrase ''eligible entity or both'' is added to the definition of ''*easement.*'' This modification adds eligible entities as having interest in land, through a deed, for the purpose of protecting grasslands and other conservation values under GRP easements. This addition ensures the interests of eligible entities holding and enforcing easements under the terms of the cooperative agreement in § 1415.17 and the easement transfer to third parties in § 1415.18.

The phrase ''eligible entity or both'' is added to the definition of ''*easement payment.*'' This revision incorporates the addition of eligible entities as having an interest in property for which the landowner receives an easement payment. This addition ensures the inclusion of eligible entities as holders of easements under the terms of the cooperative agreement in § 1415.17.

The definition of ''*eligible entity*'' is added to incorporate the 2008 Act's requirements that eligible entities own, write, and enforce a GRP easement. This new term explains the meaning of ''eligible entity'' used in the cooperative agreement in § 1415.17 and the easement transfer to third parties in § 1415.18.

The definition of ''*Farm Service Agency (FSA)*'' is added to define the USDA agency that shares authority in implementing GRP.

The term ''*FSA State Executive Director*'' is added to refer to the FSA employee authorized to implement GRP at the State level.

The definition of ''*Field Office Technical Guide*'' is revised to include ''requirements'' in place of ''standards'' and ''practices'' in place of ''treatments.'' The change updates the definition to the current NRCS definition of the Field Office Technical Guide.

The definition of ''*fire pre-suppression*'' is added to clarify the term used in the 2008 Act describing an activity in the grazing management plan. Fire pre-suppression may include the establishment and maintenance of fire breaks and prescribed burning to prevent or limit the spread of fires.

The definition of ''*functions and values of grasslands and shrublands*'' is added to clarify the term's use in the regulation and provide a consistent definition with other USDA easement programs. USDA is providing a definition that includes a variety of values intrinsic to grasslands and shrublands that will be considered during ranking of applications and the development of grazing management plans, conservation plans, or restoration plans.

The phrase ''eligible entity or both'' is added to the definition of ''*grantor.*'' This addition ensures the inclusion of the transfer of land rights to eligible entities holding and enforcing easements under the terms of the cooperative agreement in § 1415.17 and the easement transfer to third parties in § 1415.18.

The definition of ''*grassland*'' is revised to include grammatical corrections that are intended to improve the sentence structure. No technical changes were made to the definition.

The definition of ''*grazing management plan*'' is added to describe the document used in implementing a grazing management system. This addition was made to incorporate the 2008 Act language that requires the implementation of a grazing management plan. The requirements of a grazing management plan and the relationships between grazing management plan, conservation plan, and restoration plan are further discussed in the description of changes to § 1415.4 of this regulation.

The definition of ''*grazing value*'' adds the phrase ''or a market survey'' in place of ''an appraisal'' as an option to establish grazing values for easements. This change is made to be consistent with the changes in the 2008 Act.

The definition of ''*historical and archeological resources*'' is added to describe the criteria required for a resource to be considered historical or archeological. This addition is made as part of implementing the 2008 Act's requirement that land containing historical or archeological resources and located in an area that has been historically dominated by grassland, forbs or shrublands is eligible for GRP. This definition also ensures consistency with other USDA programs, including FRPP, and with State, local and Tribal preservation office practices.

The term ''*improved grassland, pasture, or rangeland*'' is modified to read ''improved rangeland or pastureland.'' This change is consistent with the use of these terms in the regulation. ''Grassland'' was dropped because it is redundant in the definition.

The definition of ''*Indian Tribe*'' is added and has the meaning given in section 4(e) of the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450b(e). This definition is consistent with the definition in section 1001 of the 2008 Act.

The definition of ''*landowner*'' is revised to include various types of owners and ownership, including legal entities and Indian Tribes, as eligible for GRP participation. The definition also adds language that clarifies that governments and non-governmental organizations that meet eligible entity requirements are not considered eligible landowners because the land owned by these entities is already under protection from the conversion to non-grazing uses.

The definition of ''*legal entity*'' is added to describe an entity that is created under Federal or State law. This term is defined because it is included in the definitions of ''applicant'' and ''landowner''. The definition clarifies that a legal entity does not include State and local governments; this rationale is explained in § 1415.5(d).

The definition of ''*maintenance*'' is added to describe work performed on lands enrolled in GRP to keep the applied conservation practices functioning for the intended purpose, and includes work that prevents a practice from failing, such as repairing damage and replacement. The definition is added to provide consistency with other USDA easement programs.

The word ''indigenous'' is added to the definition of ''*native.*'' This addition clarifies the definition of native.

The definition of ''*Natural Resources Conservation Service (NRCS)*'' is added to define the USDA agency that shares authority to implement GRP.

The definition of ''*NRCS State Conservationist*'' is added to refer to the NRCS employee with authority to implement GRP and direct activities at the State level.

The phrase ''for the purposes of this regulation'' is removed from the definition of ''*naturalized.*'' This change reflects a minor grammatical correction that is intended to improve the sentence structure.

The definition of ''*nesting season*'' is added to denote a specific time of year for species whose habitat is being protected on enrolled lands.

The definition of term ''*non-governmental organization*'' is added to describe the criteria such an organization must meet in order to be considered as an eligible entity for purposes of holding or acquiring easements with GRP funds, and is taken directly from the 2008 Act.

The definition of ''*participant*'' is revised by removing the phrase ''landowner, operator, or tenant'' and replacing it with ''person, legal entity, joint operation, or Indian Tribe'' to reflect the breadth of individuals and entities that may participate in the program. The modification also removes the last sentence that described that owners of land subject to a GRP easement are considered program participants regardless of whether they were a party to the conveyance of easement. This sentence is inconsistent with the appeal regulations at part 614 of this title. After a conservation easement is conveyed, the landowner is no longer a ''participant'' for easement enforcement and management matters and, therefore, may not appeal those matters administratively. This rationale based upon real property law principles and is consistent with NRCS appeal regulations at part 614 of this title.

The definition of ''*pastureland*'' is revised to describe a type of grazing land, its uses, and treatments. This definition is added to provide consistency with other USDA easement programs and clarifies that cropland in rotation is not considered pastureland.

The definition of ''*permanent easement*'' is revised by adding ''or for the maximum duration allowed under the law of a State.'' This addition clarifies that easements of the maximum duration allowed under the law of a State are considered to be permanent easements.

The definition of ''*plant and animal biodiversity*'' is added to describe a wide variety of plant and animal species.

The term ''Tribal lands'' was added to the definition of ''private land.'' The addition further clarifies that Tribal Lands are also qualify as private lands under GRP.

The definition of ''*purchase price*'' is added and applies to easement compensation when an eligible entity is purchasing the easement under the provisions of a cooperative agreement. USDA will pay no more than 50 percent of the purchase price, which is the fair market value of the easement minus the landowner contribution. This definition is consistent with the GRP provisions in the 2008 Act, and ensures that entities have a vested financial interest if they write and hold the easement using GRP dollars, by requiring that their contribution be at least equal to that of the USDA. Adoption of this definition by the USDA also reflects a policy decision to leverage funding through landowner donation to stretch GRP funding further and protect more acres. Eligible entities may receive increased ranking points when they provide a higher percentage of the purchase price.

The rangeland plant example of ''crested wheatgrass'' is removed from the definition of ''*rangeland.*'' Crested wheatgrass may out-compete native rangeland plants and is less desirable for the promotion of biodiversity.

The term ''agreement'' is replaced by ''contract'' in the definition of ''*rental agreement.*'' This change incorporates the 2008 Act change from the term ''rental agreement'' to ''rental contract'' and is restructured to improve clarity.

The definition of ''*restoration*'' is revised to clarify that one of the reasons that restoration may be needed is to re-establish the grassland functions and values of grasslands where the land has been degraded or converted to other uses. This addition is consistent with the eligible land definition set forth in the 2008 Act. The definition also adds the phrase ''or system of practices'' following ''conservation practices or activity'' to further clarify that an array of conservation practices or activities may be needed in the restoration of eligible land. The definition removes the parenthetical implication that restoration can only be used to restore native and naturalized plant communities. This change is made to implement section 2403 of the 2008 Act, which amends the program's focus from protecting, conserving, and restoring grassland resources on private lands to assisting owners and operators in protecting grazing uses and related conservation values by restoring and conserving eligible land. These changes are also discussed above in the description of § 1415.1.

The definition of ''*restoration agreement*'' is revised to add the term ''eligible entities'' as parties able to enter into agreements with program participants and adds a restoration plan as a component of the restoration agreement. Eligible entities are responsible for developing, holding, enforcing, and providing cost-share for restoration under the terms of the cooperative agreement in § 1415.17 or the easement transfer to third parties in § 1415.18.

The definition of a ''*restoration plan*'' is added to establish the portion of the restoration agreement that will include the schedule and conservation practices to restore the functions and values of grasslands and shrublands and to incorporate USDA's expectation that conservation practices or measures installed with GRP federal cost-share assistance will be operated and maintained by participants for the lifespan of the practice or measure. A more detailed discussion of the restoration plan can be found in the description of changes to § 1415.4(c).

The term ''*restored grassland*'' is removed. This term is no longer used in this regulation.

The definition of ''*right of enforcement*'' is added to clarify that a right of enforcement is an interest in land which the United States may exercise under specific circumstances to enforce the terms of the conservation easement. A description of the exercise of this right is included in the discussion of changes to § 1415.17 in this regulation.

The definition of ''*Secretary*'' is amended to clarify that the term applies to the Secretary of the U.S. Department of Agriculture, or his or her designee.

The definition of ''*significant decline*'' is modified to specify that species determined to be in significant decline merit conservation priority in the program. The revised language recognizes that the direct actions to conserve species in significant decline are undertaken voluntarily by program participants using program assistance.

The definition of ''*similar functions and values*'' is removed. This term is no longer used in this regulation.

The definition of ''*State Technical Committee*'' is changed by deleting the words ''Secretary of the United States Department of Agriculture'' and replacing them with ''Secretary'' because the term ''Secretary'' is already defined to reference the ''United States Department of Agriculture''.

The definition of *''Tribal land''* is added and means any land owned by Indian Tribes, which are defined in accordance with section 4(e) of the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450b(e). The addition of this term addresses changes made by the 2008 Act to enrollment options for Tribal land.

The definition of the term ''USDA'' is expanded to clarify that such term refers to the U.S. Department of Agriculture,

and its Agencies and Offices, as applicable.

Section 1415.4 Program Requirements

Section 1415.4(a) describes who may submit applications for easements and rental contracts. It is revised to require applicants for rental contracts to own the property or be able to provide written evidence of control of the property for rental contracts.

Section 1415.4(b) is simplified by removing the phrase ''duration of the'' to refer to the term of the easement or rental contract.

Section 1415.4(c) removes the term ''conservation plan'' and substitutes ''grazing management plan,'' reflecting the 2008 Act requirement for implementation of a grazing management plan. The revisions clarify the requirement for a grazing management plan and specify conditions when a conservation plan may be required. The last sentence is removed because ''conservation plan'' is now defined in § 1415.3.

USDA is taking this opportunity to explain the differences and relationships between *conservation plans, grazing management plans,* and *restoration plans*. The 2008 Act requires the implementation of a grazing management plan for all GRP participants. Although the 2002 Act was silent on planning requirements, the 2006 GRP final rule required participants to implement conservation plans in order to help protect the grassland functions and values. The 2006 GRP final rule defined a conservation plan as a resource management system (RMS) plan, which is the standard level of NRCS conservation planning. This level of planning is more rigorous than the 2008 Act's requirement for grazing management plan implementation. Because the 2008 Act requires the implementation of a grazing management plan and not a conservation plan, USDA is defining a grazing management plan as a document that describes the implementation of the grazing management system which meets the prescribed grazing standard included in the Field Office Technical Guide. USDA is also removing the requirement that all GRP participants implement a conservation plan. The grazing management plan will also include the permitted and prohibited activities, USDA's right of ingress and egress, and any associated conservation plans or restoration plans. Although all GRP participants will be required to implement a grazing management plan, conservation plans or restoration plans will only be required to be implemented under certain circumstances. For example, a conservation plan will be required in cases where ranking points were received for resource concerns not directly related to the grazing system or when a land eligibility criterion was used for enrollment that would not be part of a grazing management system. In these cases, the conservation plan must address the resource concerns associated with the ranking points or land eligibility. Examples of such circumstances where the development and implementation of a conservation plan will be needed are when points are received related to wildlife habitat management or haying and seed production issues, or when land eligibility is based on conditions at § 1415.5(b)(2), such as historical and archeological resources in areas historically dominated by grassland, land that contains forbs, or shrubland. A restoration plan will only be required when a restoration agreement to restore grassland functions and values is developed in conjunction with a GRP rental contract or easement. The grazing management plan will be the primary plan for GRP participants. The NRCS planning process will be used in the development of grazing management plans, conservation plans, and restoration plans.

Section 1415.4(d) replaces ''conservation plan'' with ''grazing management plan.'' This change reflects the 2008 Act requirement for the use of a grazing management plan.

Section 1415.4(e) describes requirements of program participants with respect to conveying an easement. This rulemaking modifies this section to add the term ''eligible entity'' to clarify that these requirements also apply in this case where the easement is being conveyed to an eligible entity. This addition implements changes in the 2008 Act authorizing third parties to purchase and hold GRP-funded conservation easements and also ensures sufficient title interest is acquired when eligible entities holding and enforcing easements under the terms of the cooperative agreement in § 1415.17 and the easement transfer to third parties in § 1415.18. The term ''unencumbered'' is added before ''title'' in paragraph (e) to clarify that the title conveyed in the easement must be free from encumbrances.

Section 1415.4(f) requires use of a standard GRP conservation easement deed. The phrase ''or developed by an eligible entity and approved by USDA under § 1415.17 of this part'' is added after ''USDA.'' This addition incorporates the 2008 Act change allowing an eligible entity to use the entity's own deed when owning an easement pursuant to a GRP cooperative agreement.

Section 1415.4(g) is modified to replace the term ''conservation plan'' to ''grazing management plan'' to be consistent with the terminology used in the 2008 Act.

Section 1415.4(h) adds ''as outlined in the grazing management plan'' to the end of the sentence. This change reflects the 2008 Act requirement for implementation of a grazing management plan and specifies the location of approved activities for GRP easements and rental contracts. Paragraph (h)(1) removes the phrase ''native and naturalized grass and shrub species'' and adds ''grassland, forb, and shrub species common to the locality.'' This revision reflects the GRP program purpose as described in the discussion of § 1415.1(b) and required by the 2008 Act. The term ''cultural'' is struck and replaced with the conservation practice examples that had been used as the definition of the term in § 1415.3. Paragraph (h)(2) is revised to remove cumbersome language and provide clarity related to haying and mowing restrictions during nesting seasons. The term ''pre-suppression'' is added to paragraph (h)(3) following ''fire.'' This term is used in the 2008 Act describing an activity in the grazing management plan. The addition is intended to bring further clarification to the activity and comply with the 2008 Act definition. The remaining language in paragraph (h)(3) is broken out into subsequent paragraphs. A new paragraph (h)(4) is added at the beginning phrase ''grazing related activities, such as fencing and livestock.'' This addition provides clarification that fencing and livestock watering facilities must be grazing related.

Wind power generation was not specifically addressed in the 2006 regulatory text because the Secretary was prohibited by statute from authorizing activities that would disturb the surface of the land. Section 2403 of the 2008 Act removed this prohibition. A new paragraph (h)(5) is added to section 1415.4 to allow for the inclusion of wind power facilities for on farm use as a potential permitted use for the GRP participant's farming or ranching operation pursuant to the Secretary's discretionary authority established in the 2008 Act. This regulatory change results from USDA's interest in assisting producers with their energy conservation efforts.

Although USDA is supportive of wind power generation for on-farm use on GRP lands, the opportunity to place generating stations on easement or

contract acres is not a guaranteed right. The siting of such facilities for on-farm energy generation must be consistent with the protection of the grazing uses and related conservation values promoted by the GRP program. In addition, authorization may only be provided after USDA conducts a site-specific evaluation to determine that there are no negative impacts on threatened, endangered or at-risk species, migratory wildlife, or related natural resources, cultural resources or the human environment. In addition, USDA will follow the guidelines being developed by the U.S. Fish and Wildlife Service, ''Guidance on Avoiding and Minimizing Wildlife Impacts from Wind Turbines,'' and will authorize wind power facilities only when the footprint of the facility would have a minimal impact on the nature of the grazing lands and other conservation values obtained through the contract or easement. These evaluation considerations will be incorporated into the environmental analyses that NRCS conducts pursuant to its National Environmental Policy Act (NEPA) responsibilities. *USDA requests comment on whether wind energy generation activities are compatible with the grazing uses and related conservation values of the GRP program.*

Paragraph 1415.4(i) provided that activities that disturb the surface of the land are prohibited in GRP and listed exceptions in paragraphs (1), (2), and (3). The 2008 Act removed this prohibition on disturbing the land surface, providing USDA with the discretion to permit some surface-disturbing activities if they are carried out in a manner that is consistent with protecting the grazing uses and related conservation values. Section 1415.4(i) is revised to describe the specific activities that are prohibited, as reflected in the 2008 Act, rather than list the exceptions. Paragraph (i)(3) is revised and re-designated as paragraph (h)(6). Given the removal of the soil disturbance prohibition, *USDA requests comments on the nature of potential impacts on grazing uses and related conservation values resulting from activities that disturb the surface of the land.*

Section 1415.4(j) is being amended to add the term ''legally'' before ''incompetent'' to reflect a more definitive determination of mental competency.

Section 1415.4(k) is being amended to remove the phrase ''the easement is for a longer duration than the rental agreement.'' This language indirectly refers to 30-year contracts and easements, which are no longer authorized under the 2008 Act.

Paragraphs (l) and (m) are added to § 1415.4 to require the suspension or elimination of cropland base and allotment history for rental contracts or easements, respectively. These changes are required by the 2008 Act.

Section 1415.5 Land Eligibility

Section 1415.5(b) describes land eligible for funding consideration. Paragraph (b)(1) removes ''native and naturalized'' and replaces with ''improved,'' and ''for which grazing is the predominant use'' is added to the end of the sentence. This revision is a reflection of the change in purpose instituted by the 2008 Act, and is discussed in greater detail in the description of changes to § 1415.1 of this regulation. Paragraph (b)(2) removes language describing the State Conservationist consulting with the State Technical Committee on habitat. This language is unnecessary and was removed for simplification and clarity. Paragraph (b)(2)(i) is amended to be consistent with the statute and to simplify the eligible land description. Paragraph (b)(2)(ii) is replaced with ''contains historical or archeological resources.'' This addition addresses the 2008 Act's requirement that land containing historical or archeological resources and located in an area that has been historically dominated by grassland, forbs or shrublands is eligible for GRP. Paragraph (b)(2)(iii) is added to address issues raised by State, regional, and national conservation priorities. Such priorities could include, for example: The North American Waterfowl Management Plan, the National Fish Habitat Action Plan, the Greater Sage Grouse Conservation Society, the State Comprehensive Wildlife Conservation Strategies (also referred to as the State Wildlife Action Plans), the Northern Bobwhite Conservation Initiative, the Gulf of Hypoxia Action Plan 2008 (and associated annual operating plans), and State forest resource strategies.

Section 1415.5(c) clarifies how the enrollment of incidental land may improve the efficient administration of an easement or rental contract by reducing irregular boundaries.

Section 1415.5(d) of the 2006 GRP final rule required 40 contiguous acres as the minimum acreage eligible for enrollment in GRP. This paragraph is removed in its entirety and subsequent paragraphs are redesignated. The 40-acre minimum enrollment requirement was removed in the 2008 Act.

Section 1415.5(e) prohibits land that is already protected through other means from enrolling in GRP. Language is added after ''existing contract or easement'' to include ''deed restriction, or of the land already is in ownership by an entity whose purpose is to protect and conserve grassland and related conservation values.'' This addition seeks to clarify further that land already in fee ownership by an organization, whose purpose is to protect and conserve grassland and related conservation values, is not eligible for GRP.

Section 1415.5(e), as re-designated, replaces the term ''prospective GRP participant'' with the defined term ''applicant.''

Section 1415.6 Participant Eligibility

Section 1415.6 describes participant eligibility. Section 1415.6 is modified to add ''except as otherwise described in § 1415.17'' to the introductory paragraph. This addition reflects the 2008 Act's addition of allowing cooperative agreements with eligible entities. Section 1415.6(b) is being amended to remove the phrase ''the Department deems'' because it is redundant of the previous reference to USDA. Section 1415.6(c) is amended to incorporate the exemption from AGI requirements for Indian Tribes as described under part 1400 of this title.

Section 1415.7 Application Procedures

Section 1415.7(a) describes where and when an application may be submitted. This rulemaking removes the description of an owner or operator and adds ''applicant, except as otherwise described under § 1415.17''. This change incorporates the 2008 Act change allowing cooperative agreements with eligible entities for the purposes of purchasing, holding, and enforcing easements as described under § 1415.17.

Minor grammatical changes were made to § 1415.7(b).

Section 1415.7(c) is removing the term ''30-years'' to comport with the 2008 Act change removing the 30-year rental contract and 30-year easement enrollment options.

Section 1415.8 Establishing Priority for Enrollment of Properties

Section 1415.8(a) describes that national guidelines will be issued for establishing state-specific project selection criteria. The phrase ''USDA offices at the state level'' is replaced with ''the NRCS State Conservationist and FSA State Executive Director'' to clarify responsibilities under this section. Other minor changes are made to this paragraph for clarification.

Section 1415.8(b) is being modified to add applications from ''eligible entities

under § 1415.17'' as an application to be evaluated and ranked under established state level criteria and ''NRCS State Conservationist and FSA State Executive Director'' to specify the role of the State Conservationist and State Executive Director in establishing State ranking criteria. This addition incorporates the 2008 Act change allowing cooperative agreements with eligible entities for the purchase of conservation easements.

Section 1415.8(c) describes the factors emphasized by the ranking criteria. This paragraph is amended to clarify the ranking criteria and restructure the criteria to ensure consistency with changes made in the 2008 Act. Specifically, paragraph (c)(1) removes the emphasis on preservation of native and naturalized grasslands and shrublands and adds ''grazing operations.'' This change is explained under the description of changes to § 1415.1(b). Paragraph (c)(2) is revised to add ''land that contains forbs, and shrubland at the greatest risk from the threat of conversion to use other than grazing.'' This change mirrors the language in the 2008 Act. Paragraph (c)(3) is amended by removing ''support for grazing operations'' and replace it with ''Plant and animal biodiversity'' to more accurately reflect the ranking criteria set forth in the 2008 Act. Paragraph (c)(4) is added to provide that ranking parcels offered under cooperative agreements with eligible entities shall consider the leveraging of non-Federal funds and entity contributions of more than 50 percent of the purchase price, respectively.

Section 1415.8(d) is amended to add ''including applications from entities under § 1415.17'' as an application that may be selected for funding. This addition incorporates the 2008 Act change allowing cooperative agreements with eligible entities. ''NRCS State Conservationist and FSA State Executive Director'' is also added to specify the proper authority at the state level.

Section 1415.8(e) establishes that States may utilize ranking pools. This paragraph is revised to clarify that the NRCS State Conservationist and FSA State Executive Director have the discretion to establish separate ranking pools to address issues raised by State, regional, and national conservation priorities. This implements the 2008 Act changes to the definition of ''eligible land'' which allows private lands that address these priority issues to be considered for enrollment.

Minor grammatical changes were made to paragraphs (f) and (g) of § 1415.8. Paragraph (f) is revised by capitalizing ''technical'' and ''committee'' and replacing ''USDA'' with ''NRCS State Conservationist and FSA State Executive Director'' to clarify responsibility at the State level. Paragraph (g) is revised by capitalizing ''technical'' and ''committee.''

Section 1415.8(h) allows USDA to fund a lower ranked application when funds are insufficient. This section is revised to clarify that USDA may select a lower-ranked application that can be fully funded if the applicant with the higher-ranked application is unwilling to reduce the acres offered to match the available amount of funding. The term ''USDA'' is replaced with ''NRCS State Conservationist and FSA State Executive Director.'' The last sentence of this section is removed because the provision is not related to a landowner's willingness to change their offer.

Section 1415.8(i) is added to give priority enrollment to expiring CRP acres. The 2008 Act requires the Secretary to give priority for GRP enrollment to land previously enrolled in CRP if the land is eligible land, is of high ecological value, and is under significant threat of conversion to uses other than grazing. USDA will provide CRP participants with eligible expiring CRP acres an opportunity to enroll in GRP for up to 12 months before the CRP contract expiration date. CRP priority enrollment is limited to enrollment in easements and 20-year rental contracts. This enrollment requirement is intended to provide lasting protection for grasslands that are of high ecological value and under significant threat of conversion. By statute, CRP priority enrollment cannot exceed 10 percent of the total acres accepted for enrollment in GRP in any year. Participants with CRP lands accepted for enrollment in GRP will have their GRP enrollment begin upon expiration of the CRP contract.

Section 1415.8(j) is added to clarify that USDA shall use, to the maximum extent practicable, 40 percent of program funding for rental contracts, and 60 percent for easements. The 2008 Act added flexibility to this existing requirement by allowing the limitation to be met ''to the maximum extent practicable.''

Section 1415.9 Enrollment of Easements and Rental Contracts

Section 1415.9 describes how USDA will enroll easements and rental contracts. The section is amended to reflect changes made in the NRCS acquisition business process to expedite the closing process and to reduce the potential of de-obligating funds due to irresolvable issues, such as title issues and hazardous materials problems. The first change to the business process is the elimination of the use of the letter of intent as the point of enrollment and the establishment of the signing of the option agreement to purchase an easement as the point of obligation and enrollment. The second change is the movement of some activities that previously took place after the signing of the option agreement to purchase an easement to occur before the signing of the option agreement. This section applies to acquisitions by NRCS; the process for easements acquired by eligible entities under a cooperative agreement is described in § 1415.17.

Section 1415.9(a) outlines how NRCS and FSA will notify applicants of their tentative acceptance into GRP. The last two sentences in this section relating to the use of the letter of intent as the point of enrollment are removed as part of streamlining NRCS' business process. The addition of cooperative agreements reflects a change made by the 2008 Act allowing cooperative agreements with eligible entities. The term ''USDA'' is replaced with ''NRCS and FSA, as appropriate.''

Section 1415.9(b) is changed to include minor editorial changes.

Section 1415.9(c) describes how enrollment offers are made for rental contracts and easements. Paragraph (c)(1) is new and sets forth that the offer of enrollment for an easement is an NRCS option agreement to purchase that has been executed by the owner. An owner signed option is a firm offer. Paragraph (c)(2) is new and describes the offer of enrollment for a rental contract is the rental contract itself and is presented to the applicant by FSA. These new paragraphs are added to provide clarity between easements and rental contracts. The offer of enrollment for both easements and rental contracts will describe the area to be enrolled and the applicable terms and conditions.

Section 1415.9(d) is revised to clarify that for rental contracts, land is considered enrolled in the program after FSA approves the GRP rental contract. This section also clarifies when and under what conditions an offer may be withdrawn.

Section 1415.9(e) describes what actions NRCS will take once the land is enrolled. The paragraph is revised to clarify when land is enrolled in the program and when funds are obligated. Land is enrolled, and funds are obligated, in GRP under the easement option when both the landowner and NRCS execute the option, and NRCS' acceptance has been relayed to the landowner.

Section 1415.9(f) is revised to describe when and under what circumstances NRCS may withdraw the land from enrollment under the easement option, such as lack of funds or title concerns.

Section 1415.10 Compensation for Easements and Rental Contracts Acquired by the Secretary.

Section 1415.10 is re-titled ''Compensation for easements and rental contracts acquired by the Secretary'' to clarify that the provision applies only to such exchanges involving USDA directly. Compensation for easements purchased through an eligible entity are addressed under § 1415.17.

Section 1415.10(a) sets forth the compensation methodology for easements. This paragraph is amended to reflect the changes made by the 2008 Act regarding easement payments and methods for determination of compensation for easements. A new paragraph (b) is added that specifies the methods through which the fair market value of the land will be determined, as determined by the changes to the 2008 Act. Subsequent paragraphs are redesignated.

Section 1415.10(c), formerly § 1415.10(b), outlines the compensation limitations for rental contracts and is revised as described below. This section is being revised to replace ''USDA'' with ''FSA'' to clarify that it is FSA that administers rental contracts under the program. The reference to adjustment of rental contract rates in the existing regulation is removed by this rulemaking because it does not reflect actual FSA practice. The annual payment limit of $50,000 per year for rental contracts is added as required by statute and according to regulations found in 7 CFR part 1400.

Section 1415.10(c) of the 2006 GRP final rule has been redesignated as § 1415.10(d).

The former § 1415.10(d) allows USDA to complete a programmatic appraisal. The paragraph is removed in its entirety. The reference to a ''programmatic appraisal'' is a similar requirement (market survey) that is already included in § 1415.10(b)(1)(ii) as part of the method of determination of compensation.

Section 1415.10(f) is a new section added by this rulemaking to clarify that payments will be made as single payments instead of installment payments, unless otherwise requested by the landowner. This method is less burdensome for the landowner and the agency and reduces the long-term unexpended obligations for the agency.

Section 1415.10(g) is a new section implementing USDA's new statutory authority under the 2008 Act to accept and use contributions of non-Federal funds to support the purposes of the program. The statutory language provides that these funds are available to the Secretary without further appropriation and until expended to carry out the program.

Section 1415.10(h) is a new section that establishes that the USDA makes no claim to environmental credits, regardless of the Federal funds invested. Activities performed to obtain environmental credits must align with GRP requirements, the easement deed or rental contract terms, the grazing management plan, and any associated conservation or restoration plan.

Section 1415.11 Restoration Agreements

This section sets forth when a restoration agreement will be required and explains the restoration plan component of the restoration agreement, which is designed to meet the natural resource and participant objectives for the enrolled land. The term ''measures'' is replaced with ''activities'' consistent with the definition revisions made under § 1415.3.

Section 1415.11(b) describes restoration practices and the restoration plan and provides that the restoration plan component of the restoration agreement is designed to meet both USDA and the participant's objectives. This paragraph is revised slightly from the 2006 GRP final rule to provide flexibility in working with local conservation districts to determine the terms of the restoration plan. The last sentence prohibiting the restoration agreement to extend past the date of a GRP rental contract or easement is removed. Easements are permanent and, therefore, a restoration agreement cannot extend past the date of the easement. The term ''restoration practices'' is replaced with the terms ''conservation practices and activities.'' This modification is consistent with the modifications made in definitions in § 1415.3.

Section 1415.11(c) establishes cost-share payment limits on restoration practices. Paragraph (c) is revised to lower the cost-share limit from ''not more than 90 percent'' to ''not more than 50 percent,'' and adds a limit of $50,000 per year (aggregate) for payments made under one or more restoration agreements to a person or legal entity, directly or indirectly. This revision incorporates changes made by the 2008 Act to payment limits for restoration agreements and cost-share rates. The differential payment for cultivated and non-cultivated land is removed because it is inconsistent with the statute. The term ''restoration practices'' is replaced with the terms ''conservation practices and activities,'' consistent with the modifications made in definitions in § 1415.3.

Section 1415.11(d) limited restoration plans to restoring native or naturalized plant communities. The amendments made to the program by the 2008 Act do not constrain USDA assistance to preserving native and naturalized grassland and shrublands. Consequently, the text of § 1415(d) has been deleted and the subsections renumbered, accordingly. The statutory change, upon which this revision is based, is discussed in detail under the description of changes to § 1415.1(b) as well as under the changes to the definition of the term ''restoration.''

Section 1415.11(e) describes the maintenance of cost-shared practices. This paragraph is now redesignated as paragraph (d) and revised to state that the participant is responsible for the operation and maintenance of conservation practices in accordance with the restoration agreement. This paragraph also removes language describing the lifespan of the practice and penalties for maintenance failure. This is duplicative of what is described in the terms of a restoration agreement.

Existing §§ 1415.11(f) and (g) are redesignated as (e) and (f).

Section 1415.11(g), as re-designated, allows USDA to adjust cost-share payments if the participant is receiving cost-share for the same practice so the total payment does not exceed 100 percent of the cost. This paragraph is revised from receiving cost-share for the same practice from ''state and local governments'' to ''another conservation program.'' This change is intended to broaden the inclusion to all conservation programs making payments on the same practice rather than payments received from just State and local governments. The term ''practice'' is replaced with ''conservation practices or activities,'' consistent with the modifications made in definitions in § 1415.3.

Section 1415.11(i) of the 2006 GRP final rule is redesignated as § 1415.11(h).

Section 1415.11(i), as re-designated, identifies that cost-share payments will not be made for conservation practices or activities implemented before approval of the rental contract or easement acquisition unless a waiver is granted. The term ''restoration practices'' is replaced with the terms ''conservation practices and activities,''

consistent with the modifications made in definitions in § 1415.3.

Section 1415.11(k) of the 2006 GRP final rule is redesignated as § 1415.11(j) and the term ''restoration practices'' is replaced with ''conservation practices and activities.'' This modification is made for clarity and is consistent with the modifications made in definitions in § 1415.3. The phrase ''USDA at the State level'' is replaced with ''State Conservationist or State Executive Director, as appropriate'' to specify the responsible USDA State level representative.

The text of § 1415.11(k) is new and is added to clarify that the responsibility for the cost of restoration when an easement with a restoration agreement is transferred to an eligible entity rests with that entity. This provision implements the requirements of the 2008 Act regarding requirements for transfer or title ownership.

Section 1415.11(l) is a new paragraph added to set forth the responsibility for the cost of restoration rests with the eligible entity when an easement with a restoration agreement is acquired under a cooperative agreement with an eligible entity. This paragraph reflects the requirements for cooperative agreements under the 2008 Act.

Section 1415.12 Modifications to Easements and Rental Contracts

Section 1415.12 sets forth how a GRP easement may be modified. The exception statement in paragraph (a) and paragraphs (b) through (d) are removed and subsequent paragraphs are redesignated. This change reflects that there is no statutory authority to modify GRP easements.

Section 1415.12(e) of the 2006 GRP final rule outlined how a restoration agreement and conservation plan may be modified. This rulemaking redesignates this paragraph as paragraph (b), amends the provision to include grazing management plans as required by the 2008 Act, and removes reference to rental agreements because the paragraph is referring only to easements.

Section 1415.12(c), as re-designated, allows USDA to approve modifications on rental contracts. The paragraph is clarified to indicate that modifications to the rental contract could create corresponding changes to the grazing management plans, conservation plans, and restoration plans. The requirement had not been articulated in the 2006 GRP final rule.

Section 1415.13 Transfer of Land

The section is revised to remove ''landowner'' and add the terms ''applicant'' or ''participant'' throughout the section, where appropriate. This change reflects the addition in the 2008 Act allowing cooperative agreements with eligible entities. The term ''USDA'' is replaced throughout the section with ''the State Conservationist or State Executive Director, as appropriate'' to provide clarity. Editorial changes are made to paragraph (d) for clarity. In paragraph (g), ''USDA'' is changed to ''FSA'' to appropriately identify that FSA is the responsible agency for the identified task.

Section 1415.14 Misrepresentation and Violations

Section 1415.14(a) is changed to refer to ''rental contract'' rather than ''contract'' to provide clarity. Section 1415.14(b) is being revised to add ''deed'' following ''easement'' throughout the paragraph to add precision to the language. The term ''USDA'' is being replaced with ''NRCS'' since it is the agency with responsibility for administering easements under the program.

Section 1415.14(c) requires the participant may be required to refund payments or pay liquidated damages if found to be in violation. This paragraph is being amended to remove the language relating to liquidated damages because there is no clear authority to collect liquidated damages. In addition, technical assistance costs, which have traditionally been used in the determination of liquidated damages, are often difficult to consistently quantify.

Section 1415.15 Payments Not Subject to Claims

A minor editorial change was made to § 1415.15.

Section 1415.16 Assignments

Section 1415.16(b) describes what happens when a participant dies, becomes incompetent or is unable to receive payments. The phrase ''is declared legally'' is added before the word ''incompetent'' to add an accepted standard of determining mental competency.

Section 1415.17 Cooperative Agreements

A new § 1415.17 regarding cooperative agreements is added and the existing § 1415.17 addressing easements transferred to third parties is redesignated as § 1415.18. The new text of § 1415.17 includes a paragraph for the enrollment and holding of easements by eligible entities, through cooperative agreements with NRCS. Section 2403 of the 2008 Act added authority for the Secretary to enter into cooperative agreements with eligible entities to own, write, and enforce easements. Cooperative agreements are entered into by NRCS on behalf of the CCC under the authorities of the Commodity Credit Charter Act, 15 U.S.C. 714. NRCS has modeled this section, to the extent possible, after the Farm and Ranch Land Protection Program (FRPP), with which it has extensive experience. The requirements for GRP entity eligibility are patterned after the requirements in the FRPP, to the extent allowed by statutory differences between the programs; this provides consistency in administration for eligible entities and the NRCS. A requirement is added to the GRP eligibility that a non-governmental organization provide evidence of a dedicated account to ensure the long-term, management, monitoring, and enforcement of GRP easements. This requirement is intended as an indicator of an eligibility entity's capacity to acquire, manage, and enforce easements and, therefore, protect the public investment in perpetuity.

This section includes a description of the minimum requirements of a GRP cooperative agreement between NRCS and the eligible entity, including requirements required by statute such as the entity's responsibility for administrative and enforcement costs. This rulemaking clarifies ''administrative costs,'' includes costs associated with acquisition such as appraisals, land surveys, legal fees, and title insurance.

This section also describes how the Secretary cost-shares with entities on easements, whether or not there is a landowner contribution. USDA has used its discretion to define ''purchase price'' to mean the fair market value of the easement (as defined in the statute and in § 1415.10(b)) minus the landowner contribution in order to encourage the leveraging of non-Federal funds and achieve the best value for the public dollar spent. The result of this definition is that the Federal share will be no more than 50 percent of the cash purchase price, because, as specified in the statute, the entity shall be required to provide a share of the purchase price at least equivalent to the share provided by NRCS.

This new section also sets forth NRCS's approval process for partnering entities' use of their own deed. NRCS approval of a template deed is required to ensure the entities' deeds meet the long-term objectives of the program and to provide assurances of the long-term commitment to managing and enforcing easements. Once a template deed is approved, the entity will use that template when acquiring conservation

easements with cost-share assistance from the NRCS. Substantive changes to the template deed must be approved by NRCS prior to use by the eligible entity.

This section also describes other deed requirements. For example, under GRP when the title is held by an eligible entity, the Food Security Act of 1985, at Section 1238Q, requires the Secretary to ensure the deed includes a ''contingent right of enforcement'' for the Department. Because this right is new in the 2008 Act and is not a standard real property term, NRCS has carefully considered its meaning when promulgating this interim final rule. Specifically, NRCS interpreted the plain meaning of the statutory language, considered the legislative history, and consulted with the Office of the General Counsel for the Department.

The purpose of the right is to ensure that the easement is enforced and that the Federal investment is protected. The caption at Section 1238Q(e) requiring the contingent right of enforcement is entitled ''Protection of the Federal Investment.'' The GRP statute requires that the easement deed include a contingent right of enforcement. Given this requirement, the Agency has determined that it is Congress's intent that such a right run with the land for the duration of the easement. Further, such an interest that runs with the land constitutes a real property right. The agency has considered other theories, including contractual and constitutional authority under the Spending Clause, but none provide a sufficient legal justification for the Secretary to enforce the terms of the easement for its duration against subsequent landowners. Consequently, NRCS has determined that the contingent right of enforcement as used in GRP means a vested real property right, which provides the Secretary, on behalf of the United States, the right to enforce the terms of the easement for the duration of the easement. In addition, because the United States has a real property interest in GRP by virtue of this right of enforcement, the easement cannot be condemned, thereby providing further protection of the conservation easement.

Finally, NRCS is interpreting the term ''contingent'' in ''contingent right of enforcement'' to mean that the Secretary exercises that right under certain circumstances, not that the right itself is contingent. Consequently, to prevent confusion over the scope of the right, NRCS is referring to its enforcement right as a ''right of enforcement.'' The definition of the ''right of enforcement'' set forth at § 1415.3 clarifies that the right is only exercised under certain circumstances.

Section 1415.18 Easement Transfer to Eligible Entities

The numbering of the existing § 1415.17 is redesignated to § 1415.18 to accommodate the insertion of the new § 1415.17, Cooperative Agreements, as explained above. This section is being re-titled ''Easement transfer to eligible entities'' to avoid confusion with the use of the term ''third parties'' elsewhere in the regulation in referring to the provision of technical assistance. The term ''NRCS'' is replacing ''USDA'' throughout the section, reflecting that NRCS is the USDA agency delegated responsibility for administering easements under the program.

Section 1415.18 outlines the transfer of easements to eligible entities. Paragraph (a) describes who USDA may transfer title of ownership to for an easement. This rulemaking revises this paragraph by adding ''eligible entity to hold and enforce an easement if:'' following who USDA may transfer the title of ownership to. The remainder of the paragraph is removed and subparagraphs are added to describe under what circumstances USDA may transfer the easement. This change implements amendments made by the 2008 Act as well as to improve readability.

Paragraph (b) specifies NRCS's continued right to conduct inspection and enforce the easement if transferred. The terms ''grazing management plan'' and ''conservation plan'' are being added to this paragraph to clarify that the requirements of any applicable plans are enforceable under the terms of transferred GRP easement. The reference to rental agreements is removed because the section only addresses easement transfers to third parties. These changes provide clarity and reflect changes made by the 2008 Act.

Paragraph (c) describes the assumption of costs by an eligible entity. This paragraph is being removed because it is redundant of the requirements set forth in § 1415.17(c)(10) and subsequent paragraphs are redesignated.

Paragraph (c), as redesignated, sets forth where an eligible entity applies to hold a GRP easement.

Section 1415.18(e) is redesignated as (d) and is amended to outline the requirements of an eligible entity. These amendments regarding the conditions under which the NRCS may approve an application and transfer of the easement are intended to provide clarity and reflect the requirements for eligible entities to accept an easement transfer, including the requirement for a dedicated fund for non-governmental organizations as discussed under the description of changes to § 1415.17.

Section 1415.18(f) of the 2006 GRP final rule described actions USDA could take if the easement holder fails to enforce the terms of the easement. This paragraph is redesignated as (e) by this rulemaking. New paragraph (e) removes language regarding the Secretary's authority to take back title in the name of the United States if the easement holder dissolves or attempts to terminate the easement and adds language to give the Secretary the ability to inspect the easement for violations and enforce the terms of the easement. This amendment implements changes in the 2008 Act relating to the federal right in GRP funded easement.

Paragraph (g), as re-designated, describes the required actions if a transfer occurs under this section. This paragraph is amended to comply with the requirements set forth in § 1415.17 as well as the addition of a grazing management plan. These changes create consistency with changes to other sections and reflect changes made in the 2008 Act. The reference to the NRCS Field Office Technical Guide is also removed because it is already implied by definition in the reference to the grazing management and conservation plan.

Paragraph (h) of the 2006 GRP final rule is redesignated as (g) by this rulemaking.

Section 1415.19 Appeals

The numbering of the existing § 1415.18 is changed to § 1415.19 to accommodate the insertion of the new § 1415.17, Cooperative Agreements.

Section 1415.19(a) describes how applicants may appeal decisions regarding GRP. The paragraph is being amended to clarify that appeals procedures apply to administrative actions such as eligibility determinations and to correct the citation for the applicable administrative appeal regulations.

Section 1415.19(b) requires that a person must exhaust all administrative appeals procedures before seeking judicial review. The paragraph is revised to clarify that appeals procedures apply to administrative actions and not for other purposes such as easement enforcement actions. This section is also revised to clarify that a decision of the FSA Administrator or a decision of the NRCS Chief constitutes a final agency action under the administrative appeal procedures.

Section 1415.19(c) is added to clarify that appraisals, market analyses, and related information is considered confidential and will not be disclosed.

This new paragraph incorporates language previously located in Confidentiality, § 1415.20 of the 2006 GRP final rule. Section 1415.20, Confidentiality, is removed in its entirety.

This rulemaking is adding a new paragraph (d) to clarify further that enforcement actions taken by NRCS are not subject to review under administrative appeal regulations. This language is consistent with 7 CFR part 614 and Federal real property law.

Section 1415.20 Scheme and Device

The numbering on the original § 1415.19 is redesignated to § 1415.20 to accommodate the insertion of the new § 1415.17, Cooperative Agreements. The term ''Department'' is replaced with ''USDA'' consistent with the modifications made in definitions under 1415.3. The term ''rental contract'' was added to (b).

Section 1415.21 Confidentiality

This section is removed in its entirety and the language is incorporated in section 1415.19(c), because the issue is more appropriately included under section on appeals.

Administrative Requirements for Conservation Programs

Section 2708, ''Compliance and Performance'', of the 2008 Act added a paragraph to Section 1244(g) of the 1985 Act entitled, ''Administrative Requirements for Conservation Programs,'' which states the following:

''(g) Compliance and performance.—For each conservation program under Subtitle D, the Secretary shall develop procedures—

''(1) To monitor compliance with program requirements;

''(2) To measure program performance;

''(3) To demonstrate whether long-term conservation benefits of the program are being achieved;

''(4) To track participation by crop and livestock type; and

''(5) To coordinate activities described in this subsection with the national conservation program authorized under section 5 of the Soil and Water Resources Conservation Act of 1977 (16 U.S.C. 2004).''

This new provision presents in one place the accountability requirements placed on the Agency as it implements conservation programs and reports on program results. The requirements apply to all programs under subtitle D, including the Wetlands Reserve program, the Conservation Security Program, the Conservation Stewardship Program, the Farm and Ranch Lands Protection Program, the Grassland Reserve Program, the Environmental Quality Incentives Program (including the Agricultural Water Enhancement Program), the Wildlife Habitat Incentive Program, and the Chesapeake Bay Watershed initiative. These requirements are not directly incorporated into these regulations, which set out requirements for program participants. However, certain provisions within these regulations relate to elements of section 1244(g) of the 1985 Act and the Agency's accountability responsibilities regarding program performance. NRCS is taking this opportunity to describe existing procedures that relate to meeting the requirements of section 1244(g) of the 1985 Act, and Agency expectations for improving its ability to report on each program's performance and achievement of long-term conservation benefits. Also included is reference to the sections of these regulations that apply to program participants and that relate to the Agency accountability requirements as outlined in section 1244(g) of the 1985 Act.

Monitor compliance with program requirements. NRCS has established application procedures to ensure that participants and eligible entities meet eligibility requirements, and follow-up procedures to ensure that participants and eligible entities are complying with the terms and conditions of their contractual arrangement with the government and that the installed conservation measures are operating as intended. These and related program compliance evaluation policies will be set forth in Agency guidance.

The program requirements applicable to participants and eligible entities that relate to compliance are set forth in these regulations in § 1415.4, ''Program requirements,'' § 1415.11, ''Restoration agreements,'' and § 1415.17, ''Cooperative agreements.'' These sections make clear the general program requirements, as well as participant and entity obligations.

Measure program performance. Pursuant to the requirements of the Government Performance and Results Act of 1993 (Pub. L. 103–62, sec. 1116) and guidance provided by OMB Circular A–11, NRCS has established performance measures for its conservation programs. Program-funded conservation activity is captured through automated field-level business tools and the information is made publicly available at: *http://ias.sc.egov.usda.gov/PRSHOME/*. Program performance also is reported annually to Congress and the public through the annual performance budget, annual accomplishments report, and the USDA Performance Accountability Report. Related performance measurement and reporting policies are set forth in Agency guidance (GM_340_401 and GM_340_403 (*http://directives.sc.egov.usda.gov/*)).

The conservation actions undertaken by participants are the basis for measuring program performance—specific actions are tracked and reported annually, while the effects of those actions relate to whether the long-term benefits of the program are being achieved. The program requirements applicable to participants that relate to undertaking conservation actions are set forth in these regulations in § 1415.4, ''Program requirements,'' § 1415.11, ''Restoration agreements,'' and § 1415.17, ''Cooperative agreements.'' These sections make clear participant and eligible entity obligations for implementing, operating, and maintaining GRP-funded conservation improvements, which in aggregate result in the program performance that is reflected in Agency performance reports.

Demonstrate whether long-term conservation benefits of the program are being achieved. Demonstrating the long-term natural resource benefits achieved through conservation programs is subject to the availability of needed data, the capacity and capability of modeling approaches, and the external influences that affect actual natural resource condition. While NRCS captures many measures of ''output'' data, such as acres of conservation practices, it is still in the process of developing methods to quantify the contribution of those outputs to environmental outcomes.

NRCS currently uses a mix of approaches to evaluate whether long-term conservation benefits are being achieved through its programs. Since 1982, NRCS has reported on certain natural resource status and trends through the National Resources Inventory (NRI), which provides statistically reliable, nationally consistent land cover/use and related natural resource data. However, lacking has been a connection between these data and specific conservation programs. In the future, the interagency Conservation Effects Assessment Project (CEAP), which has been underway since 2003, will provide nationally consistent estimates of environmental effects resulting from conservation practices and systems applied. CEAP results will be used in conjunction with performance data gathered through Agency field-level business tools to help produce estimates of environmental

effects accomplished through Agency programs, such as GRP. In 2006 a Blue Ribbon panel evaluation of CEAP strongly endorsed the project's purpose, but concluded ''CEAP must change direction'' to achieve its purposes. In response, CEAP has focused on priorities identified by the Panel and clarified that its purpose is to quantify the effects of conservation practices applied on the landscape. Information regarding CEAP, including reviews and current status is available at *http://www.nrcs.usda.gov/technical/NRI/ceap/*. Since 2004 and the initial establishment of long-term performance measures by program, NRCS has been estimating and reporting progress toward long-term program goals. Natural resource inventory and assessment, and performance measurement and reporting policies set forth in Agency guidance (GM_290_400; GM_340_401; GM_340_403) (*http://directives.sc.egov.usda.gov/*).

Demonstrating the long-term conservation benefits of conservation programs is an Agency responsibility. Through CEAP, NRCS is in the process of evaluating how these long-term benefits can be achieved through the conservation practices and systems applied by participants under the program. The program requirements applicable to participants that relate to producing long-term conservation benefits are described previously under ''measuring program performance.''

Track participation by crop and livestock type. NRCS' automated field-level business tools capture participant, land, and operation information. This information is aggregated in the National Conservation Planning database and is used in a variety of program reports. Additional reports will be developed to provide more detailed information on program participation to meet congressional needs. These and related program management procedures supporting program implementation will be set forth in Agency guidance.

The program requirements applicable to participants that relate to tracking participation by crop and livestock type are put forth in these regulations in § 1415.4, ''Program Requirements,'' which makes clear program eligibility requirements, including the requirement to provide NRCS the information necessary to implement GRP.

Coordinate these actions with the national conservation program authorized under the Soil and Water Resources Conservation Act (RCA). The 2008 Act reauthorized and expanded on a number of elements of the RCA related to evaluating program performance and conservation benefits. Specifically, the 2008 Farm Bill added a provision stating, ''Appraisal and inventory of resources, assessment and inventory of conservation needs, evaluation of the effects of conservation practices, and analyses of alternative approaches to existing conservation programs are basic to effective soil, water, and related natural resources conservation.''

The program, performance, and natural resource and effects data described previously will serve as a foundation for the next RCA, which will also identify and fill, to the extent possible, data and information gaps. Policy and procedures related to the RCA are set forth in Agency guidance (GM_290_400; M_440_525; GM_130_402) (*http://directives.sc.egov.usda.gov/*).

The coordination of the previously described components with the RCA is an Agency responsibility and is not reflected in these regulations. However, it is likely that results from the RCA process will result in modifications to the program and performance data collected, to the systems used to acquire data and information, and potentially to the program itself. Thus, as the Secretary proceeds to implement the RCA in accordance with the statute, the approaches and processes developed will improve existing program performance measurement and outcome reporting capability and provide the foundation for improved implementation of the program performance requirements of section 1244(g) of the 1985 Act.

List of Subjects in 7 CFR 1415

Administrative practice and procedure, Agriculture, Soil conservation, Grassland, Grassland protection, Grazing land protection.

■ For the reasons stated in the preamble, the Commodity Credit Corporation revises part 1415 of title 7 of the Code of Federal Regulations as follows:

PART 1415—GRASSLANDS RESERVE PROGRAM

Sec.

1415.1 Purpose.
1415.2 Administration.
1415.3 Definitions.
1415.4 Program requirements.
1415.5 Land eligibility.
1415.6 Participant eligibility.
1415.7 Application procedures.
1415.8 Establishing priority for enrollment of properties.
1415.9 Enrollment of easements and rental contracts.
1415.10 Compensation for easements and rental contracts acquired by the Secretary.
1415.11 Restoration agreements.
1415.12 Modifications to easements and rental contracts.
1415.13 Transfer of land.
1415.14 Misrepresentation and violations.
1415.15 Payments not subject to claims.
1415.16 Assignments.
1415.17 Cooperative agreements.
1415.18 Easement transfer to eligible entities.
1415.19 Appeals.
1415.20 Scheme or device.

Authority: 16 U.S.C. 3838n–3838q.

§ 1415.1 Purpose.

(a) The purpose of the Grassland Reserve Program (GRP) is to assist landowners and operators to protect grazing uses and related conservation values by conserving and restoring grassland resources on eligible private lands through rental contracts, easements, and restoration agreements.

(b) GRP emphasizes:

(1) Supporting grazing operations;

(2) Maintaining and improving plant and animal biodiversity; and

(3) Protecting grasslands and shrublands from the threat of conversion to uses other than grazing.

§ 1415.2 Administration.

(a) The regulations in this part set forth policies, procedures, and requirements for program implementation of GRP, as administered by the Natural Resources Conservation Service (NRCS) and the Farm Service Agency (FSA). The regulations in this part are administered under the general supervision and direction of the NRCS Chief and the FSA Administrator. These two agency leaders:

(1) Concur in the establishment of program policy and direction, development of the National allocation formula, and development of broad national ranking criteria.

(2) Use a national allocation formula to provide GRP funds to NRCS State Conservationists and FSA State Executive Directors that emphasizes support for grazing operations, biodiversity of plants and animals, and grasslands under the greatest threat of conversion to uses other than grazing. The national allocation formula may also include additional factors related to improving program implementation, as determined by the NRCS Chief and the FSA Administrator. The allocation formula may be modified periodically to change the emphasis of any factor(s) in order to address a particular natural resource concern, such as the precipitous decline of a population of a grassland-dependent bird(s) or animal(s).

(3) Ensure the National, State, and local level information regarding

program implementation is made available to the public.

(4) Consult with USDA leaders at the State level and other Federal agencies with the appropriate expertise and information when evaluating program policies and direction.

(5) Authorize NRCS State Conservationists and FSA State Executive Directors to determine how funds will be used and how the program will be implemented at the State level.

(b) At the State level, the NRCS State Conservationist and the FSA State Executive Director are jointly responsible for:

(1) Determining how funds will be used and how the program will be implemented at the State level to achieve the program purposes;

(2) Identifying State priorities for project selection, based on input from the State Technical Committee;

(3) Identifying USDA employees at the field level responsible for implementing the program by considering the nature and extent of natural resource concerns throughout the State and the availability of human resources to assist with activities related to program enrollment;

(4) Developing program outreach materials at the State and local level to help ensure landowners, operators, and tenants of eligible land are aware and informed that they may be eligible for the program;

(5) Approving conservation practices eligible for cost-share and cost-share rates;

(6) Developing grazing management plans and restoration agreements;

(7) Administering and enforcing the terms of easements and rental contracts unless this responsibility is transferred to an eligible entity as provided in § 1415.17 and § 1415.18;

(8) With advice from the State Technical Committee, developing criteria for ranking eligible land, consistent with national criteria and program objectives and State priorities.

(c) The funds, facilities, and authorities of the Commodity Credit Corporation are available to NRCS and FSA to implement GRP.

(d) Subject to funding availability, the program may be implemented in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(e) The Chief, NRCS, or the Administrator, FSA may modify or waive a provision of this part if he or she deems the application of that provision to a particular limited situation to be inappropriate and inconsistent with the conservation purposes and sound administration of GRP. This authority cannot be further delegated. No provision of this part which is required by law may be waived.

(f) No delegation in this part to lower organizational levels shall preclude the Chief, NRCS, or the Administrator, FSA, from determining any issue arising under this part or from reversing or modifying any determination arising from this part.

(g) The USDA Forest Service may hold GRP easements on properties adjacent to USDA Forest Service land, with the consent of the landowner.

(h) Program participation is voluntary.

(i) Applications for participation will be accepted on a continual basis at local USDA Service Centers. Eligible entities wishing to enter into a cooperative agreement under § 1415.17 in order to purchase, own, write, and hold easements may apply on a continuous basis to the NRCS State Conservationist. The State Conservationist and State Executive Director will establish cut-off periods to rank and select applications for participation. These cut-off periods will be available in program outreach material provided by the local USDA Service Center. Once funding levels have been exhausted, unfunded eligible applications will remain on file until they are funded or the applicant chooses to be removed from consideration.

(j) The services of third parties as provided for in part 652 of this title may be used to provide technical services to participants.

§ 1415.3 Definitions.

Activity means an action other than a conservation practice that is included as a part of a grazing management or conservation plan that has the effect of alleviating problems or improving treatment of the resources, including ensuring proper management or maintenance of the functions and values restored, protected, or enhanced through an easement or rental contract.

Administrator means the Administrator of the Farm Service Agency (FSA) or the person delegated authority to act for the Administrator.

Applicant means a person, legal entity, joint operator, or Indian Tribe who applies to participate in the program.

Chief means the Chief of the Natural Resources Conservation Service (NRCS) or the person delegated authority to act for the Chief.

Commodity Credit Corporation (CCC) is a Government-owned and operated entity that was created to stabilize, support, and protect farm income and prices. CCC is managed by a Board of Directors, subject to the general supervision and direction of the Secretary of Agriculture, who is an ex-officio director and chairperson of the Board. The Chief and Administrator are Vice Presidents of CCC. CCC provides the funding for GRP, and FSA and NRCS administer the GRP on its behalf.

Common grazing practices means those grazing practices, including those related to forage and seed production, common to the area of the subject ranching or farming operation. Included are routine management activities necessary to maintain the viability of forage or browse resources that are common to the locale of the subject ranching or farming operation.

Conservation District means any district or unit of State, Tribal, or local government formed under State, Tribal, or territorial law for the express purpose of developing and carrying out a local soil and water conservation program. Such district or unit of government may be referred to as a ''conservation district,'' ''soil conservation district,'' ''soil and water conservation district,'' ''resource conservation district,'' ''natural resource district,'' ''land conservation committee,'' or similar name.

Conservation plan means a record of the GRP participants' decisions and supporting information that will be developed in cases where ranking points are assigned and land is enrolled on the basis of resource concerns in addition to grazing land uses. The conservation plan will include the schedule of operations for the implementation and maintenance of practices directly related to the additional land eligibility criteria under which the land is enrolled.

Conservation practice means a specified treatment, such as a vegetative, structural, or land management practice, that is planned and applied according to NRCS Field Office Technical Guide standards and specifications.

Conservation values means those natural resource attributes that provide ecosystem functions and values of the grassland area, including but not limited to, habitat for grassland- and shrubland-dependent plants and animals, soil erosion control, and air and water quality protection.

Cost-share payment means the payment made by USDA to a program participant or vendor to achieve the restoration, enhancement, and protection goals in accordance with the GRP restoration plan component of the restoration agreement.

Dedicated account means a dedicated fund held in a separate account for the management, monitoring, and enforcement of conservation easements and that cannot be used for other purposes.

Easement means a conservation easement, which is an interest in land defined and delineated in a deed whereby the landowner conveys certain rights, title, and interests in a property to the United States, an eligible entity, or both for the purpose of protecting the grassland and other conservation values of the property. Under GRP, the property rights are conveyed by a ''conservation easement deed.''

Easement area means the land encumbered by an easement.

Easement payment means the consideration paid to a landowner for an easement conveyed to the United States, an eligible entity, or both under GRP.

Eligible entity for the purposes of entering into a cooperative agreement under 16 U.S.C. 3838q(d) means an agency of State or local government, an Indian Tribe, or a non-governmental organization that has the relevant experience necessary, as appropriate for the application, to administer an easement on grassland, land that contains forbs, or shrubland; has a charter that describes a commitment to conserving ranchland, agricultural land, or grassland for grazing and conservation purposes; and has the resources necessary to effectuate the purposes of the charter.

Enhancement means to increase or improve the viability of grassland resources, including habitat for declining species of grassland-dependent birds and animals.

Farm Service Agency (FSA) is an agency of the United States Department of Agriculture.

FSA State Executive Director means the FSA employee authorized to implement the Grasslands Reserve Program and direct and supervise FSA activities in a State, Caribbean Area, or the Pacific Islands Area.

Field Office Technical Guide means the official local NRCS source of resource information and interpretations of guidelines, criteria, and requirements for planning and applying conservation practices and conservation management systems. It contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared.

Fire pre-suppression means activities as outlined in a grazing management plan such as the establishment and maintenance of firebreaks and prescribed burning to prevent or limit the spread of fires.

Forb means any herbaceous plant other than those in the grass family.

Functions and values of grasslands and shrublands means ecosystem services provided, including: Domestic animal productivity, biological productivity, plant and animal richness and diversity, and abundance, fish and wildlife habitat (including habitat for pollinators and native insects), water quality and quantity benefits, aesthetics, open space, and recreation.

Grantor means the landowner who is transferring land rights to the United States or an eligible entity, or both through an easement.

Grassland means land on which the vegetation is dominated by grasses, grass-like plants, shrubs, or forbs, including shrubland, land that contains forbs, pasture, and rangeland, and improved pasture and rangeland.

Grazing management plan means the document developed by NRCS that describes the implementation of the grazing management system consistent with the prescribed grazing standard contained in the Field Office Technical Guide (FOTG). The grazing management plan will include a description of the grazing management system, permissible and prohibited activities, any associated restoration plan or conservation plan if applicable, and a description of USDA's right of ingress and egress.

Grazing value means the financial worth of the land as used for grazing or forage production. The term is used in the calculation of compensation for rental contracts and easements. For easements, this value is determined through an appraisal process or a market survey process. For rental contracts, FSA determines the grazing value based upon an administrative process.

Historical and archeological resources means a resource that is: (1) Listed in the National Register of Historic Places (established under the National Historic Preservation Act (NHPA), 16U.S.C. 470, *et seq.*); (2) Formally determined eligible for listing the National Register of Historic Places by the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) and Keeper of the National Register in accordance with Section 106 or the NHPA); (3) Formally listed in the State or Tribal Register of Historic Places of the SHPO (designated under section 101 (b) (1) (B) of the NHPA) or the Tribal Register of Historic Places (designated under section 101 (d) (1) (C) of the NHPA); or (4) Included in the SPHO or THPO inventory with written justification as to why it meets National Register of Historic Places criteria.

Improved rangeland or pastureland means grazing land permanently producing naturalized forage species that receives varying degrees of periodic cultural treatment to enhance forage quality and yields and is primarily harvested by grazing animals.

Indian Tribe means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) that is eligible for the special programs and services provided by the United States to Indians because of their status as Indians (25 U. S. C. 450b(e)).

Landowner means a person, legal entity, or Indian Tribe having legal ownership of land. Landowner may include all forms of collective ownership including joint tenants, tenants-in-common, and life tenants. The term landowner includes Indian Tribes. State governments, local governments, and non-governmental organizations that qualify as eligible entities are not eligible to participate as eligible landowners.

Legal entity means an entity that is created under Federal or State law and that:

(1) Owns land or an agricultural commodity, product, or livestock; or

(2) Produces an agricultural commodity, product, or livestock.

Maintenance means work performed to keep the applied conservation practice functioning for the intended purpose during its life span. Maintenance includes work to, manage, and prevent deterioration, repair damage, or replace the practice to its original condition if one or more components fail.

Native means a species that is indigenous and is a part of the original fauna or flora of the area.

Natural Resources Conservation Service (NRCS) is an agency of the United States Department of Agriculture.

NRCS State Conservationist means the NRCS employee authorized to implement the Grasslands Reserve Programs and direct and supervise NRCS activities in a State, Caribbean Area, or the Pacific Islands Area.

Naturalized means an introduced, desirable forage species that is ecologically adapted to the site and can perpetuate itself in the community without cultural treatment. The term ''naturalized'' does not include noxious weeds.

Nesting season means the time of year that animals (birds and others) build or otherwise find a place of refuge for purposes of reproduction or dormancy.

Non-governmental organization means any organization that:

(1) Is organized for, and at all times since the formation of the organization, has been operated principally for one or more of the conservation purposes specified in clause (i), (ii), (iii), or (iv) of section 170(h)(4)(A) of the Internal Revenue Code of 1986;

(2) Is an organization described in section 501(c)(3) of that Code that is exempt from taxation under 501(a) of that Code; and

(3) Is described—

(i) in Section 509(a)(1) or 509(a)(2) of that Code; or

(ii) in Section 509(a)(3) of that Code and is controlled by an organization described in Section 509(a)(2) of that Code.

Participant means a person, legal entity, joint operation, or Indian Tribe, who is accepted to participate in GRP through a rental contract or option agreement to purchase an easement.

Pastureland means grazing lands comprised of introduced or domesticated native forage species that are used primarily for the production of livestock. These lands receive periodic renovation and/or cultural treatments, such as tillage, aeration, fertilization, mowing, weed control, and may be irrigated. This term does not include lands that are in rotation with crops.

Permanent easement means an easement that lasts in perpetuity or for the maximum duration allowed under the law of a State.

Plant and animal biodiversity means the existence of a wide variety of plant and animal species in their natural environments, providing for ecological functions and genetic variations.

Private land means land that is not owned by a governmental entity and includes Tribal Lands.

Purchase price means the amount paid to acquire an easement under a cooperative agreement between NRCS and an eligible entity. It is the fair market value of the easement minus the landowner donation.

Rangeland means a land cover or use category with a climax or potential plant cover composed principally of native grasses, grass-like plants, forbs, or shrubs suitable for grazing and browsing, and introduced forage species that are managed like rangeland. Rangeland includes lands re-vegetated naturally or artificially when routine management of that vegetation is accomplished mainly through manipulation of grazing. This term includes areas where introduced hardy and persistent grasses are planted and such practices as deferred grazing, burning, chaining, and rotational grazing are used, with little or no chemicals or fertilizer being applied. Grasslands, savannas, many wetlands, some deserts, and tundra are considered to be rangeland. Certain communities of low forbs and shrubs, such as mesquite, chaparral, mountain shrub, and pinyon-juniper, are also included as rangeland.

Rental contract means the legal document that specifies the obligations and rights of a participant in GRP, including the annual rental payments to be provided to the participant for the length of the contract to maintain or restore grassland functions and values under the GRP.

Restoration means implementing any conservation practice, system of practices or activities to restore functions and values of grasslands and shrublands. The restoration may re-establish grassland functions and values on degraded land, or on land that has been converted to another use.

Restoration agreement means an agreement between the program participant and the USDA or eligible entity to carry out activities and conservation practices necessary to restore or improve the functions and values of that land. A restoration agreement will include a restoration plan.

Restoration plan is the portion of the restoration agreement that includes the schedule and conservation practices and activities to restore the functions and values of grasslands and shrublands, including protection of associated streams, ponds, and wetlands. The restoration plan incorporates the requirement that program participants will maintain GRP-funded conservation practices and activities for their expected lifespan as described in the plan.

Right of enforcement means an interest in the easement that the United States Government may exercise under specific circumstances in order to enforce the terms of the conservation easement.

Secretary means the Secretary of the U.S. Department of Agriculture, or his or her designee.

Shrubland means land that the dominant plant species is shrubs, which are plants that are persistent, have woody stems, a relatively low growth habitat, and generally produces several basal shoots instead of a single bole.

Significant decline means a decrease of a species population to such an extent that it merits conservation priority, as determined by the NRCS State Conservationist in consultation with the State Technical Committee.

State Technical Committee means a committee established by the Secretary in a State pursuant to 16 U.S.C. 3861.

Tribal lands means any lands owned by Indian Tribes, which are defined consistent with Section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U. S. C. 450b(e)).

USDA means the U.S. Department of Agriculture, and its Agencies and Offices, as applicable.

§ 1415.4 Program requirements.

(a) Except as provided for under § 1415.17, only landowners may submit applications for easements. For rental contracts, applicants must own or provide written evidence of control of the property for the duration of the rental contract.

(b) The easement or rental contract will require that the area be maintained in accordance with GRP goals and objectives for the term of the easement or rental contract, including the conservation, protection, enhancement, and, if necessary, restoration of the grassland functions and values.

(c) All participants in GRP are required to implement a grazing management plan approved by NRCS. In cases where a participant receives ranking points on the basis of resource concerns other than grazing land concerns, all such resource concerns will be addressed in an applicable conservation plan.

(d) The easement or rental contract must grant USDA or its representatives a right of ingress and egress to the easement or rental contract area. For easements, this access is legally described by the conservation easement deed and the GRP grazing management plan. Access to rental contract areas is identified in the GRP grazing management plan.

(e) Easement participants are required to convey unencumbered title that is acceptable to the United States and provide consent or subordination agreements from each holder of a security or other interest in the land. The landowner must warrant that the easement granted the United States or eligible entity is superior to the rights of all others, except for exceptions to the title that are deemed acceptable by the USDA.

(f) Landowners are required to use a standard GRP conservation easement deed developed by USDA or developed by an eligible entity and approved by USDA under § 1415.17 of this part. The easement grants development rights, title, and interest in the easement area

in order to protect grassland and other conservation values.

(g) The program participant must comply with the terms of the easement or rental contract and comply with all terms and conditions of the grazing management plan and any associated conservation plan or restoration agreement.

(h) Easements and rental contracts allow, consistent with their terms and the program purposes, the following activities as outlined in the grazing management plan:

(1) Common grazing practices, including maintenance and necessary conservation practices and activities (*e.g.*, prescribed grazing; upland wildlife habitat management; prescribed burning; fencing, watering, and feeding necessary for the raising of livestock; related forage and seed production) on the land in a manner that is consistent with maintaining the viability of grassland, forb, and shrub species common to the locality;

(2) Haying, mowing, or harvesting for seed production subject to appropriate restrictions, as determined by the State Conservationist, during the nesting season for birds in the local area that are in significant decline, or are conserved in accordance with Federal or State law;

(3) Fire pre-suppression, rehabilitation, and construction of firebreaks;

(4) Grazing related activities, such as fencing and livestock watering facilities;

(5) Wind power facilities for on-farm use power generation; and

(6) Other activities that USDA determines the manner, number, intensity, location, operation, and other features associated with the activity will not adversely affect the grassland resources or related conservation values protected under an easement or rental contract. This includes infrastructure development along existing rights-of-way, where the easement deed allows the landowner to grant rights-of-way when it is determined by NRCS that granting of such rights-of-way are in the public interest and that grassland resources and related conservation values will not be adversely impacted, and the landowner agrees to a restoration plan for the disturbed area as developed by NRCS, but at no cost to NRCS.

(i) Easement and rental contracts prohibit the following activities:

(1) The production of crops (other than hay), fruit trees, vineyards, or other agricultural commodity that is inconsistent with maintaining grazing land.

(2) Except as permitted under a restoration plan, the conduct of any other activity that would be inconsistent with maintaining grazing uses and related conservation values protected under an easement or rental contract.

(3) Wind power facilities for off-farm power generation.

(j) Rental contracts may be terminated by USDA without penalty or refund if the original participant dies, is declared legally incompetent, or is otherwise unavailable during the contract period.

(k) Participants, with the agreement of USDA, may convert a rental contract to an easement, provided that funds are available and the project meets conditions established by the USDA. Land cannot be enrolled in both a rental contract option and an easement enrollment option at the same time. The rental contract shall be terminated prior to the date the easement is recorded in the local land records office.

(l) Rental contract participants are required to suspend any existing cropland base and allotment history for the land under another program administered by the Secretary.

(m) Easement participants are required to eliminate any existing cropland base and allotment history for the land under another program administered by the Secretary.

§ 1415.5 Land eligibility.

(a) GRP is available on privately owned lands, which include private and Tribal land. Publicly owned land is not eligible.

(b) Land is eligible for funding consideration if the NRCS State Conservationist determines that the land is:

(1) Grassland, land that contains forbs, or shrubland (including improved rangeland and pastureland) for which grazing is the predominant use; or

(2) Located in an area that has been historically dominated by grassland, forbs, or shrubland, and the State Conservationist, with advice from the State Technical Committee, determines that it is compatible with grazing uses and related conservation values, and—

(i) Could provide habitat for animal or plant populations of significant ecological value if the land is retained in its current use or is restored to a natural condition;

(ii) Contains historical or archeological resources; or

(iii) Would address issues raised by State, regional, and national conservation priorities.

(c) Incidental lands, in conjunction with eligible land, may also be considered for enrollment to allow for the efficient administration of an easement or rental contract. Incidental lands may include relatively small areas that do not specifically meet the eligibility requirements, but as a part of the land unit, may contribute to grassland functions and values and related conservation values, or its inclusion may increase efficiencies in land surveying, easement management, and monitoring by reducing irregular boundaries.

(d) Land will not be enrolled if the functions and values of the grassland are already protected under an existing contract, easement, or deed restriction, or if the land already is in ownership by an entity whose purpose is to protect and conserve grassland and related conservation values. This land becomes eligible for enrollment in the GRP if the existing contract, easement, or deed restriction expires or is terminated and the grassland values and functions are no longer protected.

(e) Land on which gas, oil, earth, or other mineral rights exploration has been leased or is owned by someone other than the applicant may be offered for participation in the program. However, if an applicant submits an offer for an easement project, USDA will assess the potential impact that the third party rights may have upon the grassland resources. USDA reserves the right to deny funding for any application where there are exceptions to clear title on the property.

§ 1415.6 Participant eligibility.

To be eligible to participate in GRP, an applicant, except as otherwise described in § 1415.17:

(a) Must be a landowner for easement participation or be a landowner or have control of the eligible acreage being offered for rental contract participation;

(b) Agree to provide such information to USDA that is necessary or desirable to assist in its determination of eligibility for program benefits and for other program implementation purposes;

(c) Meet the Adjusted Gross Income requirements in 7 CFR part 1400 of this title, unless exempted under part 1400 of this title; and

(d) Meet the conservation compliance requirements found in part 12 of this title.

§ 1415.7 Application procedures.

(a) Applicants, except as otherwise described under § 1415.17, may submit an application through a USDA Service Center for participation in the GRP. Applications may be submitted throughout the year.

(b) By filing an application for participation, the applicant consents to a USDA representative entering upon the land offered for enrollment for

purposes of assessing the grassland functions and values and for other activities that are necessary for the USDA to make an offer of enrollment. Generally, the applicant will be notified prior to a USDA representative entering upon their property.

(c) Applicants submit applications that identify the duration of the easement or rental contract for which they seek to enroll their land. Rental contracts may be for a duration of 10-years, 15-years, or 20-years; easements may be permanent in duration or for the maximum duration authorized by State law.

§ 1415.8 Establishing priority for enrollment of properties.

(a) USDA, at the national level, will provide to NRCS State Conservationists and FSA State Executive Directors, national guidelines for establishing State specific ranking criteria, for selection of applications for funding.

(b) NRCS State Conservationists and FSA State Executive Directors, with advice from the State Technical Committee, establish criteria to evaluate and rank applications for easement and rental contract enrollment, including applications from eligible entities under § 1415.17, following the guidance established in paragraph (a) of this section.

(c) Ranking criteria shall emphasize support for:

(1) Grazing operations;

(2) Protection of grassland, land that contains forbs, and shrubland at the greatest risk from the threat of conversion to uses other than grazing;

(3) Plant and animal biodiversity; and

(4) In ranking parcels offered by eligible entities—

(i) Leveraging of non-Federal funds, and

(ii) Entity contributions in excess of 50 percent of the purchase price, as defined in § 1415.3.

(d) When funding is available, NRCS State Conservationists and FSA State Executive Directors, will periodically select for funding the highest ranked applications, including applications from entities under § 1415.17, based on applicant and land eligibility and the State-developed ranking criteria.

(e) NRCS State Conservationists and FSA State Executive Directors may establish separate ranking pools to address, for example, specific conservation issues raised by State, regional, and national conservation priorities.

(f) The NRCS State Conservationist and FSA State Executive Director, with advice from the State Technical Committee, may emphasize enrollment of unique grasslands or specific geographic areas of the State.

(g) The FSA State Executive Director and NRCS State Conservationist, with advice from the State Technical Committee, will select applications for funding.

(h) If available funds are insufficient to accept the highest ranked application, and the applicant is not interested in reducing the acres offered to match available funding, the State Conservationist or State Executive Director may select a lower ranked application that can be fully funded.

(i) Land enrolled in a Conservation Reserve Program (CRP) contract that is within one year of the scheduled expiration date shall receive a priority for enrollment. To receive this priority, the following criteria must be met:

(1) The land must be eligible as defined in § 1415.5;

(2) USDA must determine it is of high ecological value and under significant threat of conversion to uses other than grazing;

(3) The land must be offered for easement or 20-year rental contract enrollment;

(4) Expired CRP land enrolled under this priority shall not exceed 10 percent of the total number of acres accepted for enrollment in GRP in any year; and

(5) This priority applies only up to 12 months before the scheduled expiration of the CRP contract.

(j) USDA will manage the program nationally to ensure that, to the extent practicable, no more than 60 percent of funds are used for the purchase of easements, either directly or through cooperative agreements with eligible entities as set forth in § 1415.17, and no more than 40 percent of funds are used for rental contracts.

§ 1415.9 Enrollment of easements and rental contracts.

(a) Based on the priority ranking, NRCS or FSA, as appropriate, will notify applicants in writing of their tentative acceptance into the program for either rental contract or conservation easement options. Enrollment under cooperative agreements is described under § 1415.17. The letter notifies the applicant of the intent to continue the enrollment process unless otherwise notified by the applicant.

(b) An offer of tentative acceptance into the program neither binds USDA to acquire an easement or enter into a rental contract, nor binds the applicant to convey an easement, enter into a rental contract, or agree to restoration activities.

(c) Offer of enrollment will be through either:

(1) An option agreement to purchase an easement presented by NRCS to the applicant, which will describe the easement; the easement terms and conditions; and other terms and conditions that may be required by NRCS; or

(2) A rental contract will be presented by FSA to the applicant, which will describe the contract area; the contract terms and conditions, and other terms and conditions that may be required by FSA.

(d) For rental contracts, land shall be considered to be enrolled in GRP once an FSA representative approves the GRP rental contract. FSA may withdraw the offer before approval of the contract due to lack of available funds or other reasons.

(e) For easements, after the option agreement to purchase an easement is executed by NRCS and the participant, the land will be considered enrolled in the GRP. NRCS will proceed with the development of the grazing management plan, or conservation or restoration plans if applicable, and various easement acquisition activities, which may include conducting a legal survey of the easement area, securing necessary subordination agreements, procuring title insurance, and conducting other activities necessary to record the easement or implement the GRP.

(f) Prior to closing an easement, NRCS may withdraw the land from enrollment at any time due to lack of available funds, title concerns, or other reasons.

§ 1415.10 Compensation for easements and rental contracts acquired by the Secretary.

(a) The Chief shall not pay more than the fair market value of the land, less the grazing value of the land encumbered by the easement.

(b) To determine this amount, the Chief shall pay as compensation the lowest of:

(1) The fair market value of the land encumbered by the easement as determined by the Chief using—

(i) The Uniform Standards of Professional Appraisal Practice; or

(ii) An area-wide market analysis or market survey.

(2) The amount corresponding to a geographical cap, as determined by the State Conservationist with advice from the State Technical Committee; or

(3) An offer made by the landowner.

(c) For 10-, 15-, and 20-year rental contracts, the participant will receive not more than 75 percent of the grazing value in an annual payment for the length of the contract, as determined by FSA. As provided by the regulations at part 1400 of this title, payments made

under one or more rental contracts to a person or legal entity, directly or indirectly, may not exceed, in the aggregate, $50,000 per year.

(d) In order to provide for better uniformity among States, the FSA Administrator and the NRCS Chief may review and adjust, as appropriate, State or other geographically based payment rates for rental contracts.

(e) Easement or rental contract payments received by a participant shall be in addition to, and not affect, the total amount of payments that the participant is otherwise eligible to receive under other USDA programs.

(f) Easement payments will be made in a single payment to the landowner unless otherwise requested by the landowner.

(g) USDA may accept and use contributions of non-Federal funds to support the purposes of the program. These funds are available to USDA without further appropriation and until expended, to carry out the program.

(h) USDA asserts no direct or indirect interest on environmental credits that may result from GRP-funded conservation practices and activities through a GRP rental contract, easement, or restoration agreement, except:

(1) In the event the participant sells or trades credits arising from GRP funded activities, USDA retains the authority to ensure that the requirements for GRP rental contracts, easements, or restoration agreements are met and maintained consistent with this part; and

(2) If activities required under an environmental credit agreement may affect land covered under a GRP rental contract, easement, or restoration agreement, participants are highly encouraged to request a compatibility assessment from USDA prior to entering into such agreements.

§ 1415.11 Restoration agreements.

(a) Restoration agreements are only authorized to be used in conjunction with easements and rental contracts. NRCS, in consultation with the program participant, determines if the grassland resources are adequate to meet the participant's objectives and the purposes of the program, or if a restoration agreement is needed. Such a determination is also subject to the availability of funding. USDA may condition participation in the program upon the execution of a restoration agreement depending on the condition of the grassland resources. When the functions and values of the grassland are determined adequate by NRCS, a restoration agreement is not required. However, if a restoration agreement is required, NRCS will set the terms of the restoration agreement. The restoration plan component of the restoration agreement identifies conservation practices and activities necessary to restore or improve the functions and values of the grassland to meet both USDA and the participant's objective and the purposes of the program. If the functions and values of the grassland decline while the land is subject to a GRP easement or rental contract through no fault of the participant, the participant may enter into a restoration agreement at that time to improve the functions and values with USDA approval and when funds are available.

(b) The NRCS State Conservationist, with advice from the State Technical Committee and in consultation with FSA, determines the conservation practices and activities, and cost-share percentages, not to exceed statutory limits, available under the GRP. A list of conservation practices and activities approved for cost-share assistance under GRP restoration plans is available to the public through the local USDA Service Center. NRCS may work through the local conservation district with the program participant to determine the terms of the restoration plan. The conservation district may assist NRCS with determining eligible conservation practices and activities and approving restoration agreements.

(c) Only approved conservation practices and activities are eligible for cost-sharing. Payments under the GRP restoration agreements may be made to the participant of not more than 50 percent for the cost of carrying out the conservation practices or activities. As provided by the regulations at part 1400 of this chapter, payments made under one or more restoration agreements to a person or legal entity, directly or indirectly, may not exceed, in the aggregate, $50,000 per year.

(d) The participant is responsible for the operation and maintenance of conservation practices in accordance with the restoration agreement.

(e) All conservation practices must be implemented in accordance with the NRCS Field Office Technical Guide.

(f) Technical assistance is provided by NRCS, or an approved third party.

(g) If the participant is receiving cost-share for the same conservation practice or activity from another conservation program, USDA will adjust the GRP cost-share rate proportionately so that the amount received by the participant does not exceed 100 percent of the costs of restoration. The participant cannot receive cost-share from more than one USDA cost-share program for the same conservation practice or activity on the same land.

(h) Cost-share payments may be made only upon a determination by a qualified individual approved by the NRCS State Conservationist that an eligible restoration practice has been established in compliance with appropriate standards and specifications.

(i) Conservation practices and activities identified in the restoration plan may be implemented by the participant or other designee.

(j) Cost-share payments will not be made for conservation practices or activities implemented or initiated prior to the approval of a rental contract or easement acquisition unless a written waiver is granted by the State Conservationist or State Executive Director, as appropriate, prior to installation of the practice.

(k) Upon transfer of an easement with a restoration agreement to an eligible entity as described in § 1415.18, the entity shall be responsible for administration of the agreement, and providing funds for payment of any costs associated with the completion of the restoration agreement. The eligible entity may, with participant consent, revise an existing restoration agreement or develop a new restoration agreement. Restoration plans must be consistent with the grazing management plan or any associated conservation plan as described in § 1415.4.

(l) Cooperating entities under § 1415.17 shall be responsible for development, administration, and implementation costs of restoration plans. Restoration plans must be consistent with the grazing management plan or any associated conservation plan as described in § 1415.4.

§ 1415.12 Modifications to easements and rental contracts.

(a) After an easement has been recorded, no substantive modification will be made to the easement.

(b) State Conservationists may approve modifications for restoration agreements and grazing management plans, or conservation plans where applicable, as long as the modifications do not affect the provisions of the easement and meet program objectives.

(c) USDA may approve modifications to rental contracts, including corresponding changes to conservation plans, grazing management plans, and restoration plans, to facilitate the practical administration and management of the enrolled area so long as the modification will not adversely affect the grassland functions and values for which the land was enrolled.

§ 1415.13 Transfer of land.

(a) Any transfer of the property prior to an applicant's acceptance into the program shall void the offer of enrollment, unless at the option of the State Conservationist or State Executive Director, as appropriate, an offer is extended to the new landowner and the new landowner agrees to the same easement or rental contract terms and conditions.

(b) After acreage is accepted in the program, for easements with multiple payments, any remaining easement payments will be made to the original participant unless NRCS receives an assignment of proceeds.

(c) Future annual rental payments will be made to the successor participant.

(d) The new landowner is responsible for complying with the terms of the recorded easement and the contract successor is responsible for complying with the terms of the rental contract and for assuring completion of all activities and practices required by any associated restoration agreement. Eligible cost-share payments will be made to the new participant upon presentation that the successor assumed the costs of establishing the practices.

(e) With respect to any and all payments owed to participants, the United States bears no responsibility for any full payments or partial distributions of funds between the original participant and the participant's successor. In the event of a dispute or claim on the distribution of cost-share payments, USDA may withhold payments without the accrual of interest pending an agreement or adjudication on the rights to the funds.

(f) The rights granted to the United States in an easement shall apply to any of its agents or assigns. All obligations of the participant under the GRP conservation easement deed also bind the participant's heirs, successors, agents, assigns, lessees, and any other person claiming under them.

(g) Rental contracts may be transferred to another landowner, operator or tenant that acquires an interest in the land enrolled in GRP. The successor must be determined by FSA to be eligible to participate in GRP and must assume full responsibility under the contract. FSA may require a participant to refund all or a portion of any financial assistance awarded under GRP, plus interest, if the participant sells or loses control of the land under a GRP rental contract, and the new landowner, operator, or tenant is not eligible to participate in the program or declines to assume responsibility under the contract.

§ 1415.14 Misrepresentation and violations.

(a) The following provisions apply to violations of rental contracts:

(1) Rental contract violations, determinations, and appeals are handled in accordance with the terms of the rental contract.

(2) A participant who is determined to have erroneously represented any fact affecting a program determination made in accordance with this part may not be entitled to rental contract payments and must refund to CCC all payments, plus interest in accordance with part 1403 of this title.

(3) In the event of a violation of a rental contract, the participant will be given notice and an opportunity to voluntarily correct the violation within 30 days of the date of the notice, or such additional time as CCC may allow. Failure to correct the violation may result in termination of the rental contract.

(b) The following provisions apply to violations of easement deeds:

(1) Easement violations are handled under the terms of the easement deed.

(2) Upon notification of the participant, NRCS has the right to enter upon the easement area at any time to monitor compliance with the terms of the GRP conservation easement deed or remedy deficiencies or violations.

(3) When NRCS believes there may be a violation of the terms of the GRP conservation easement deed, NRCS may enter the property without prior notice.

(4) The participant will be liable for any costs incurred by the United States as a result of the participant's negligence or failure to comply with the easement terms and conditions.

(c) USDA may require the participant to refund all or part of any payments received by the participant under the program contract or agreement.

(d) In addition to any and all legal and equitable remedies available to the United States under applicable law, USDA may withhold any easement payment, rental payment, or cost-share payments owing to the participant at any time there is a material breach of the easement covenants, rental contract, or any contract. Such withheld funds may be used to offset costs incurred by the United States in any remedial actions or retained as damages pursuant to court order or settlement agreement.

(e) Under a GRP conservation easement, the United States shall be entitled to recover any and all administrative and legal costs, including attorney's fees or expenses, associated with any enforcement or remedial action.

§ 1415.15 Payments not subject to claims.

Any cost-share, rental, or easement payment or portion thereof due any person under this part shall be allowed without regard to any claim or lien in favor of any creditor, except agencies of the United States Government.

§ 1415.16 Assignments.

(a) Any person entitled to any cash payment under this program may assign the right to receive such cash payments, in whole or in part.

(b) If a participant that is entitled to a payment dies, is declared legally incompetent, or is otherwise unable to receive the payment, or is succeeded by another person who renders or completes the required performance, such a participant may be eligible to receive payment in such a manner as USDA determines is fair and reasonable in light of all the circumstances.

§ 1415.17 Cooperative agreements.

(a) NRCS may enter into cooperative agreements which establish terms and conditions under which an eligible entity shall use funds provided by NRCS to own, write, and enforce a grassland protection easement.

(b) To be eligible to receive GRP funding, an eligible entity must demonstrate:

(1) A commitment to long-term conservation of agricultural lands, ranchland, or grassland for grazing and conservation purposes;

(2) A capability to acquire, manage, and enforce easements;

(3) Sufficient number of staff dedicated to monitoring and easement stewardship;

(4) The availability of funds; and

(5) For non-governmental organizations, the existence of a dedicated account for the purposes of easement management, monitoring, and enforcement of each easement held by the eligible entity.

(c) NRCS enters into a cooperative agreement with those eligible entities selected for funding. Once a proposal is selected by the State Conservationist, the eligible entity must work with the appropriate State Conservationist to finalize and sign the cooperative agreement, incorporating all necessary GRP requirements. The cooperative agreement addresses:

(1) The interests in land to be acquired, including the form of the easement deeds to be used and terms and conditions.

(2) The management and enforcement of the interests acquired.

(3) The responsibilities of NRCS.

(4) The responsibilities of the eligible entity on lands acquired with the assistance of GRP.

(5) An attachment listing the parcels accepted by the State Conservationist, landowners' names, addresses, location map(s), and other relevant information.

(6) The allowance of parcel substitution upon mutual agreement of the parties.

(7) The manner in which violations are addressed.

(8) The right of the Secretary to conduct periodic inspections to verify the eligible entity's enforcement of the easements.

(9) The manner in which the eligible entity will evaluate and report the use of funds to the Secretary.

(10) The eligible entity's agreement to assume the costs incurred in administering and enforcing the easement, including the costs of restoration and rehabilitation of the land as specified by the owner and eligible entity. The entity will also assume the responsibility for enforcing the grazing management plan, or conservation plan, as applicable. The eligible entity must incorporate any required plan into the conservation easement deed by reference or otherwise.

(11) If applicable, the ability of an eligible entity to include a charitable donation or qualified conservation contribution (as defined by Section 170(h) of the Internal Revenue Code of 1986) from the landowner as part of the entity's share of the cost to purchase the easement.

(12) The schedule of payments to an eligible entity, as agreed to by NRCS and the eligible entity.

(13) That GRP funds may not be used for expenditures such as appraisals, surveys, title insurance, legal fees, costs of easement monitoring, and other related administrative and transaction costs incurred by the entity.

(14) That NRCS may provide a share of the purchase price of an easement under the program, and that the eligible entity shall be required to provide a share of the purchase price at least equivalent to that provided by NRCS. The Federal share will be no more than 50 percent of the purchase price, as defined in § 1415.3.

(15) The eligible entity's succession plan that describes its successors or assigns to hold, manage, and enforce the interests in land acquired in the event that the eligible entity is no longer able to fulfill its obligations under the cooperative agreement entered into with NRCS.

(16) Other requirements deemed necessary by NRCS to protect the interests of the United States.

(d) Under the cooperative agreement option, a landowner grants an easement to an eligible entity with which NRCS has entered into a GRP cooperative agreement. The easement shall require that the easement area be maintained in accordance with GRP goals and objectives for the term of the easement. Easements are acquired in perpetuity, except where State law prohibits a permanent easement.

(e) The entity may use its own terms and conditions in the conservation easement deed, but a conservation easement deed template used by the eligible entity shall be submitted to the Chief within 30 days of the signing of the cooperative agreement. The conservation easement deed templates shall be reviewed and approved by the Chief. NRCS reserves the right to require additional specific language or to remove language in the conservation easement deed to protect the interests of the United States.

(1) Because title to the easement is held by an entity other than the United States, the conveyance document must contain a ''right of enforcement.'' The right of enforcement provides that the Chief has the right to inspect and enforce the easement if the eligible entity fails to uphold the easement or attempts to transfer the easement without first securing the consent of the Secretary. This right is a vested interest in real property and cannot be condemned or terminated by State or local government.

(2) The eligible entity shall acquire, hold, manage and enforce the easement. The eligible entity may have the option to enter into an agreement with governmental or private organizations to carry out easement stewardship responsibilities if approved by NRCS.

(3) Prior to closing, NRCS must sign an acceptance of the conservation easement, concurring with the terms of the conservation easement and accepting its interest in the conservation easement deed.

(4) All conservation easement deeds acquired with GRP funds must be recorded in the appropriate land records. Proof of recordation shall be provided to NRCS by the eligible entity.

(5) The conservation easement deed must include an indemnification clause requiring the participant (grantor) to indemnify and hold harmless the United States from any liability arising from or related to the property enrolled in GRP.

§ 1415.18 Easement transfer to eligible entities.

(a) NRCS may transfer title of ownership to an easement to an eligible entity to hold and enforce an easement if:

(1) The Chief determines that transfer will promote protection of grassland, land that contains forbs, or shrubland;

(2) The owner authorizes the eligible entity to hold and enforce the easement; and

(3) The eligible entity agrees to assume the costs incurred in administering and enforcing the easement, including the costs of restoration or rehabilitation of the land as specified by the owner and the eligible entity, and the entity assumes responsibility for enforcing the grazing management plan, or conservation plan as applicable, as approved by NRCS.

(b) NRCS has the right to conduct periodic inspections and enforce the easement, which includes the terms and requirements set forth in the grazing management plan, and any associated restoration or conservation plan, for any easements transferred pursuant to this section.

(c) An eligible entity that seeks to hold and enforce an easement shall apply to the NRCS State Conservationist for approval.

(d) The Chief may approve an application if the eligible entity:

(1) Has relevant experience necessary, as appropriate for the application, to administer an easement on grassland, land that contains forbs, or shrublands;

(2) Has a charter that describes the commitment of the eligible entity to conserving ranchland, agricultural land, or grassland for grazing and conservation purposes;

(3) Possesses the human and financial resources necessary, as determined by the Chief, NRCS, to effectuate the purposes of the charter;

(4) Has sufficient financial resources to carry out easement administrative and enforcement activities;

(5) Presents proof of a dedicated fund for enforcement as described in § 1415.17(b)(5), if the entity is a non-governmental organization; and

(6) Presents documentation that the landowner has concurred in the transfer.

(e) The Chief, his or her successors and assigns, shall retain a ''right of enforcement'' in any transferred GRP funded easement, which provides the Secretary the right to inspect the easement for violations and enforce the terms of this easement through any and all authorities available under Federal or State law, in the event that the eligible entity fails to enforce the terms of the easement, as determined by NRCS.

(f) Should an easement be transferred pursuant to this section, all warranties and indemnifications provided for in the deed shall continue to apply to the

United States. Upon transfer of the easement, the easement holder shall be responsible for enforcement of the grazing management plan, as approved by NRCS, and implementation of any associated conservation or restoration plans and costs of such restoration, as agreed to by the landowner and entity.

(g) Due to the Federal interest in the GRP easement, transferred GRP funded easements cannot be condemned.

§ 1415.19 Appeals.

(a) Applicants or participants may obtain a review of any administrative determination concerning eligibility for participation utilizing the administrative appeal regulations provided in parts 614 and 780 of this title.

(b) Before a person may seek judicial review of any administrative action concerning eligibility for program participation under this part, the person must exhaust all administrative appeal procedures set forth in paragraph (a) of this section, and for the purposes of judicial review, no decision shall be a final agency action except a decision of the Chief, NRCS or the FSA Administrator, as applicable, under these procedures.

(c) Any appraisals, market analysis, or supporting documentation that may be used by NRCS in determining property value are considered confidential information, and shall only be disclosed as determined at the sole discretion of NRCS in accordance with applicable law.

(d) Enforcement actions undertaken by NRCS in furtherance of its Federally-held property rights are under the jurisdiction of the Federal District Court and are not subject to review under administrative appeal regulations.

§ 1415.20 Scheme or device.

(a) If it is determined by USDA that a participant has employed a scheme or device to defeat the purposes of this part, any part of any program payment otherwise due or paid such participant during the applicable period may be withheld or be required to be refunded with interest thereon, as determined appropriate by USDA.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving any other person of payments for cost-share practices, rental contracts, or easements for the purpose of obtaining a payment to which a person would otherwise not be entitled.

(c) A participant who succeeds to the responsibilities under this part shall report in writing to USDA any interest of any kind in enrolled land that is held by a predecessor or any lender. A failure of full disclosure will be considered a scheme or device under this section.

Signed this 14th day of January, 2009, in Washington, DC.

Arlen L. Lancaster,

Vice President, Commodity Credit Corporation, and Chief, Natural Resources Conservation Service.

Teresa C. Lasseter,

Executive Vice President, Commodity Credit Corporation, and Administrator, Farm Service Agency.

[FR Doc. E9–1075 Filed 1–16–09; 8:45 am]

BILLING CODE 3410–16–P

Federal Register

Wednesday,
January 21, 2009

Part V

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 216

Taking and Importing Marine Mammals; U.S. Navy Training in the Southern California Range Complex; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 0808061069–81583–02]

RIN 0648–AW91

Taking and Importing Marine Mammals; U.S. Navy Training in the Southern California Range Complex

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

ACTION: Final rule.

SUMMARY: NMFS, upon application from the U.S. Navy (Navy), is issuing regulations to govern the unintentional taking of marine mammals incidental to training, maintenance, and research, development, testing and evaluation (RDT&E) activities conducted in the Southern California Range Complex (SOCAL Range Complex), which extends south and southwest off the southern California coast, for the period of January 2009 through January 2014. The Navy's activities are considered military readiness activities pursuant to the Marine Mammal Protection Act (MMPA), as amended by the National Defense Authorization Act for Fiscal Year 2004 (NDAA). These regulations, which allow for the issuance of ''Letters of Authorization'' (LOAs) for the incidental take of marine mammals during the described activities and specified timeframes, prescribe the permissible methods of taking and other means of affecting the least practicable adverse impact on marine mammal species and their habitat, as well as requirements pertaining to the monitoring and reporting of such taking.

DATES: Effective January 14, 2009 through January 14, 2014.

ADDRESSES: A copy of the Navy's application (which contains a list of the references used in this document), NMFS' Record of Decision (ROD), and other documents cited herein, may be obtained by writing to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225 or by telephone via the contact listed here (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Jolie Harrison, Office of Protected Resources, NMFS, (301) 713–2289, ext. 166.

SUPPLEMENTARY INFORMATION: Extensive supplementary information was provided in the proposed rule for this activity, which was published in the **Federal Register** on Tuesday, October 14, 2008 (73 FR 60836). This information will not be reprinted here in its entirety; rather, all sections from the proposed rule will be represented herein and will contain either a summary of the material presented in the proposed rule or a note referencing the page(s) in the proposed rule where the information may be found. Any information that has changed since the proposed rule was published will be addressed herein. Additionally, this final rule contains a section that responds to the comments received during the public comment period.

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) during periods of not more than five consecutive years each if certain findings are made and regulations are issued or, if the taking is limited to harassment and of no more than 1 year, the Secretary shall issue a notice of proposed authorization for public review.

Authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as:

> An impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The NDAA (Pub. L. 108–136) removed the ''small numbers'' and ''specified geographical region'' limitations and amended the definition of ''harassment'' as it applies to a ''military readiness activity'' to read as follows (Section 3(18)(B) of the MMPA):

> (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or
>
> (ii) Any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

Summary of Request

On April 1, 2008, NMFS received an application from the Navy requesting authorization for the take of individuals of 37 species of marine mammals incidental to upcoming Navy training activities, maintenance, and research, development, testing, and evaluation (RDT&E) activities to be conducted within the SOCAL Range Complex, which extends southwest approximately 600 nm in the general shape of a 200-nm wide rectangle (see the Navy's application), over the course of 5 years. These activities are military readiness activities under the provisions of the NDAA. The Navy states, and NMFS concurs, that these military readiness activities may incidentally take marine mammals present within the SOCAL Range Complex by exposing them to sound from mid-frequency or high frequency active sonar (MFAS/HFAS) or underwater detonations. The Navy requests authorization to take individuals of 37 species of marine mammals by Level B Harassment. Further, though they do not anticipate it to occur, the Navy requests authorization to take, by injury or mortality, up to 10 beaked whales over the course of the 5-yr period for which the regulations will be in effect.

Background of Navy Request

The proposed rule contains a description of the Navy's mission, their responsibilities pursuant to Title 10 of the United States Code, and the specific purpose and need for the activities for which they requested incidental take authorization. The description contained in the proposed rule has not changed. See 73 FR 60836.

Overview of the SOCAL Range Complex

The proposed rule contains an overview of the SOCAL Range Complex that describes the SOCAL Operational Areas (OPAREAS), the Special Use Airspaces, San Clemente Island, and the overlap with Point Mugu Sea Range for certain anti-submarine warfare (ASW) training. The description contained in the proposed rule has not changed. See 73 FR 60836, page 60837.

Description of the Specified Activities

The proposed rule contains a complete description of the Navy's specified activities that are covered by these final regulations, and for which the associated incidental take of marine mammals will be authorized in the related LOAs. The proposed rule

describes the nature of the activities involving both mid and high-frequency active sonar (MFAS and HFAS) and explosive detonations, as well as the MFAS and HFAS sound sources and explosive types. See 73 FR 60836, pages 60837–60847. The narrative description of the action contained in the proposed rule has not changed, with the exception of the change from IEER to AEER described in the paragraph below. Tables 1, 2, and 3 summarize the sonar and explosive exercise types used in the Navy's activities and hours of sonar operation conducted.

The Navy is developing the Advanced Extended Echo Ranging (AEER) system as a replacement to the IEER system. AEER would use a new active sonobuoy (AN/SSQ–125) that utilizes a tonal (or a sonar ping) vice impulsive (or explosive) sound source as a replacement for the SSQ–110A (the system used in IEER). AEER will still use the ADAR sonobuoy as the systems receiver and be deployed by Marine Patrol Aircraft. As AEER is introduced for Fleet use, IEER will be removed. The same total number of buoys will be deployed as were presented in the proposed rule, but a subset of them will be AEER instead of IEER. The small difference in the number of anticipated marine mammal takes that will result from this change is indicated in the take table, along with other minor modifications. This small change in the take numbers did not affect NMFS' analysis of and conclusions regarding the proposed action.

Sonar Sources	Freq- uency (kHz)	Source Level (dB) re 1 µPa @ 1 m	Emission Spacing (m)*	Vertical Direct-ivity	Horizon-tal Direct-ivity	Associated Platform	System Description
AN/SQS-53C	3.5	235	154	Omni	240° forward-looking	Cruiser (CG) and Destroyer (DDG) hull mounted sonar	ASW search, detection, & localization (approximately 2 pings per minute)
AN/SQS-53C Kingfisher Mode	3.5	236	4.6	20° width 42° D/E	120° forward	Same as above	Mine object detection (approximately 2 pings per minute)
AN/SQS-56C	7.5	225	129	13°	30°	Frigate (FFG) hullmounted sonar	ASW search, detection, & localization (approximately 2 pings per minute)
AN/AQS-22 (or AN/AQS-13F**)	4.1	217	15	Omni	Omni	Helicopter (SH-60, MH-60R) dipping sonar	ASW sonar lowered from hovering helicopter (approximately 10 pings/dip, 30 seconds between pings)
AN/BQQ-10	Classifed (MF)	Classified	n/a	Omni	Omni	Submarine (SSN) hullmounted sonar	ASW search and attack (approximately two pings per hour when in use)
AN/BQQ-15	Classifed (MF)	Classified				Submarine (SSN) hullmounted sonar	Submarine navigational sonar
AN/SSQ-62 DICASS (sonobuoy, tonal)	8	201	450	Omni	Omni	Helicopter and maritime patrol aircraft (P3 and P8 MPA) dropped sonobuoy	Remotely commanded expendable sonar-equipped buoy (approximately 12 pings per use, 30 secs between pings)
MK-48 torpedo sonar	Classified (>10)	Classified	144	Omni	Omni	Submarine (SSN) launched torpedo	Recoverable and non-explosive exercise torpedo; sonar is active approximately 15 min per torpedo run
***MK-46 or 54 torpedo sonar	Classified (HF)	Classified				Surface ship and aircraft fired exercise torpedo (lightweight)	Recoverable and non-explosive exercise torpedo
AN/SSQ-110A (IEER)	Classified (impulsive, broadband)	Classified	n/a	Omni	Omni	MPA deployed	ASW system consists of explosive acoustic source buoy (contains two 4.1 lb charges) and expendable passive receiver sonobuoy
AN/SLQ-25A (NIXIE)	Classified (MF)	Classified				DDG, CG, FFG and certain other surface ship towed array (torpedo countermeasure)	Towed countermeasure to avert localization and torpedo attacks (approximately 20 mins per use)
AN/SSQ-125 (AEER)	MF	Classified				MPA deployed	ASW system consists of active sonobuoy and expendable passive receiver sonobuoy

Table 1. Active sonar sources in SOCAL Range Complex and parameters used for modeling them. Many of the actual parameters and capabilities of these sonars are classified. Parameters used for modeling were derived to be as representative as possible. When, however, there were a wide range of potential modeling values, a nominal parameter likely to result in the most impact was used so that the model would err towards overestimation.

*Spacing means distance between pings at the nominal speed

**AN/AQS-22 used as surogote for AN/AQS-13F; AQS-22 source level is higher than AQS-13F

*** MK-48 used as surogote for MK-46/54 in modeling; MK-48 source level is higher than MK-46

Event	SQS-53C Sonar Hours	SQS-56C Sonar Hours	BQQ-10 Sonar Hours	BQQ-15 Sonar Hours	Total Sonar Hours	AQS-22 Number of Dips	SSQ-62 Number of Sonobuoys	SSQ-125 AEER Number of Sonobuoys	MK-48 Number of Torpedo Events	MK-46 Number of Torpedo Events	AN/SLQ-25A NIXIE Number of
Major Exercise (8/yr)	1,045	261	98	41	1,445	337	2,255	54	11	28	76
Integrated Exercises (7/yr)	403	101	138	41	683	690	845	0	15	28	76
ULT & Maintenance	529	132	579	41	1,281	1,692	1,156	0	61	28	76
Total	1,977	494	815	122	3,408	2,719	4,256	54	87	84	227

Table 2. Estimated Annual use of each sonar source. Note that values may vary slightly between years but will not exceed 5 times the annual estimate for any source (+/- 10%) over the course of the 5-yr regulations.

	Independent Unit-Level Exercises							Integrated / Coordinated / Major Exercises				
Exercise Type	S-S GUNEX / NSFS	A-S MISSILEX	A-S BOMBEX	SINKEX	ASW TRACKEX including IAC [1]	ASW TORPEX including IAC [1]	EER/ IEER / AEER	IAC	Sus-tain-Ment	SHAREM	JTFEX	COMP-TUEX
Sources/ Weapons/ Rounds	5" rounds	HELLFIRE Harpoon	MK82, MK83, MK84 bombs	Bombs, MK48 5" rounds	53C AQS-22 sonobuoys	53C, MK48, AQS22 sonobuoys	AN/SQQ-110A or AN/SQQ-125	All sources possible	All sources possible	All sources possible	All sources possible	All sources possible
Length of Exercise	2.5 - 9 hrs	3 hrs	1 hr	16 hrs	2 hrs	2	6 hrs	2 days	>21 days	7 days	10 days	21 days
Detonations/ Rounds per exercise	6 to 11	3	MK82 - 9 MK83 - 5 MK84 - 2	5" - 120 MK82 - 2 MK83 - 1 MK48 - 1	N/A	N/A	36	N/A	N/A	N/A	N/A	N/A
Number Exercises per Year[2]	402	50	40	2	53C – 1600 buoys – 3,864 AQS22-2,453	53C - 28 buoys - 150 MK48 - 84 AQS22 - 112	3	2	1	2	4	4
Possible Areas Conducted	SOAR SHOBA W-291	LTR-1/2	W-291	W-291	SOAR W-291	SOAR	W-291	SOCAL	Primarily SOAR	SOCAL	SOCAL	SOCAL
Months of Year conducted	Year Round	Year Round	Year Round	Year Round	Year Round	Year Round	Year Round	Year Round	Year Round	Year Round	Year Round	Year Round

Table 3. Summary of Exercise Types with sonar or explosive use anticipated to result in take of marine mammals.

1. IAC activities are accounted for in ASW TRACKEX and ASW TORPEX

2 For ASW TRACKEX and ASW TORPEX: 53C number equates to annual hours of use; buoys number equates to annual number of sonobuoys used; AQS22 number equates to annual number of dips; MK48 number equates to annual number of MK48 or 46 torpedoes used.

Description of Marine Mammals in the Area of the Specified Activities

There are 41 marine mammal species with possible or confirmed occurrence in the SOCAL Range Complex. Nine marine mammal species listed as federally endangered under the Endangered Species Act (ESA) can occur in the SOCAL Range Complex: The humpback whale, North Pacific right whale, sei whale, fin whale, blue whale, sperm whale, southern resident killer whale, Guadalupe fur seal, and Steller sea lion. The proposed rule contains a discussion of three species that are not considered further in the analysis (southern resident killer whale, North Pacific right whale, and Steller sea lion) because of their rarity in the SOCAL Range Complex. With the exception of marine mammal abundance and Steller sea lion correction discussed below, the Description of Marine Mammals in the Area of the Specified Activities in the proposed rule remains unchanged (see 73 FR 60836, pages 60846–60850).

For this rulemaking and subsequent LOA, NMFS' Southwest Fisheries Science Center calculated marine mammal density estimates based on compiled densities from vessel surveys conducted from 1986 to 2005, and provided it to the Navy as Government Furnished Information (GFI). These density estimates are included in Table 4 and remain unchanged from the proposed rule. The proposed rule contains a description of the methods used to estimate density. During the public comment period for the proposed rule, several members of the public noted and commented that the abundance numbers provided for some marine mammal species were not from the latest NMFS stock assessment reports. Those numbers have been updated in Table 4, which now includes the abundance estimates from both the 2007 stock assessment reports and the draft 2008 reports. This correction did not affect NMFS analysis, as take estimates are based on density estimates (not abundance estimates), which remain unchanged from those presented in the proposed rule.

The proposed rule indicated (73 FR 60836, page 60849) that the last sighting of a Steller sea lion in Southern California was that of a sub adult male that was briefly on San Miguel Island in 1998. In fact, a Steller sea lion was sighted in Newport Harbor in April 2008 and a Steller sea lion (that may have been the same individual) live stranded in Santa Barbara in the summer of 2008. This correction did not affect NMFS analysis and, as indicated in the proposed rule, Steller sea lions are not likely to be present in the action area or taken by the Navy's specified activities.

Species Name	Warm Season density/km^2	Cold Season density/km^2	Estimated Population Size	
			NMFS 2007 Stock Assessment Report	NMFS 2008 Stock Assessment Report
MYSTICETES				
Blue whale	0.0041222	0.0041222	1,186	1,368
Fin whale	0.0024267	0.0008008	3,454	2,636
Humpback whale	0.0001613	0.0000984	1,396	1,391
Sei whale	0.0000081	0.000005	43	46
Bryde's whale	0.0000081	0.0000081	none published	none published
Gray whale	0	0.051	18,813 °	18,813 °°
Minke whale	0.0010313	0.0010313	898	806
ODONTOCETES				
Sperm whale	0.0014313	0.0008731	2,265	2,853
Baird's beaked whale	0.0001434	0.0001434	313	540
Bottlenose dolphin	0.0123205	0.0184808	323 inshore stock/ 3,257offshore stock	323 inshore stock/ 3,495 offshore stock
Cuvier's beaked whale	0.0036883	0.0036883	2,171	2,830
Dall's porpoise	0.0016877	0.0081008	57,549	48,376
Killer whale	0.0000812	0.0000812	422 NPAC offshore stock / 314 West Coast transient stock	1,014 Eastern NPAC offshore stock/ 314 West Coast transient stock**
Long-beaked common dolphin	0.0965747	0.0366984	1,893	15,335
Mesoplodont beaked whales	0.0011125	0.0011125	1,024	1,206
Northern right whale dolphin	0.0056284	0.0270163	15,305	12,876
Pacific white-sided dolphin	0.0160748	0.0160748	25,233	20,719
Pygmy sperm whale	0.0013785	0.0013785	none published	899
Short-finned pilot whale	0.0003315	0.0003315	245	245
Risso's dolphin	0.0180045	0.0540134	12,093	11,621
Short-beaked common dolphin	0.8299606	0.315385	487,622	392,733
Striped dolphin	0.0175442	0.0107019	23,316	17,925
Ziphiid whales	0.0008214	0.0008214		
PINNIPEDS				
Guadalupe fur seal	0.007	0.007	7,408	7,408
Northern elephant seal	0.042	0.025	124,000	124,000
Harbor seal	0.19	0.19	34,233	34,233
California sea lion	0.605	0.87	238,000	238,000
Northern fur seal	0.027	0.027	9,424	9,424

Table 4. Estimated density and abundance of marine mammals

A Brief Background on Sound

The proposed rule contains a section that provides a brief background on the principles of sound that are frequently referred to in this rulemaking. See 73 FR 60836, pages 60850–60851. This section also includes a discussion of the functional hearing ranges of the different groups of marine mammals (by frequency) as well as a discussion of the two main sound metrics used in NMFS analysis (sound pressure level (SPL) and sound energy level (SEL)). The information contained in the proposed rule has not changed.

Potential Effects of Specified Activities on Marine Mammals

With respect to the MMPA, NMFS' effects assessment serves four primary purposes: (1) To prescribe the permissible methods of taking (i.e., Level B Harassment (behavioral harassment), Level A Harassment (injury), or mortality, including an identification of the number and types of take that could occur by Level A or B harassment or mortality) and to prescribe other means of affecting the least practicable adverse impact on such species or stock and its habitat (i.e., mitigation); (2) to determine whether the specified activity will have a negligible impact on the affected species or stocks of marine mammals (based on the likelihood that the activity will adversely affect the species or stock through effects on annual rates of recruitment or survival); (3) to determine whether the specified activity will have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (however, there are no subsistence communities that would be affected in the SOCAL Range Complex, so this determination is inapplicable for this rulemaking); and (4) to prescribe requirements pertaining to monitoring and reporting.

In the Potential Effects of Specified Activities on Marine Mammals Section of the proposed rule NMFS included a qualitative discussion of the different ways that MFAS/HFAS and underwater explosive detonations may potentially affect marine mammals (some of which NMFS would not classify as harassment). See 73 FR 60836, pages 60851–60863. Marine mammals may experience direct physiological effects (such as threshold shift), acoustic masking, impaired communications, stress responses, and behavioral disturbance. This section also included a discussion of some of the suggested explanations for the association between the use of MFAS and marine mammal strandings (such as behaviorally-mediated bubble growth) that have been observed a limited number of times in certain circumstances (the specific events are also described). See 73 FR 60836, pages 60859–60863. The information contained in the Potential Effects of Specified Activities on Marine Mammals Section from the proposed rule has not changed, with the exception of the following sentence. On page 60861, NMFS said "Other species (*Stenella coeruleoalba, Kogia breviceps* and *Balaenoptera acutorostrata*) have stranded, but in much lower numbers and less consistently than beaked whales." As a member of the public pointed out, and as NMFS stated on page 60860 of the proposed rule, there was no likely association between the minke whale and spotted dolphin strandings referred to and the operation of MFAS. Therefore, the sentence should read "Other species, such as *Kogia breviceps,* have stranded in association with the operation of MFAS, but in much lower numbers and less consistently than beaked whales."

Later, in the Estimated Take of Marine Mammals section, NMFS relates and quantifies the potential effects to marine mammals from MFAS/HFAS and underwater detonation of explosives discussed here to the MMPA regulatory definitions of Level A and Level B Harassment. NMFS has also considered the effects of mortality on these species.

Mitigation

In order to issue an incidental take authorization (ITA) under Section 101(a)(5)(A) of the MMPA, NMFS must prescribe regulations setting forth the ''permissible methods of taking pursuant to such activity, and other means of affecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.'' The NDAA of 2004 amended the MMPA as it relates to military readiness activities and the incidental take authorization process such that ''least practicable adverse impact'' shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the ''military readiness activity.'' The SOCAL Range Complex activities described in the proposed rule are considered military readiness activities.

NMFS reviewed the Navy's proposed SOCAL Range Complex activities and the proposed SOCAL mitigation measures (which the Navy refers to as Protective Measures) presented in the Navy's application to determine whether the activities and mitigation measures were capable of achieving the least practicable adverse effect on marine mammals. NMFS determined that further discussion was necessary regarding the potential relationship between the operation of MFAS/HFAS and marine mammal strandings.

Any mitigation measure prescribed by NMFS should be known to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

(a) Avoidance or minimization of injury or death of marine mammals wherever possible (goals b, c, and d may contribute to this goal).

(b) A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to received levels of MFAS/HFAS, underwater detonations, or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing harassment takes only).

(c) A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to received levels of MFAS/HFAS, underwater detonations, or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing harassment takes only).

(d) A reduction in the intensity of exposures (either total number or number at biologically important time or location) to received levels of MFAS/HFAS, underwater detonations, or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing the severity of harassment takes only).

(e) A reduction in adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.

(f) For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation (shut-down zone, etc.).

NMFS worked with the Navy to identify potential additional practicable and effective mitigation measures, which included a careful balancing of the likely benefit of any particular measure to the marine mammals with the likely effect of that measure on personnel safety, practicality of implementation, and impact on the ''military-readiness activity''. NMFS and the Navy developed a Stranding Response Plan to address the concern listed above.

The Navy's proposed mitigation measures, as well as the Stranding Response Plan, which is required under these regulations, were described in detail in the proposed rule (73 FR 60836, pages 60863–60870). The Navy's measures address personnel training, lookout and watchstander responsibilities, and operating procedures for activities using both MFAS/HFAS and explosive detonations. Three modifications (see below) have been made to the mitigation measures described in the proposed rule. The final SOCAL Stranding Response Plan, which includes a shutdown protocol, a stranding investigation plan, and a requirement for Navy and NMFS to implement an MOA that will establish a framework whereby the Navy can (and provide the Navy examples of how they can best) assist NMFS with stranding investigations in certain circumstances, may be viewed at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.* Additionally, the mitigation measures are included in full in the codified text of the regulations.

The proposed rule (the regulatory text, not the preamble) contained a measure in which the Navy indicated that ''prior to conducting the exercise, remotely sensed sea surface temperature maps would be reviewed. SINKEX shall not be conducted within areas where strong temperature discontinuities are present, thereby indicating the existence of oceanographic fronts.'' See 73 FR 60836, page 60904. The Navy included this measure in the LOA application in error. The removal of the measure does not change NMFS' analysis and therefore the measure is not included in the final rule.

The following measure has been added to the Mitigation section of the regulations: Night vision goggles shall be available to all ships and air crews for use as appropriate.

Last, the same mitigation measures outlined for the IEER system in the proposed rule will also be applied to the similar, but newly described, AEER system.

NMFS has determined that the Navy's proposed mitigation measures (from the LOA application), along with the Stranding Response Plan (and when the Adaptive Management (see Adaptive Management below) component is taken into consideration) are adequate means of effecting the least practicable adverse impacts on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, while also considering personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. The justification for this conclusion is discussed in the Mitigation Conclusion section of the proposed rule. See 73 FR 60836, pages 60870–60871. The Mitigation Conclusion Section of the proposed rule has not changed. Research and Conservation Measures for Marine Mammals.

The Navy provides a significant amount of funding and support for marine research. The Navy provided $26 million in Fiscal Year 2008 and plans for $22 million in Fiscal Year 2009 to universities, research institutions, federal laboratories, private companies, and independent researchers around the world to study marine mammals. Over the past five years the Navy has funded over $100 million in marine mammal research.

The U.S. Navy sponsors seventy percent of all U.S. research concerning the effects of human-generated sound on marine mammals and 50 percent of such research conducted worldwide. Major topics of Navy-supported research include the following:

- Better understanding of marine species distribution and important habitat areas,
- Developing methods to detect and monitor marine species before and during training,
- Understanding the effects of sound on marine mammals, sea turtles, fish, and birds, and
- Developing tools to model and estimate potential effects of sound.

The Navy's Office of Naval Research currently coordinates six programs that examine the marine environment and are devoted solely to studying the effects of noise and/or the implementation of technology tools that will assist the Navy in studying and tracking marine mammals. The six programs are as follows:

- Environmental Consequences of Underwater Sound,
- Non-Auditory Biological Effects of Sound on Marine Mammals,
- Effects of Sound on the Marine Environment,
- Sensors and Models for Marine Environmental Monitoring,
- Effects of Sound on Hearing of Marine Animals, and
- Passive Acoustic Detection, Classification, and Tracking of Marine Mammals.

The Navy has also developed the technical reports referenced within this document and the SOCAL Range Complex EIS, such as the Marine Resource Assessments. Furthermore, research cruises by NMFS and by academic institutions have received funding from the U.S. Navy.

The Navy has sponsored several workshops to evaluate the current state of knowledge and potential for future acoustic monitoring of marine mammals. The workshops brought together acoustic experts and marine biologists from the Navy and other research organizations to present data and information on current acoustic monitoring research efforts and to evaluate the potential for incorporating similar technology and methods on instrumented ranges. However, acoustic detection, identification, localization, and tracking of individual animals still requires a significant amount of research effort to be considered a reliable method for marine mammal monitoring. The Navy supports research efforts on acoustic monitoring and will continue to investigate the feasibility of passive acoustics as a potential mitigation and monitoring tool.

Overall, the Navy will continue to fund ongoing marine mammal research, and is planning to coordinate long-term monitoring/studies of marine mammals on various established ranges and operating areas. The Navy will continue to research and contribute to university/external research to improve the state of the science regarding marine species biology and acoustic effects. These efforts include mitigation and monitoring programs; data sharing with NMFS and via the literature for research and development efforts.

Long-Term Prospective Study

Apart from this final rule, NMFS, with input and assistance from the Navy and several other agencies and entities, will perform a longitudinal observational study of marine mammal strandings to systematically observe and record the types of pathologies and diseases and investigate the relationship with potential causal factors (e.g., sonar, seismic surveys, weather). The proposed rule contained an outline of the proposed study (73 FR 60836, pages 60837–60838). No changes have been made to the longitudinal study as described in the proposed rule.

Monitoring

In order to issue an ITA for an activity, Section 101(a)(5)(A) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking''. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for LOAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

(a) An increase in the probability of detecting marine mammals, both within the safety zone (thus allowing for more effective implementation of the mitigation) and in general to generate more data to contribute to the effects analyses.

(b) An increase in our understanding of how many marine mammals are likely to be exposed to levels of MFAS/HFAS (or explosives or other stimuli) that we associate with specific adverse effects, such as behavioral harassment, TTS, or PTS.

(c) An increase in our understanding of how marine mammals respond (behaviorally or physiologically) to MFAS/HFAS (at specific received levels), explosives, or other stimuli expected to result in take and how anticipated adverse effects on individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual rates of recruitment or survival).

(d) An increased knowledge of the affected species.

(e) An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

(f) A better understanding and record of the manner in which the authorized entity complies with the incidental take authorization.

Proposed Monitoring Plan for the SOCAL Range Complex

As NMFS indicated in the proposed rule, the Navy has (with input from NMFS) fleshed out the details of and made improvements to the SOCAL Range Complex Marine Mammal and Sea Turtle Monitoring Plan (Monitoring Plan). Additionally, NMFS and the Navy have incorporated a recommendation from the public, which recommended the Navy hold a workshop to discuss the Navy's Monitoring Plan (see Monitoring Workshop section). The final SOCAL Range Complex Monitoring Plan, which is summarized below may be viewed at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.* The Navy plans to implement all of the components of the Monitoring Plan; however, only the marine mammal components (not the sea turtle components) will be required by the MMPA regulations and associated LOAs.

The draft Monitoring Plan for the SOCAL Range Complex has been designed as a collection of focused ''studies'' (described fully in the SOCAL Range Complex Monitoring Plan) to gather data that will allow the Navy to address the following questions:

(1) Are marine mammals and sea turtles exposed to MFAS, especially at levels associated with adverse effects (i.e., based on NMFS' criteria for behavioral harassment, TTS, or PTS)? If so, at what levels are they exposed?

(2) If marine mammals and sea turtles are exposed to MFAS in the SOCAL Range Complex, do they redistribute geographically as a result of continued exposure? If so, how long does the redistribution last?

(3) If marine mammals and sea turtles are exposed to MFAS, what are their behavioral responses to various levels?

(4) What are the behavioral responses of marine mammals and sea turtles that are exposed to explosives at specific levels?

(5) Is the Navy's suite of mitigation measures for MFAS and explosives (e.g., PMAP, major exercise measures agreed to by the Navy through permitting) effective at avoiding TTS, injury, and mortality of marine mammals and sea turtles?

Data gathered in these studies will be collected by qualified, professional marine mammal biologists that are experts in their field. They will use a combination of the following methods to collect data:

- Visual Surveys—Vessel and aerial.
- Passive Acoustic Monitoring (PAM), including working with the passive acoustic detection capabilities of Navy's SOAR fixed range.
- Marine Mammal Observers (MMOs) on Navy Vessels.
- Marine Mammal Tagging.

In the five proposed study designs (all of which cover multiple years), the above methods will be used separately or in combination to monitor marine mammals in different combinations before, during, and after activities utilizing MFAS/HFAS or explosive detonations. Table 5 contains a summary of the monitoring effort that is planned for each study in each year (effort may vary slightly between years or study type, but overall effort will remain constant). The SOCAL Range Complex Monitoring Plan is designed to collect data on all marine mammals and sea turtles encountered during monitoring studies. However, priority will be given to ESA-listed species and taxa in which MFAS exposure, under certain circumstances and strandings have been linked (beaked whales and other deep-diving species).

STUDY 1,3,4 (exposures and behavioral responses)									
	FY09	ADAPTIVE MANAGEMENT REASSESSMENT (AMR)	**FY10**	AMR	**FY11**	AMR	**FY12**	AMR	**FY13**
Aerial Surveys	Award monitoring contract, develop standard operating procedures (SOP), obtain permits; Portions of major, intermediate level, or Unit Level Training (ULT) mid-frequency active sonar (MFAS) exercises, and offshore detonation events		Portions of major, intermediate level, or ULT MFAS exercises, and offshore detonation events		Portions of major, intermediate level, or ULT MFAS exercises, and offshore detonation events		Portions of major, intermediate level, or ULT MFAS exercises, and offshore detonation events		Portions of major, intermediate level, or ULT MFAS exercises, and offshore detonation events
Marine Mammal Observers (MMO)	Opportunistic as staff and SOP developed; minimum intermediate level or ULT MFAS exercises		Intermediate level or ULT MFAS exercises		Intermediate level or ULT MFAS exercises		Intermediate level or ULT MFAS exercises		Intermediate level or ULT MFAS exercises
Vessel surveys (study 3, 4 only)	Award monitoring contract, develop SOP, obtain permits; Portions of major or intermediate level MFAS exercises including offshore detonation events		Portions of major or intermediate level MFAS exercises including offshore detonation events		Portions of major or intermediate level MFAS exercises including offshore detonation events		Portions of major or intermediate level MFAS exercises including offshore detonation events		Portions of major or intermediate level MFAS exercises including offshore detonation events
STUDY 2 (geographic redistribution)									
Aerial Surveys Before And After Training	Award monitoring contract, develop SOP, obtain permits; Portions of major, intermediate level, or ULT MFAS exercises		Portions of major, intermediate level, or ULT MFAS exercises		Portions of major, intermediate level, or ULT MFAS exercises		Portions of major, intermediate level, or ULT MFAS exercises		Portions of major, intermediate level, or ULT MFAS exercises
Passive Acoustics	Award monitoring contract, develop SOP, obtain permits; Order devices and determine best location; integrate SOAR M3R classification data for beaked whales (BW)	AMR	Install minimum 2 autonomous devices in the SOCAL study area and begin recording; integrate SOAR M3R classification data (BW)	AMR	Continue recording from devices; Begin data analysis; integrate SOAR M3R classification data (BW and other species if available)	AMR	Continue recording from devices and data analysis; integrate SOAR M3R classification data (BW and other species if available)	AMR	Data Analysis and continue recording from devices and data analysis; integrate SOAR M3R classification data (BW and other species if available)
Marine Mammal Tagging	Award monitoring contract, develop SOP, obtain permits		Conduct opportunistic marine mammal tagging		Conduct opportunistic marine mammal tagging		Conduct opportunistic marine mammal tagging		Complete tag analysis and reporting
FY Commitment:	**FY09** -120 hrs aerial survey (approx. 20 aerial survey days at 6 hrs/day) -60 hours vessel survey (approx. 5 days at 12 hrs/day) -36 hrs MMO (approx. 3 days at 12 hrs/day) - integrate existing PAM		**FY10** -120 hrs aerial survey (20 days) -72 hrs vessel survey (6 days) -72 hours MMO (6 days) -use existing PAM; deploy min. 2 PAM buoys -tagging		**FY11** -120 hrs aerial survey -72 hrs vessel survey -72 hours MMO -use existing PAM; deploy min. 2 PAM bottom buoys -tagging		**FY12** -120 hrs aerial survey -72 hrs vessel survey -72 hours MMO -use existing PAM; deploy min. 2 PAM bottom buoys -tagging		**FY13** -120 hrs aerial survey -72 hrs vessel survey -72 hours MMO -use existing PAM; deploy min. 2 PAM bottom buoys

Table 5. Summary of SOCAL Range Complex Monitoring Plan

Monitoring Workshop

During the public comment period on the SOCAL Range Complex proposed rule (as well as the Hawaii Range Complex proposed rule), NMFS received a comment which, in consultation with the Navy, we have chosen to incorporate into the final rule (in a modified form). One commenter recommended that a workshop or panel be convened to solicit input on the monitoring plan from researchers, experts, and other interested parties. The SOCAL Range Complex proposed rule included an adaptive management component and both NMFS and the Navy believe that a workshop would provide a means for Navy and NMFS to consider input from participants in determining whether or how to modify monitoring techniques to more effectively accomplish the goals of monitoring set forth earlier in the document. NMFS and the Navy believe that this workshop concept is valuable in relation to all of the Range Complexes and major training exercise rules and LOAs that NMFS is working on with the Navy at this time, and consequently this single Monitoring Workshop will be included as a component of all of the rules and LOAs that NMFS will be processing for the Navy in the next year or so.

The Navy, with guidance and support from NMFS, will convene a Monitoring Workshop, including marine mammal and acoustic experts as well as other interested parties, in 2011. The Monitoring Workshop participants will review the monitoring results from the previous two years of monitoring pursuant to the SOCAL Range Complex rule as well as monitoring results from other Navy rules and LOAs (e.g., the Atlantic Fleet Active Sonar Training, Hawaii Range Complex (HRC), and other rules). The Monitoring Workshop participants would provide their individual recommendations to the Navy and NMFS on the monitoring plan(s) after also considering the current science (including Navy research and development) and working within the framework of available resources and feasibility of implementation. NMFS and the Navy would then analyze the input from the Monitoring Workshop participants and determine the best way forward from a national perspective. Subsequent to the Monitoring Workshop, modifications would be applied to monitoring plans as appropriate.

Integrated Comprehensive Monitoring Program

In addition to the Monitoring Plan for the SOCAL Range Complex, the Navy will complete the Integrated Comprehensive Monitoring Program (ICMP) Plan by the end of 2009. The ICMP will provide the overarching coordination that will support compilation of data from range-specific monitoring plans (e.g., SOCAL Range Complex plan) as well as Navy funded research and development (R&D) studies. The ICMP will coordinate the monitoring program's progress towards meeting its goals and develop a data management plan. The ICMP will be evaluated annually to provide a matrix for progress and goals for the following year, and will make recommendations on adaptive management for refinement and analysis of the monitoring methods.

The primary objectives of the ICMP are to:

- Monitor and assess the effects of Navy activities on protected species;
- Ensure that data collected at multiple locations is collected in a manner that allows comparison between and among different geographic locations;
- Assess the efficacy and practicality of the monitoring and mitigation techniques;
- Add to the overall knowledge-base of marine species and the effects of Navy activities on marine species.

The ICMP will be used both as: (1) A planning tool to focus Navy monitoring priorities (pursuant to ESA/MMPA requirements) across Navy Range Complexes and Exercises; and (2) an adaptive management tool, through the consolidation and analysis of the Navy's monitoring and watchstander data, as well as new information from other Navy programs (e.g., R&D), and other appropriate newly published information.

In combination with the 2011 Monitoring Workshop and the adaptive management component of the SOCAL Range Complex rule and the other planned Navy rules (e.g., AFAST and HRC), the ICMP could potentially provide a framework for restructuring the monitoring plans and allocating monitoring effort based on the value of particular specific monitoring proposals (in terms of the degree to which results would likely contribute to stated monitoring goals, as well as the likely technical success of the monitoring based on a review of past monitoring results) that have been developed through the ICMP framework, instead of allocating based on maintaining an equal (or commensurate to effects) distribution of monitoring effort across Range complexes. For example, if careful prioritization and planning through the ICMP (which would include a review of both past monitoring results and current scientific developments) were to show that a large, intense monitoring effort in Hawaii would likely provide extensive, robust and much-needed data that could be used to understand the effects of sonar throughout different geographical areas, it may be appropriate to have other Range Complexes dedicate money, resources, or staff to the specific monitoring proposal identified as ''high priority'' by the Navy and NMFS, in lieu of focusing on smaller, lower priority projects divided throughout their home Range Complexes.

The ICMP will identify:

- A means by which NMFS and the Navy would jointly consider the previous year's monitoring results and advancing science to determine if modifications are needed in mitigation or monitoring measures to better effect the goals laid out in the Mitigation and Monitoring sections of the SOCAL Range Complex rule.
- Guidelines for prioritizing monitoring projects.
- If, as a result of the workshop and similar to the example described in the paragraph above, the Navy and NMFS decide it is appropriate to restructure the monitoring plans for multiple ranges such that they are no longer evenly allocated (by Range Complex), but rather focused on priority monitoring projects that are not necessarily tied to the geographic area addressed in the rule, the ICMP will be modified to include a very clear and unclassified record-keeping system that will allow NMFS and the public to see how each Range Complex/project is contributing to all of the ongoing monitoring (resources, effort, money, etc.).

Past Monitoring in the SOCAL Range Complex

The proposed rule contained a detailed review of the previous marine mammal monitoring conducted in the SOCAL Range Complex, which was conducted in compliance with the terms and conditions of multiple biological opinions issued for MFAS activities (73 FR 60836, pages 60873–60875). No changes have been made to the discussion contained in the proposed rule.

Adaptive Management

The final regulations governing the take of marine mammals incidental to Navy activities in the SOCAL Range Complex will contain an adaptive

management component. Our understanding of the effects of MFAS/HFAS and explosives on marine mammals is still in its relative infancy, and yet the science in this field continues to improve. These circumstances make the inclusion of an adaptive management component both valuable and necessary within the context of 5-year regulations for activities that have been associated with marine mammal mortality in certain circumstances and locations (though not the SOCAL Range Complex). The use of adaptive management will give NMFS the ability to consider new data from different sources to determine (in coordination with the Navy) on an annual basis if mitigation or monitoring measures should be modified or added (or deleted) if new data suggests that such modifications are appropriate (or are not appropriate) for subsequent annual LOAs.

Following are some of the possible sources of applicable data:

- Results from the Navy's monitoring from the previous year (either from the SOCAL Range Complex or other locations).
- Findings of the Workshop that the Navy will convene in 2011 to analyze monitoring results to date, review current science, and recommend modifications, as appropriate to the monitoring protocols to increase monitoring effectiveness.
- Compiled results of Navy funded research and development (R&D) studies (presented pursuant to the ICMP, which is discussed elsewhere in this document).
- Results from specific stranding investigations (either from the SOCAL Range Complex or other locations, involving the coincident MFAS/HFAS of explosives training or not involving the coincident use).
- Results from the Long Term Prospective Study described below.
- Results from general marine mammal and sound research (funded by the Navy (described below) or otherwise).

Mitigation measures could be modified or added (or deleted) if new data suggests that such modifications would have (or do not have) a reasonable likelihood of accomplishing the goals of mitigation laid out in this final rule and if the measures are practicable. NMFS would also coordinate with the Navy to modify or add to (or delete) the existing monitoring requirements if the new data suggest that the addition of (or deletion of) a particular measure would more effectively accomplish the goals of monitoring laid out in this final rule.

The reporting requirements associated with this rule are designed to provide NMFS with monitoring data from the previous year to allow NMFS to consider the data and issue annual LOAs. NMFS and the Navy will meet annually (prior to LOA issuance, except in the year of the Monitoring Workshop) to discuss the monitoring reports, Navy R&D developments, and current science and whether mitigation or monitoring modifications are appropriate.

Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(A) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking''. Effective reporting is critical to ensure compliance with the terms and conditions of an LOA, and to provide NMFS and the Navy with data of the highest quality based on the required monitoring.

As NMFS noted in its proposed rule, additional detail has been added to the reporting requirements since they were outlined in the proposed rule. The updated reporting requirements are all included below. A subset of the information provided in the monitoring reports may be classified and not releasable to the public.

NMFS will work with the Navy to develop tables that allow for efficient submission of the information required below.

General Notification of Injured or Dead Marine Mammals

Navy personnel will ensure that NMFS (regional stranding coordinator) is notified immediately (or as soon as operational security allows) if an injured or dead marine mammal is found during or shortly after, and in the vicinity of, any Navy training exercise utilizing MFAS, HFAS, or underwater explosive detonations. The Navy will provide NMFS with species or description of the animal(s), the condition of the animal(s) (including carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available). The Stranding Response Plan contains more specific reporting requirements for specific circumstances.

Annual SOCAL Range Complex Monitoring Plan Report

The Navy shall submit a report annually on October 1 describing the implementation and results (through August 1 of the same year) of the SOCAL Range Complex Monitoring Plan, described above. Data collection methods will be standardized across range complexes to allow for comparison in different geographic locations. Although additional information will also be gathered, marine mammal observers (MMOs) collecting marine mammal data pursuant to the SOCAL Range Complex Monitoring Plan shall, at a minimum, provide the same marine mammal observation data required in the MFAS/HFAS major Training Exercises section of the Annual SOCAL Range Complex Exercise Report referenced below.

The SOCAL Range Complex Monitoring Plan Report may be provided to NMFS within a larger report that includes the required Monitoring Plan Reports from multiple Range Complexes.

Annual SOCAL Range Complex Exercise Report

The Navy will submit an Annual SOCAL Range Complex Exercise Report on October 1 of every year (covering data gathered through August 1). This report shall contain the subsections and information indicated below.

MFAS/HFAS Major Training Exercises

This section shall contain the following information for Integrated, Coordinated, and Major Training Exercises (MTEs), which include Ship ASW Readiness and Evaluation Measuring (SHAREM), Sustainment Exercises, Integrated ASW Course Phase II (IAC2), Composite Training Unit Exercises (COMPTUEX), and Joint Task Force Exercises (JTFEX) conducted in the SOCAL Range Complex:

(a) Exercise Information (for each MTE):

(i) Exercise designator.
(ii) Date that exercise began and ended.
(iii) Location.
(iv) Number and types of active sources used in the exercise.
(v) Number and types of passive acoustic sources used in exercise.
(vi) Number and types of vessels, aircraft, etc., participating in exercise.
(vii) Total hours of observation by watchstanders.
(viii) Total hours of all active sonar source operation.
(ix) Total hours of each active sonar source (along with explanation of how hours are calculated for sources typically quantified in alternate way (buoys, torpedoes, etc.)).
(x) Wave height (high, low, and average during exercise).

(b) Individual marine mammal sighting info (for each sighting in each MTE):

(i) Location of sighting.
(ii) Species (if not possible—indication of whale/dolphin/pinniped).
(iii) Number of individuals.
(iv) Calves observed (y/n).
(v) Initial Detection Sensor.
(vi) Indication of specific type of platform observation made from (including, for example, what type of surface vessel, i.e., FFG, DDG, or CG).
(vii) Length of time observers maintained visual contact with marine mammal(s).
(viii) Wave height (in feet).
(ix) Visibility.
(x) Sonar source in use (y/n).
(xi) Indication of whether animal is <200yd, 200–500yd, 500–1000yd, 1000–2000yd, or >2000yd from sonar source in (x) above.
(xiii) Mitigation Implementation—Whether operation of sonar sensor was delayed, or sonar was powered or shut down, and how long the delay was.
(xiv) If source in use (x) is hullmounted, true bearing of animal from ship, true direction of ship's travel, and estimation of animal's motion relative to ship (opening, closing, parallel).
(xv) Observed behavior—Watchstanders shall report, in plain language and without trying to categorize in any way, the observed behavior of the animals (such as animal closing to bow ride, paralleling course/speed, floating on surface and not swimming, etc.).

(c) An evaluation (based on data gathered during all of the MTEs) of the effectiveness of mitigation measures designed to avoid exposing animals to mid-frequency sonar. This evaluation shall identify the specific observations that support any conclusions the Navy reaches about the effectiveness of the mitigation.

ASW Summary

This section shall include the following information as summarized from both MTEs and non-major training exercises (unit-level exercises, such as TRACKEXs):

(i) Total annual hours of each type of sonar source (along with explanation of how hours are calculated for sources typically quantified in alternate way (buoys, torpedoes, etc.)).

(iv) *Cumulative Impact Report*—To the extent practicable, the Navy, in coordination with NMFS, shall develop and implement a method of annually reporting non-major (i.e., other than MTEs) training exercises utilizing hull-mounted sonar. The report shall present an annual (and seasonal, where practicable) depiction of non-major training exercises geographically across the SOCAL Range Complex. The Navy shall include (in the SOCAL Range Complex annual report) a brief annual progress update on the status of the development of an effective and unclassified method to report this information until an agreed-upon (with NMFS) method has been developed and implemented.

SINKEXs

This section shall include the following information for each SINKEX completed that year:

(a) Exercise info:

(i) Location.
(ii) Date and time exercise began and ended.
(iii) Total hours of observation by watchstanders before, during, and after exercise.
(iv) Total number and types of rounds expended/explosives detonated.
(v) Number and types of passive acoustic sources used in exercise.
(vi) Total hours of passive acoustic search time.
(vii) Number and types of vessels, aircraft, etc., participating in exercise.
(viii) Wave height in feet (high, low and average during exercise).
(ix) Narrative description of sensors and platforms utilized for marine mammal detection and timeline illustrating how marine mammal detection was conducted.

(b) Individual marine mammal observation (by Navy lookouts) info:

(i) Location of sighting.
(ii) Species (if not possible—indication of whale/dolphin/pinniped).
(iii) Number of individuals.
(iv) Calves observed (y/n).
(v) Initial detection sensor.
(vi) Length of time observers maintained visual contact with marine mammal.
(vii) Wave height.
(viii) Visibility.
(ix) Whether sighting was before, during, or after detonations/exercise, and how many minutes before or after.
(x) Distance of marine mammal from actual detonations (or target spot if not yet detonated)—use four categories to define distance: (1) The modeled injury threshold radius for the largest explosive used in that exercise type in that OPAREA (738 m for SINKEX in the SOCAL Range Complex); (2) the required exclusion zone (1 nm for SINKEX in SOCAL Range Complex); (3) the required observation distance (if different than the exclusion zone (2 nm for SINKEX in SOCAL Range Complex); and (4) greater than the required observed distance. For example, in this case, the observer would indicate if < 738 m, from 738 m–1 nm, from 1 nm–2 nm, and > 2 nm.
(xi) Observed behavior—Watchstanders will report, in plain language and without trying to categorize in any way, the observed behavior of the animals (such as animal closing to bow ride, paralleling course/speed, floating on surface and not swimming etc.), including speed and direction.
(xii) Resulting mitigation implementation—Indicate whether explosive detonations were delayed, ceased, modified, or not modified due to marine mammal presence and for how long.
(xiii) If observation occurs while explosives are detonating in the water, indicate munition type in use at time of marine mammal detection.

Improved Extended Echo-Ranging System (IEER) and Advanced Extended Echo-Ranging System (AEER) Summary

This section shall include an annual summary of the following IEER/AEER information:

(i) Total number of IEER and AEER events conducted in the SOCAL Range Complex.
(ii) Total expended/detonated rounds (buoys).
(iii) Total number of self-scuttled IEER rounds.

Explosives Summary

The Navy is in the process of improving the methods used to track explosive use to provide increased granularity. To the extent practicable, the Navy will provide the information described below for all of their explosive exercises. Until the Navy is able to report in full the information below, they will provide an annual update on the Navy's explosive tracking methods, including improvements from the previous year.

(i) Total annual number of each type of explosive exercise (of those identified as part of the ''specified activity'' in this final rule) conducted in the SOCAL Range Complex.
(ii) Total annual expended/detonated rounds (missiles, bombs, etc.) for each explosive type.

Sonar Exercise Notification

The Navy shall submit to the NMFS Office of Protected Resources (specific contact information to be provided in LOA) either an electronic (preferably) or verbal report within fifteen calendar days after the completion of any MTE (Sustainment, IAC2, SHAREM, COMPTUEX, or JTFEX) indicating:

(1) Location of the exercise.

(2) Beginning and end dates of the exercise.

(3) Type of exercise.

SOCAL Range Complex 5-Yr Comprehensive Report

The Navy shall submit to NMFS a draft report that analyzes and summarizes all of the multi-year marine mammal information gathered during ASW and explosive exercises for which annual reports are required (Annual SOCAL Range Complex Exercise Reports and SOCAL Range Complex Monitoring Plan Reports). This report will be submitted at the end of the fourth year of the rule (November 2012), covering activities that have occurred through June 1, 2012.

Comprehensive National ASW Report

By June, 2014, the Navy shall submit a draft National Report that analyzes, compares, and summarizes the active sonar data gathered (through January 1, 2014) from the watchstanders and pursuant to the implementation of the Monitoring Plans for the SOCAL Range Complex, the Atlantic Fleet Active Sonar Training, the HRC, the Marianas Range Complex, the Northwest Training Range, the Gulf of Alaska, and the East Coast Undersea Warfare Training Range.

The Navy shall respond to NMFS comments and requests for additional information or clarification on the SOCAL Range Complex Comprehensive Report, the Comprehensive National ASW report, the Annual SOCAL Range Complex Exercise Report, or the Annual SOCAL Range Complex Monitoring Plan Report (or the multi-Range Complex Annual Monitoring Plan Report, if that is how the Navy chooses to submit the information) if submitted within 3 months of receipt. These reports will be considered final after the Navy has addressed NMFS' comments or provided the requested information, or three months after the submittal of the draft if NMFS does not comment by then.

SOCAL

Comments and Responses

On October 14, 2008 (73 FR 60836), NMFS published a proposed rule in response to the Navy's request to take marine mammals incidental to military readiness training exercises in SOCAL and requested comments, information and suggestions concerning the request. During the 30-day public comment period, NMFS received 8 comments from private citizens, comments from the Marine Mammal Commission (MMC) and several sets of comments from non-governmental organizations, including, the Natural Resources Defense Council (NRDC) (which commented on behalf of The Humane Society of the United States, the International Fund for Animal Welfare, Whale and Dolphin Conservation Society, Cetacean Society International, Pamlico Tar River Foundation, League for Coastal Protection, and Ocean Futures Society and its founder Jean-Michel Cousteau), the Cascadia Research Collective (CRC), Ziphius EcoServices, and Smultea Environmental Sciences, LLC. The comments are summarized and sorted into general topic areas and are addressed below. Full copies of the comment letters may be accessed at *www.regulations.gov*.

Monitoring and Reporting

Comment 1: One commenter stated that ''It is advisable to hold a multi-day workshop to discuss controversial issues related to the problem.'' The commenter further indicated that the workshop should include representatives from the Navy, NMFS, relevant marine mammal researchers, NGOs (e.g., NRDC), and invited experts on certain topics of interest. The goal of the workshop should be to move towards consensus on a way forward for the monitoring plan. Another commenter suggested that outside expert review of the ICMP by professional marine mammal biologists was needed.

Response: NMFS believes that a workshop consisting of the Navy, NMFS, researchers, invited experts, and other interested parties, in combination with an adaptive management plan that allows for modification to the monitoring plan, would provide a means for the Navy to potentially make changes to the Monitoring Plan that would more effectively accomplish some of the goals of monitoring set forth earlier in the Monitoring section. NMFS and the Navy have coordinated on this point and the Navy will convene a workshop, to include (among others) outside marine mammal experts, in 2011. The workshop and how it will interact with the adaptive management component are discussed in the Monitoring Workshop section of this final rule. The Monitoring Workshop participants will be asked to submit individual recommendations to the Navy and NMFS, and both agencies will work together to determine whether modifications to the SOCAL Range Complex monitoring are necessary based on the recommendations. As necessary, NMFS would incorporate any changes into future LOAs and future rules. However, NMFS disagrees with the commenter's suggestion that the workshop participants seek to achieve consensus on a way forward for the monitoring plan. NMFS has statutory responsibility to prescribe regulations pertaining to monitoring and reporting, and will in coordination with the Navy, develop the most effective and appropriate monitoring and reporting protocols for future authorizations.

Comment 2: Two commenters made several recommendations regarding the formatting and understandability of the monitoring plan, including recommending additional text. For example, one commenter recommended the Navy add a list of acronyms and another recommended adding text explaining that dropping sonobuoys from monitoring observation aircraft is another potential method of PAM whose feasibility and utility should be assessed as part of the SCMP.

Response: NMFS and the Navy incorporated these recommendations where appropriate. For example, both of the above examples were incorporated. However, we did not incorporate the commenter's recommendations in all cases, if we believed doing so, for example, would needlessly lengthen and complicate the Plan or generally be duplicative with the analytical contents of the rule.

Comment 3: One commenter stated: ''The Navy improperly assumes that they have no impact on the marine mammals. It is clear that the draft plan begins with the assumption that the Navy has no impact on marine mammals, or that the current mitigation is adequate to eliminate impacts. This is not supported by facts, and it invalidates the entire purpose of the plan. The Navy must acknowledge that sonar testing may indeed impact marine mammals and provide references, and must be willing to work as an active partner in a plan to investigate the extent and severity of such impacts, and how to reduce them to insignificant levels. Otherwise, this entire exercise is just 'window dressing' and will be a major waste of taxpayer dollars.''

Response: NMFS disagrees with this commenter's assertion. It is possible that the commenter mistook the fact that the Navy phrased some of their goals as null hypotheses (''If marine mammals and

sea turtles are exposed to MFAS, what are their behavioral responses? Are they different at various levels?'') to mean that they think there are no effects. The Navy's LOA application and EIS clearly discuss the potential adverse effects that marine mammals may experience when exposed to MFAS/HFAS and explosive detonations. The Navy has and will continue to work as an active partner to investigate the extent and severity of the impacts and how to reduce them (see Navy Research section of this final rule).

Regarding the issue of the mitigation being adequate to eliminate impacts, nowhere does either the Navy or NMFS indicate that the current mitigation will eliminate impacts. The MMPA requires that NMFS put forth the means of effecting the least practicable adverse impacts. As discussed in the Mitigation section of the proposed rule, NMFS has determined that the final required mitigation accomplishes this. If it were possible to eliminate impacts to marine mammals, an MMPA authorization would not be necessary.

Comment 4: Two commenters were concerned that the Navy used the term ''relative distance'' when describing the data that would be gathered for marine mammals and sound sources and indicated that precise measurements are needed to draw accurate conclusions.

Response: GPS measurements are used for the majority of Navy data, both for ship tracks and marine mammal sightings. The word ''relative'' was used because in some cases the Navy cannot report exactly where their exercise is for security reasons, but they can report exactly where the marine mammal was relative to the sound source.

Comment 5: A few commenters asked why the Navy did not consider additional survey methods, or modifications to the existing methods, beyond those currently included in the plan, such as: dropping sonobuoys from airplanes, specified focal follows of one animal before, during, and after sonar; photo-identification of marine mammals to look at residency patterns; or doing biopsy sampling to assess stress hormones.

Response: There are many different methods available with which to monitor marine mammals and the Navy considered a wide range of methods in the development of their plan. NMFS considered all of the public comments (including the recommended additional survey methods) received during this rulemaking. Some of the methods suggested by the public, such as the photo-identification method, would likely be feasible and provide useful information (and in fact, the Navy will take photographs whenever feasible), while other methods, such as biopsy sampling (which would require a new research permit), would be more difficult both financially and operationally. Nevertheless, the Navy must work within the framework of the available resources and the operational constraints associated with doing work in the vicinity of a complex military exercise. NMFS provided input during the development of the plan and believes that results from the required monitoring will provide valuable information regarding the effects of MFAS on marine mammals. Additionally, by including the Monitoring Plan as a requirement of the regulations and LOA, NMFS is compliant with the MMPA requirement to prescribe regulations setting forth the requirements pertaining to the monitoring and reporting of taking. That being said, the Navy and NMFS understand the importance of marine mammal monitoring to determine the effects of MFAS, which is why the Navy agreed to conduct the Workshop referred to in Comment #1 during which the workshop participants will review and assess the monitoring results (from this Monitoring Plan and others from other Range complexes and areas) and make informed recommendations for how to move forward with the best monitoring strategy.

Comment 6: One commenter asked that the Navy specify somewhere in the Monitoring Plan that any potentially stranded animals will be photographed for individual identification purposes.

Response: When possible, every attempt will be made to opportunistically collect concurrent digital video and digital photographs of animals under observation by both vessels and aircraft. Direct experience with aerial monitoring within the Hawaii and SOCAL Range Complexes in 2008 revealed the value of these techniques for on-site and off-site species identification or confirmation, and for assistance in reviewing a given animal's behavioral state after the survey. Language to this effect has been added to the Monitoring Plan.

Comment 7: One commenter questioned who will conduct the Adaptive Management Review and whether professional marine mammal and sea turtle biologists will be involved as advisors on a regular basis.

Response: The NMFS and the Navy will conduct the Adaptive Management Reassessment review to examine the prior year's monitoring lessons learned, integrate new science, and re-direct monitoring based on input from the scientific community. As mentioned in comment 1, professional marine mammal biologists will be involved in the 2011 Monitoring Workshop.

Comment 8: One commenter noted that there is a lot of emphasis on collection of data by Navy watchstanders, but the Navy must acknowledge the limitation of these kinds of data. The relatively low level of training and experience by these people (in relation to professional marine mammal biologists) will make the data collected of little value. Another commenter similarly notes that the marine species awareness training consists primarily of watching a DVD, which is insufficient to ensure that they accurately detect many species.

Response: The vast majority of the monitoring (pursuant to the monitoring plan) will be conducted by independent marine mammal scientists. Alternately, Navy lookouts are responsible for detecting marine mammal presence within the safety zone so that the mitigation can be implemented. Navy lookouts are specifically trained to detect anomalies in the water around the ship and both the safety of Navy personnel and success in the training exercise depend on the lookout being able to detect objects (or marine mammals) effectively around the ship. NMFS has reviewed the Navy's After Action Reports from previous exercises and they show that lookouts are detecting marine mammals, and implementing sonar shutdowns as required when they do. That said, the SOCAL Range Complex Monitoring Plan contains a study in which Navy lookouts will be on watch simultaneously with non-Navy marine mammal observers and their detection rates will be compared. Though Navy lookouts are not trained biologists and may not always be able to identify a marine mammal to species, NMFS believes that if data is gathered systematically and in sufficient detail (as described in the Reporting section of the rule), Navy lookouts will provide important encounter rate data that will allow comparisons between lookouts and MMOs, as well as between when sonar is on or off.

Comment 9: One commenter stated that it would seem to be a conflict of interest to be using Navy personnel to monitor training activity areas for marine mammals [during their own activities].

Response: The Navy is responsible for both the funding and implementation of a substantial amount of marine mammal and acoustic research and NMFS has no concerns regarding the objectivity of the reported results from either these research projects or the monitoring required pursuant to the MMPA

authorization. It is definitely not a conflict of interest since the statute requires a permit holder to comply with regulations related to the incidental taking of marine mammals, including monitoring and reporting requirements.

Comment 10: During aerial surveys, information on headings/orientation of animals should be collected as these data can later be examined to assess movement/response of animals relative to locations and received sound levels of MFAS and underwater detonations.

Response: As NMFS noted in the proposed rule, additional detail has been added to the Reporting Requirements section of the final rule. A requirement that Navy lookouts report the relative directions of both the marine mammals and the sonar source has been included. NMFS also included a requirement that the MMOs collecting data for the Monitoring Plan collect, at a minimum, the same data outlined in the Reporting Requirements section for the Navy lookouts.

Comment 11: Commenters questioned whether the Navy had considered whether a statistically sound sample size had been developed to answer the questions that monitoring is trying to answer.

Response: The Navy will contract a team of marine mammal experts to implement the monitoring plan and fine-tune the sample size and analysis parameters. The data from the SOCAL Range Complex will be pooled (as appropriate) with data collected from other range complexes to maximize data collection each year. No conclusions will be made without a statistically valid sample size.

Comment 12: One commenter stated: ''The Navy should establish a long-term research program, perhaps conducted by NMFS or by an independent agent, on the distribution, abundance, and population structuring of protected species on the SOCAL Range Complex, with the goal of supporting adaptive geographic avoidance of high-value habitat.'' Another commenter suggests that the Navy should conduct research and development of technologies to reduce the impacts of active acoustic sources on marine mammals.

Response: The MMPA does not require that individuals who have received an incidental take authorization conduct research. As mentioned above, the mitigation EA addresses geographic avoidance of high-value habitat. Separately, the Navy has voluntarily developed and funded a number of research plans that are designed to address technologies to reduce the impacts of active acoustic sources on marine mammals (see Research section).

Mitigation

Comment 13: The Marine Mammal Commission recommends that NMFS:

(a) Clarify which monitoring and mitigation measures will be required, in light of the fact that a revised Monitoring Plan was posted after the proposed rule was published.

(b) Require performance testing and validation of those measures (and the MMC suggests that NMFS did not review, and the rule does not include reference to, five post-exercise reports that the Navy submitted to us for 2006/2007 exercises in the SOCAL Range Complex).

(c) Require new measures to address remaining monitoring and mitigation shortcomings. The MMC suggests that visual and passive acoustic monitoring offer only limited detection capability but notes that NMFS asserts that more than 60 potential lethal or injurious takes have been mitigated to zero by posting visual observers and opportunistic monitoring using sonobuoys and other existing passive acoustic sensing capabilities.

(d) Work with the Navy to develop a database for storing original records of marine mammal interactions; the database should meet the Navy's security requirements but also maintain what are potentially valuable records about the Navy's interactions with and effects on marine mammals. The MMC notes that the proposed rule indicates that the ship's logs of sightings, power-downs, and other mitigation actions are retained only for 30 days.

Response: Following are responses to MMC's alphabetized sub-comments:

(a) The final required mitigation measures are exactly the same as those described in the proposed rule. As described in the proposed rule, the Monitoring Plan contains a table that generally describes the level of effort that the Navy has committed to in the monitoring, but the Navy continued to develop and improve the Monitoring Plan for the SOCAL Range Complex (based on public comments, among other input) throughout the MMPA and ESA processes. The Monitoring Plan will be finalized prior to the issuance of the first LOA, but we note that flexibility remains for the implementation team (the independent scientist contractors that the Navy will hire to conduct the monitoring) to further refine the specific protocols as appropriate.

(b) Navy lookouts are specifically trained to detect anomalies in the water around the ship and both the safety of Navy personnel and success in the training exercise depend on the lookout being able to detect objects (or marine mammals) effectively around the ship. NMFS has reviewed the Navy's After Action Reports from previous exercises and they show that lookouts are detecting marine mammals and implementing sonar shutdowns as required. That said, the SOCAL Range Complex Monitoring Plan contains a study in which Navy lookouts will be on watch simultaneously with non-Navy marine mammal observers and their detection rates will be compared. Additionally, the regulations and subsequent authorization would require the Navy to provide ''an evaluation (based on data gathered during all of the major training exercises) of the effectiveness of mitigation measures designed to avoid exposing marine mammals to mid-frequency sonar. This evaluation shall identify the specific observations that support any conclusions the Navy reaches about the effectiveness of the mitigation included in the authorization.'' Last, the rule contains an adaptive management component that specifies that NMFS and the Navy will meet on an annual basis to evaluate the Navy Reports (on both Navy lookout observations as well as Monitoring Plan reporting) and other new information (such as Navy R&D developments or new science) to ascertain whether mitigation or monitoring modifications are appropriate.

Contrary to the MMC's assertion, NMFS included both a summary table of (Table 7 in proposed rule), and general conclusions related to, 12 post exercise reports that the Navy submitted for exercises conducted in 2006 and 2007. NMFS agrees that the review of post-exercise reports is critical, and through the implementation of the more rigorous reporting requirements that have been laid out in the final rule (versus the proposed rule) we should be able to reach well-supported conclusions regarding the effects of MFAS on marine mammals.

(c) As described in the proposed rule, NMFS's analysis does not assert that 60+ injuries or mortalities are completely alleviated by mitigation implementation. Rather, we explain that, in the first place, the model that estimated 60 injuries and mortalities does not take into consideration at all that a subset of animals will avoid operating sound sources (or even vessels without operating sources), which means that fewer than 60 animals would be likely to get close enough to be exposed to levels expected to result in injury or death. For MFAS, animals

would need to approach within 10 m of the sound source to be exposed to levels likely to result in injury. For explosives, the larger charges have effects at greater distances, but they also have very rigorous clearance procedures that include monitoring the area for 2 hours in advance of the exercise. Nonetheless, NMFS acknowledges the opportunity for improvement via the use of dedicated passive or active sonar to detect marine mammals for mitigation implementation. However, current technology does not allow the Navy to detect, identify, and localize marine mammals and transmit this information to operators real-time while also not substantially reducing the effectiveness of the fast-paced and complicated exercises that the Navy must conduct. The Navy is committed, however, to technological development in the area of marine mammal protection and is currently funding multiple research projects towards this goal (see Research section).

(d) Though the original ship logs are destroyed after 30 days, the information pertaining to marine mammal observations and mitigation implementation is passed along to environmental compliance staff who are responsible for producing reports for NMFS and who already have a system for retaining the needed information. However, under the ICMP, NMFS will work with the Navy to ensure that all of the needed information is saved (in a standard form across geographic areas), which could potentially include the development of a new database.

Comment 14: One commenter noted that the training exercises that the Navy proposes to conduct in the Southern California range from 2009 to 2014 are apparently very similar to those that have in the past provoked extended litigation against the Navy by environmental groups (e.g., the RIMPAC litigation in 2006 and the ongoing SOCAL case, *NRDC* v. *Winters,* currently under review by the Supreme Court). The environmental groups have, thus far, been successful in both of their lawsuits against the Navy and the NMFS; each suit has required the Navy to take much more rigorous measures to mitigate the environmental impact of its sonar exercises. And yet neither the Navy nor the NMFS appears to have incorporated the lessons of these legal actions into their practices, as shown by the proposed regulation released for comment. Specifically, the NRDC asserts that NMFS's proposed rule, as well as the Navy's SOCAL Range Complex Draft Environmental Impact Statement (''DEIS'') (73 FR 18522 (Apr. 4, 2008)) ignores mitigation measures imposed specifically for the SOCAL Range Complex by courts in California. See *NRDC* v. *Winter* 527 F.Supp.2d 1216 (C.D. Cal. 2008), aff'd 518 F.3d 658 (9th Cir. 2008).

Response: The outcome of any litigation is based very specifically on the content of the administrative record for the particular decision that is being litigated. NMFS has worked closely with the Navy, both in the development of the SOCAL Range Complex EIS and in the ESA and MMPA consultations, to build a strong administrative record (both procedure and content-wise) that supports our decisions under the applicable statutes. Both NMFS and the Navy have incorporated lessons from the aforementioned legal actions into our practices. For example, the Navy (with NMFS support as a cooperating agency) chose to develop EISs for their major MFAS training activities instead of relying on an Environmental Assessment as they did in RIMPAC 2006. However, NMFS and the Navy are still bound to make certain findings under different statutes, and just because additional measures were imposed by the court in previous similar cases does not mean that those measures are appropriate in the specific context of the statutes that NMFS or the Navy are endeavoring to comply with in a specific case. More specifically, though, both NMFS and the Navy have considered the types of measures recommended by the courts (see Mitigation EA). Finally, the Supreme Court (*Winter* v. *NRDC*) recently sided with the Navy in NRDC's challenge to the use of mid-frequency active sonar in the SOCAL Range Complex. The court determined the Navy's need to conduct realistic training with active sonar to respond to the threat posed by enemy submarines plainly outweighs the interests advanced by the plaintiffs.

Comment 15: One commenter asserts that NMFS's analysis ignores or improperly discounts an array of options that have been considered and imposed by other active sonar users, including avoidance of coastal waters, high-value habitat, and complex topography; the employment of a safety zone more protective than the 1000-yard power-down and 200-yard shutdown accepted by NMFS; general passive acoustic monitoring for whales; special rules for surface ducting and low-visibility conditions; monitoring and shutdown procedures for sea turtles and large schools of fish; and many others. The commenter further provides a detailed list of 30 additional measures that should be considered. Other commenters made additional recommendations of mitigation measures that should be considered.

Response: NMFS considered a wide range of mitigation options in our analysis, including those listed by the commenters. In order to issue an incidental take authorization (ITA) under Section 101(a)(5)(A) of the MMPA, NMFS must set forth the ''permissible methods of taking pursuant to such activity, and other means of affecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.'' The National Defense Authorization Act (NDAA) of 2004 amended the MMPA as it relates to military-readiness activities (which these Navy activities are) and the incidental take authorization process such that ''least practicable adverse impact'' shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the ''military readiness activity''. NMFS worked with the Navy to identify practicable and effective mitigation measures, which included a careful balancing of the likely benefit of any particular measure to the marine mammals with the likely effect of that measure on personnel safety, practicality of implementation, and impact on the ''military-readiness activity''. NMFS developed an Environmental Assessment (EA) that analyzes a suite of possible mitigation measures in regard to potential benefits for marine mammals (see goals of mitigation in the Mitigation section of this proposed rule) and practicability for the Navy. That EA, which considered all of the measures recommended by these public comments, is currently available on the NMFS Web site (*http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*) and has been relied upon to inform NMFS's MMPA decision.

Comment 16: One commenter suggests that the graded response steps for MFAS based on the distance at which marine mammals are sighted does not make sense given the high proportion of time many marine mammal species, especially long-divers, spend underwater. A beaked whale sighted in the path of the vessel 600 yards ahead that then dives would only require a decrease in source level by 6 dB, even though the trajectory of the ship would take it directly over the animal while it is underwater.

Response: The next ''graded'' mitigation measure says ''Should the marine mammal be detected within or closing to inside 200 yds (183 m) of the

sonar dome, active sonar transmissions shall cease.'' The ''or closing'' part of this measure ensures that if the Navy vessel is headed straight at an animal, they will use the appropriate measure. Additionally, review of the Navy's after-action reports shows that in the vast majority of marine mammal detections within 1000 yds, the Navy immediately shuts down the sonar, without going through the power-down step.

Comment 17: NRDC recommends prescription of specific mitigation requirements for individual categories (or sub-categories) of testing and training activities, in order to maximize mitigation given varying sets of operational needs. Also, the Navy should require that other nations abide by U.S. mitigation measures when training in the SOCAL Range Complex, except where their own measures are more stringent.

Response: The Navy's standard protective measures include measures that are specific to certain categories of activities. For example, different exclusion zones are utilized for hull-mounted sonar and dipping sonar, and different range clearance procedures are used for SINKEXs and IEER sonobuoy exercises. Pursuant to the Navy's 2000 Policy for Environmental Compliance at Sea, the commander or officer in charge of a major exercise shall provide participating foreign units with a description of the measures to protect the environment required of similar U.S. units as early as reasonable in the exercise planning process and shall encourage them to comply. As a binding international law, foreign sovereign immune vessels may not be compelled to adopt such mitigation measures.

Comment 18: The Marine Mammal Commission recommends that NMFS modify the Navy's mitigation measures by requiring that the Navy delay resumption of full operational sonar use following a power-down or shutdown for 30 minutes if the sighted animal can be identified to the species level and the species is not deep diving and 60 minutes if it cannot be identified or is known to be a member of a deep-diving species such as sperm and beaked whales. They further recommend that NMFS allow resumption of full operations before the end of the 30-minute period (when the species can be identified and is not a deep diver) or 60-minute period (the species cannot be determined or can be determined but is a deep diver) only when the Navy has good evidence that the marine mammal seen outside the safety zone is the same animal originally sighted within the zone.

Response: NMFS does not concur with the MMC that we should expand the delay (until sonar can be restarted after a shutdown due to a marine mammal sighting) to 60 minutes for deep-diving species for the following reasons:

- The ability of an animal to dive longer than 30 minutes does not mean that it will always do so. Therefore, the 60 minute delay would only potentially add value in instances when animals had remained under water for more than 30 minutes.
- Navy vessels typically move at 10–12 knots (5–6 m/sec) when operating active sonar and potentially much faster when not. Fish et al. (2006) measured speeds of 7 species of odontocetes and found that they ranged from 1.4–7.30 m/sec. Even if a vessel was moving at the slower typical speed associated with active sonar use, an animal would need to be swimming near sustained maximum speed for an hour in the direction of the vessel's course to stay within the safety zone of the vessel. Increasing the typical speed associated with active sonar use would further narrow the circumstances in which the 60-minute delay would add value.
- Additionally, the times when marine mammals are deep-diving (i.e., the times when they are under the water for longer periods of time) are the same times that a large portion of their motion is in the vertical direction, which means that they are far less likely to keep pace with a horizontally moving vessel.
- Given that, the animal would need to have stayed in the immediate vicinity of the sound source for an hour and considering the maximum area that both the vessel and the animal could cover in an hour, it is improbable that this would randomly occur. Moreover, considering that many animals have been shown to avoid both acoustic sources and ships without acoustic sources, it is improbable that a deep-diving cetacean (as opposed to a dolphin that might bow ride) would choose to remain in the immediate vicinity of the source. NMFS believes that it is unlikely that a single cetacean would remain in the safety zone of a Navy sound source for more than 30 minutes.
- Last, in many cases, the lookouts are not able to differentiate species to the degree that would be necessary to implement this measure. Plus, Navy operators have indicated that increasing the number of mitigation decisions that need to be made based on biological information is more difficult for the lookouts (because it is not their area of expertise).

NMFS does not believe that 60-minute delay would add to the protection of marine mammals in the vast majority of cases, while it would definitely decrease the effectiveness of the Navy's training exercises by adding further delay, and therefore we have not required it. Regarding the MMCs second recommendation, the current measure says that sonar transmission will be limited until ''the animal is seen to leave the area''—NMFS does not believe that further clarification is needed regarding the fact that the Navy needs to be sure it is the same animal.

Comment 19: One commenter states that the Navy should engage in timely and regular reporting to NOAA, state coastal management authorities, and the public to describe and verify use of mitigation measures during testing and training activities.

Response: The Navy will be required to submit annual reports and these reports will be made available to the public upon the Notice to the public (in the **Federal Register**) of the issuance of subsequent LOAs. The reports will include a description of the mitigation measures implemented during major exercises and will also include an evaluation of the effectiveness if any mitigation measure implemented.

Comment 20: One commenter asserts that the Navy should avoid fish spawning grounds and important fish habitat. It should also avoid high-value sea turtle habitat. The Navy should include sea turtles in other described mitigation measures, including safety zones, for which floating weeds and kelp and algal mats should be taken as proxies for sea turtle presence.

Response: These concerns are outside of the purview of the MMPA. Impacts to fish spawning grounds are dealt with pursuant to the Magnuson-Stevens Act as it relates to Essential Fish Habitat (EFH). NMFS Office of Habitat Conservation found that the Navy's proposed action would adversely affect EFH, but that the proposed mitigation measures (see the Navy's EFH assessment in Appendix E of the SOCAL Range Complex FEIS) would adequately address adverse impacts to EFH. Therefore, NMFS made no additional EFH conservation recommendations. Measures to reduce impacts to sea turtles are included in the terms and conditions of the biological opinion that NMFS issued to the Navy (view at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*). Finally, it should be noted that the Navy will be required to alter activities if floating weeds or kelp are seen within a particular area (e.g., for Surface-to-Surface Gunnery exercises: ''Lookouts shall visually survey for floating weeds

and kelp. Intended impact shall not be within 600 yds (585 m) of known or observed floating weeds and kelp, and algal mats'').

Acoustic Threshold for Behavioral Harassment

Comment 21: The NRDC submitted a comprehensive critique of the risk function (authored by Dr. David Bain), which NMFS has posted on our Web site (*http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*). NRDC summarized some general limitations of the risk function and included a fairly detailed critique of the specific structure of and parameters chosen for use in the model. Following are some of the general topics addressed in the letter:

• Factors that Dr. Bain thinks should be addressed by the model, such as social interactions and multiple sources.

• Critique of the datasets that NMFS used to populate the risk function (described Level B Harasssment—Risk Function section of the proposed rule): (1) Controlled Laboratory Experiments with Odontocetes (SSC Dataset); (2) Mysticete Field Study (Nowacek et al., 2004), and (3) Odontocete Field Data (Haro Strait—USS Shoup).

• Consideration of some datasets that were considered by NMFS, but not used in the risk function.

• A critique of the parameters (A, B, and K) used in the risk function.

• A sensitivity analysis of the parameters (i.e., takes were modeled while applying variable values for the A, B, and K values).

Dr. Bain included a summary of his concerns and an abbreviated version is included below. Additionally (and not included in the summary), Dr. Bain suggested that the effect of multiple sources may be both different and greater than the effects of fewer sources and provided supporting examples.

Dr. Bain's Summary follows (comments that were in Dr. Bain's summary, but have been addressed elsewhere in this Comment Response section are not included below):

• In summary, development of a function that recognizes individual variation is a step in the right direction.

• The selected equation is likely to produce underestimates of takes due to asymmetries in the number of individuals affected if parameters are either underestimated or overestimated due to uncertainty. Thus it will be important to use the risk function in a precautionary manner.

• The sensitivity analysis reveals the importance of using as many datasets as possible. First, for historical reasons, there has been an emphasis on high energy noise sources and the species tolerant enough of noise to be observed near them. Exclusion of the rarer datasets demonstrating responses to low levels of noise biases the average parameter values, and hence underestimates effects on sensitive species.

• A similar mistake was made with the right whale data. The level at which 100 percent of individuals responded was used as the value at which 50 percent of individuals responded (B+K). Likewise, the level at which 100 percent of killer whales responded to mid-frequency sonar is less than the value derived for B+K in the HRC SDEIS (Dept. Navy 2008b).

• It is likely that biological B values should be in the range from just detectable above ambient noise to 120 dB re 1 μPa. The resulting mathematical B value could be tens of dB lower, not the 120 dB re 1 μPa proposed. For many species, risk may approach 100 percent in the range from 120–135 dB re 1 μPa, putting K in the 15–45 dB range.

• The A values do not seem well supported by the data, and in any case, are likely to be misleading in social species as the risk function is likely to be asymmetrical with a disproportionate number of individuals responding at low noise levels. Rather than one equation fitting all species well, parameters are likely to be species typical.

• As realistic parameter values are lower than those employed in the HRC SDEIS (Dept. Navy 2008b), AFAST DEIS (Dept. Navy 2008a) and related DEIS's, take numbers should be recalculated to reflect the larger numbers of individuals likely to be taken. The difference between the parameter values estimated here and those used in the SDEIS suggests takes were underestimated by two orders of magnitude.

Response: Many of the limitations outlined in Dr. Bain's document were raised by other commenters and are addressed elsewhere in this Comment and Response Section and will not be addressed again here. Below, NMFS responds to the specific points summarized above.

• *The effects of multiple sources:* Mathematically, the Navy's exposure model has already accounted for takes of animals exposed to multiple sources in the number of estimated takes. NMFS concurs with the commenter, however, in noting that the severity of responses of the small subset of animals that are actually exposed to multiple sources simultaneously could potentially be greater than animals exposed to a single source due to the fact that received level, both SPL and SEL, would be slightly higher and because contextually it could be perceived as more threatening to an animal to receive multiple stimuli coming from potentially multiple directions at once (for example, marine mammals have been shown to respond more severely to sources coming directly towards them, vs. obliquely (Wartzok, 2004)). However, it is also worth noting that according to information provided by the Navy, surface vessels do not typically operate closer than 10–20 miles from another surface vessel (and greater distance is ideal), and other sonar sources, such as dipping sonar and sonobuoys, are almost always used 20 or more miles away from the surface vessel. This means that if the two most powerful sources were operating at the closest distance they are likely to (10 miles), in the worst case scenario, animals that would have been exposed to 150 dB SPL or less (taken from table 16 of the proposed rule) may be exposed to slightly higher levels or to similar levels or less coming from multiple directions.

• *Underestimates of takes due to asymmetries in the number of individuals affected when parameters are underestimated and overestimated due to uncertainty:* The commenter's point is acknowledged. When a sensitivity analysis is conducted and parameters are varied (both higher and lower values used)—the degree of difference in take estimates is much greater when the parameter is adjusted in one direction than in the other, which suggests the way that this generalized model incorporates uncertainty may not be conservative. However, in all cases when the adjustment of the parameter in a certain direction results in a disproportionately (as compared to an adjustment in the other direction) large increase in the number of takes, it is because the model is now estimating that a larger percentage of animals will be taken at greater distances from the source. This risk function is based completely on the received level of sound. As discussed in the proposed rule, there are other contextual variables that are very important to the way that an animal responds to a sound, such as nearness of the source, relative movement (approaching or retreating), or the animals familiarity with the source. Southall et al. (2007) indicates that the presence of high-frequency components and a lack of reverberation (which are indicative of nearness) may be more relevant acoustic cues of spatial relationship than simply exposure level alone. In the SOCAL Range Complex, an

animal exposed to between 120 and 130 dB may be more than 65 nm from the sonar source. NMFS is not aware of any data that describe the response of any marine mammals to sounds at that distance, much less data that indicate that an animal responded in a way we would classify as harassment at that distance. Because of this, NMFS does not believe it is currently possible or appropriate to modify the model to further address uncertainty if doing so results in the model predicting that much larger numbers of animals will be taken at great distances from the source when we have no data to suggest that that would occur.

• *Using many datasets:* NMFS has explained both in the rule, and then again elsewhere in response to these comments, why we chose the three datasets we did to define the risk function. As Dr. Bain points out, there are datasets that report marine mammal responses to lower levels of received sound. However, because of the structure of the curve NMFS is using and what it predicts (Level B Harassment), we need datasets that show a response that we have determined qualifies as harassment (in addition to needing a source that is adequately representative of MFAS and reliable specific received level information), which many of the lower level examples do not.

• *50 percent vs. 100 percent response:* Dr. Bain asserts that two of the three datasets (Nowacek et al., 2004 and Haro Strait—USS SHOUP) that NMFS uses to derive the 50 percent response probability in the risk function actually report a 100 percent response at the indicated received levels. For the Haro Strait dataset, a range of estimated received levels at the closest approach to the J Pod were estimated. Given that neither the number of individual exposures or responses were available, the mean of this range was used as a surrogate for the 50 percent response probability in the development of the risk function. For the Nowacek data, NMFS used 139.2 dB, which is the mean of the received levels at which 5 of 6 animals showed a significant response to the signal. However, viewed another way, of 6 animals, one animal did not respond to the signal and the other five responded at received levels of 133 dB, 135 dB, 137 dB, 143 dB, and 148 dB, which means that 3 of the 6 animals (50 percent) showed a significant response at 139.2 dB or less.

• *120 dB basement value:* When the broad array of data reported from exposures across taxa and to varied sources are reviewed, NMFS believes that 120 dB is an appropriate B value for a curve designed to predict responses that rise to the level of an MMPA harassment (not just any response). The available data do not support the commenter's assertion that risk may approach 100 percent in the range from 120–135 dB for many species. For example, the Southall et al. (2007) summary of behavioral response data clearly shows, in almost every table (for all sound types), reports of events in which animals showed no observable response, or low-level responses NMFS would not likely consider harassment, in the 120 to 135-dB range. For the species (the harbor porpoise) for which the data do support that assertion, which the Southall et al. (2007) paper considers ''particularly sensitive'', NMFS has implemented the use of a species-specific step function threshold of 120 dB SPL.

• *The A value:* Please see the second bullet of this response for the first part of the answer. NMFS concurs with the commenter that species-specific parameters would likely be ideal, however there are not currently enough applicable data to support separate curves for each species. We note, though, that even with species-specific parameters, the context of the exposure will still likely result in a substantive variability of behavioral responses to the same received level by the same species.

• *Recalculation:* For the reasons described in the bullets above in this response, NMFS disagrees with the commenter's assertion that the parameters used in the proposed rule and the EIS are unrealistic and that they result in take estimates that are too small by two orders of magnitude. We do not believe that a recalculation is necessary.

The science in the field of marine mammals and underwater sound is evolving relatively rapidly. NMFS is in the process of revisiting our acoustic criteria with the goal of developing a framework (Acoustic Guidelines) that allows for the regular and scientifically valid incorporation of new data into our acoustic criteria. We acknowledge that this model has limitations, however, the limitations are primarily based on the lack of applicable quantitative data. We believe that the best available science has been used in the development of the criteria used in this and other concurrent Navy rules and that this behavioral harassment threshold far more accurately represents the number of marine mammals that will be taken than the criteria used in the RIMPAC 2006 authorization. We appreciate the input from the public and intend to consider it further as we move forward and develop the Acoustic Guidelines.

Comment 22: One commenter expressed the concern that NMFS blindly relies on TTS studies conducted on 7 captive animals of two species (to the exclusion of copious data on animals in the wild) as a primary source of data for the behavioral harassment threshold. The commenter further asserts that these studies (on highly trained animals that do not represent a normal range of variation within their own species, as they have been housed in a noisy bay for most of their lives) have major deficiencies, which NMFS ignores by using the data.

Response: The SSC Dataset (Controlled Laboratory Experiments with Odontocetes) is not the primary source of data for the behavioral harassment threshold; rather, it is one of three datasets (the other two datasets are from wild species exposed to noise in the field) treated equally in the determination of the K value (equates to midpoint) of the behavioral risk function. NMFS recognizes that certain limitations may exist when one develops and applies a risk function to animals in the field based on captive animal behavioral data. However, we note that for the SSC Dataset: (1) Researchers had superior control over and ability to quantify noise exposure conditions; (2) behavioral patterns of exposed marine mammals were readily observable and definable; and, (3) fatiguing noise consisted of tonal noise exposures with frequencies contained in the tactical mid-frequency sonar bandwidth. NMFS does not ignore the deficiencies of these data, rather we weighed them against the value of the data and compared the dataset to the other available datasets and decided that the SSC dataset was one of the three appropriate datasets to use in the development of the risk function.

Comment 23: NMFS fails to include data from the July 2004 Hanalei Bay event, in which 150–200 melon-headed whales were embayed for more than 24 hours during the Navy's Rim of the Pacific exercise. According to the Navy's analysis, predicted mean received levels (from mid-frequency sonar) inside and at the mouth of Hanalei Bay ranged from 137.9 dB to 149.2 dB. NMFS' failure to incorporate these numbers into its methodology as another data set is not justifiable.

Response: NMFS' investigation of the Hanalei event concluded that there was insufficient evidence to determine causality. There are a number of uncertainties about sonar exposure and other potential contributing factors and assumptions inherent to a reconstruction of events in which sonar was the causative agent that simply

preclude this determination. Because of this, NMFS did not use the numbers (137.9–149.2 dB) in our methodology. Additionally, even if NMFS had concluded that MFAS were the causative agent, insufficient evidence exists regarding the received level when the animals responded (there is no information regarding where they were when they would have first heard the sound).

Comment 24: One commenter stated ''NMFS excludes a substantial body of research on wild animals (and some research on other experimental animals as well, within a behavioral experimental protocol). Perhaps most glaringly, while the related DEIS prepared for the Navy's Atlantic Fleet Active Sonar Training activities appears to acknowledge the strong sensitivity of harbor porpoises by setting an absolute take threshold of 120 dB (SPL)—a sensitivity that, as NMFS has noted, is reflected in numerous wild and captive animal studies—the agencies improperly fail to include any of these studies in their data set. The result is clear bias, for even if one assumes (for argument's sake) that the SPAWAR data has value, NMFS has included a relatively insensitive species in setting its general standard for marine mammals while excluding a relatively sensitive one.''

Response: As explained in the Level B Harassment (Risk Function) section of the proposed rule the risk function is based primarily on three datasets (SSC dataset, Nowacek et al. (2004), and Haro Strait—USS Shoup) in which marine mammals exposed to mid-frequency sound sources were reported to respond in a manner that NMFS would classify as Level B Harassment. NMFS considered the ''substantial body of research'' that the commenter refers to but was unable to find other datasets that were suitable in terms of all of the following: The equivalency of the sound source to MFAS, a reported behavioral response that NMFS would definitively consider Level B Harassment, and a received level reported with high confidence. The SSC dataset is only one of three used and, in fact, the other 2 datasets (which are from wild animals—killer whales and North Atlantic right whales) both report behavioral responses at substantively lower levels (i.e., the ''relatively insensitive'' species is not driving the values in the function).

Separately, combined wild and captive data support the conclusion that harbor porpoises (high-frequency hearing specialists) are quite sensitive to a variety of anthropogenic sounds at very low exposures (Southall et al., 2007). Southall et al. (which refer to harbor porpoises as particularly sensitive species) report that all recorded exposures exceeding 140 dB SPL induced profound and sustained avoidance behavior in wild harbor porpoises. Unlike for the mid-frequency and low-frequency species, there are also no reported instances where harbor porpoises were exposed to higher levels and did not have a high response score. For these reasons, harbor porpoises are considered especially sensitive and NMFS determined that it is appropriate to apply a more conservative threshold.

Comment 25: The risk function must take into account the social ecology of some marine mammal species. For species that travel in tight-knit groups, an effect on certain individuals can adversely influence the behavior of the whole. Should those individuals fall on the more sensitive end of the spectrum, the entire group or pod can suffer significant harm at levels below what the Navy would use as the mean. In developing its ''K'' parameter, NMFS must take into account the potential for indirect effects.

Response: The risk function is intended to define the received level of MFAS at which exposed marine mammals will experience behavioral harassment. The issue the commenter raises is related to the Navy's exposure model—not the risk function. However, because of a lack of related data there is no way to numerically address this issue in the model. Although the point the commenter raises could potentially apply, one could also assert that if certain animals in a tight knit group were less sensitive it would have the opposite effect on the group. Additionally, the modeling is based on uniform marine mammal density (distributed evenly over the entire area of potential effect), which does not consider the fact that marine mammals appearing in pods will be easier to detect and therefore the Navy will be more likely to implement mitigation measures that avoid exposing the animals to the higher levels received within 1000m of the source.

Comment 26: One commenter asserts that NMFS' threshold is applied in such a way as to preclude any assessment of long-term behavioral impacts on marine mammals. It does not account, to any degree, for the problem of repetition: The way that apparently insignificant impacts, such as subtle changes in dive times or vocalization patterns, can become significant if experienced repeatedly or over time.

Response: NMFS threshold does not preclude any assessment of long-term behavioral impacts on marine mammals. The threshold is a quantitative tool that NMFS uses to estimate individual behavioral harassment events. Quantitative data relating to long-term behavioral impacts are limited, and therefore NMFS' assessment of long-term behavioral impacts is qualitative in nature (see Diel Cycle section in Negligible Impact Analysis section). NMFS analysis discusses the potential significance of impacts that continue more than 24 hours and/or are repeated on subsequent days and, though it does not quantify those impacts, further indicates that these types of impacts are not likely to occur because of the nature of the Navy's training activities and the large area over which they are conducted.

Comment 27: One commenter stated ''NMFS appears to have misused data garnered from the Haro Strait incident—one of only three data sets it considers—by including only those levels of sound received by the ''J'' pod of killer whales when the USS Shoup was at its closest approach. These numbers represent the maximum level at which the pod was harassed; in fact, the whales were reported to have broken off their foraging and to have engaged in significant avoidance behavior at far greater distances from the ship, where received levels would have been orders of magnitude lower. We must insist that NMFS provide the public with the Navy's propagation analysis for the Haro Strait event, which it used in preparing its 2005 Assessment of the incident.''

Response: For the specific application in the risk function for behavioral harassment, NMFS used the levels of sound received by the ''J'' pod when the USS Shoup was at its closest approach because a review of the videotapes and other materials by NMFS detailing the behavior of the animals in relation to the location of the Navy vessels showed that it was after the closest approach of the vessel that the whales were observed responding in a manner that NMFS would classify as ''harassed.'' Though animals were observed potentially responding to the source at greater distances, NMFS scientists believed that the responses observed at greater distances were notably less severe and would not rise to the level of MMPA harassment. Though the received levels observed in relation to the lesser responses could be used in some types of analytical tools, the risk continuum specifically requires that we use received sound levels that are representative of when MMPA harassment likely occurred. The Navy's report may be viewed at: *http://www.acousticecology.org/docs/SHOUPNavyReport0204.pdf.*

Acoustic Thresholds for TTS and PTS

Comment 28: One commenter notes that in the SOCAL proposed rule, NMFS sets its threshold for temporary hearing loss and behavioral effects, or ''temporary threshold shift'' (''TTS''), at 183 dB re 1 μPa²·s for harbor seals, 204 dB re 1 μPa²·s for northern elephant seals, and 206 dB re 1 μPa²·s for California sea lions (73 FR 60878). However, the commenter notes, in the proposed rule for AFAST, NMFS indicates that the TTS threshold for pinnipeds is 183 dB re 1 μPa²·s. NMFS does not explain the difference in thresholds. The commenter makes the same comment for the PTS thresholds (which are 20 dB higher than the TTS thresholds).

Response: As noted in the SOCAL proposed rule, the TTS thresholds are 183 dB re 1 FPa²·s for harbor seals (and closely related species), 204 dB re 1 μPa²·s for northern elephant seals (and closely related species), and 206 dB re 1 μPa²·s for California sea lions (and closely related species) (73 FR 60878). The commenter is correct, in the AFAST rule, NMFS did not fully explain that all of the pinnipeds that might be exposed to MFAS are ''closely related'' to harbor seals. Therefore, the 183 dB SEL is the pinniped threshold applied in AFAST. The AFAST final rule will be amended to clarify this issue and be consistent with the SOCAL final rule. The same answer applies to the comment about PTS thresholds.

Comment 29: One commenter stated that NMFS' take estimates do not reflect other non-auditory physiological impacts, such as from chronic exposure during development, stress, ship collisions, and exposure to toxic chemicals.

Response: The commenter is correct that the Navy's estimated take numbers do not reflect non-auditory physiological impacts because the quantitative data necessary to address those factors in the exposure model do not exist. However, NMFS acknowledges that a subset of the animals that are taken by harassment will also likely experience non-auditory physiological effects (stress, etc.) and these effects are addressed in the proposed rule (see Stress Responses section). Regarding toxins, the Navy concluded that the potential ingestion of toxins, such as the small amount of propellant or stimulant remaining in the spent boosters or on pieces of missile debris, by marine mammals or fish species would be remote because of (1) atmospheric dispersion, (2) the diluting and neutralizing effects of seawater, and (3) the relatively small area that could potentially be affected. Therefore, the Navy determined that marine mammals would not be taken via the ingestion of toxins and they did not request (nor did NMFS grant) authorization for take of marine mammals from toxin ingestion. Similarly, regarding ship strikes, the Navy's EIS indicated that the Navy does not expect marine mammals to be struck because of standard operating procedures to reduce the likelihood of collisions, to include: (1) Use of lookouts trained to detect all objects on the surface of the water (including marine mammals); (2) reasonable and prudent actions to avoid the close interactions of Navy assets and marine mammals; and (3) maneuvering to keep away from any observed marine mammal. Therefore, the Navy did not request (nor did NMFS grant) authorization for take of marine mammals from ship strikes.

Comment 30: The Navy's exclusive reliance on energy flux density as its unit of analysis does not take other potentially relevant acoustic characteristics into account. Reflecting this uncertainty, the Navy should establish a dual threshold for marine mammal injury.

Response: NMFS currently uses the injury threshold recommended by Southall et al. (2007) for MFAS. Specifically, NMFS uses the 215-dB SEL sound exposure level threshold (the commenter refers to it as energy flux density level). Southall et al. (2007) presents a dual threshold for injury, which also includes a 230-dB peak pressure level threshold. NMFS discussed this issue with the Navy early in the MMPA process and determined that the 215-dB SEL injury threshold was the more conservative of the two thresholds (i.e., the 230-dB peak pressure threshold occurs much closer to the source than the 215-dB SEL threshold) and therefore it was not necessary to consider the 230-dB peak pressure threshold further. For example, an animal will be within the 215-dB SEL threshold and counted as a take before it is exposed to the 230-dB threshold. NMFS concurs with Southall et al. (2007), which asserts that for an exposed individual, whichever criterion is exceeded first, the more precautionary of the two measures should be used as the operative injury criterion.

Comment 31: One commenter asserts that NMFS disregards data gained from actual whale mortalities. The commenter cites to peer-reviewed literature that indicates that sound levels at the most likely locations of beaked whales beached in the Bahamas strandings run far lower than the Navy's threshold for injury here: Approximately 150–160 dB re 1 μPa for 50–150 seconds, over the course of the transit. A further modeling effort, undertaken in part by the Office of Naval Research, the commenter states, suggests that the mean exposure level of beaked whales, given their likely distribution in the Bahamas' Providence Channels and averaging results from various assumptions, may have been lower than 140 dB re 1 μPa. Last the commenter suggests that when duration is factored in, evidence would support a maximum energy level (''EL'') threshold for serious injury on the order of 182 dB re 1 μPa²·s, at least for beaked whales.

Response: No one knows where the beaked whales were when they were first exposed to MFAS in the Bahamas or the duration of exposure for individuals (in regards to maximum EL) and, therefore, we cannot accurately estimate the received level that triggered the response that ultimately led to the stranding. Therefore, NMFS is unable to quantitatively utilize any data from this event in the mathematical model utilized to estimate the number of animals that will be ''taken'' incidental to the Navy's proposed action. However, NMFS does not disregard the data. The proposed rule includes a qualitative discussion of the Bahamas stranding and four other strandings that NMFS and the Navy concur that the operation of MFAS likely contributed to. These data illustrate a ''worst case scenario'' of the range of potential effects from sonar and the analysis of these strandings supports the Navy's request for authorization to take 10 individuals of several species by mortality over the 5-yr. period.

Comment 32: One commenter states that NMFS' and the Navy's assessment of the risk of marine mammal injury and mortality is astonishingly poor. Although NMFS briefly discusses stranding events (73 FR 60859), the Marine Mammal Protection Act requires NMFS to fully consider the impacts of sonar on marine mammals to determine there is no more than a negligible impact before issuing an incidental take authorization.

Response: NMFS disagrees. The proposed rule contains a detailed discussion of stranding events (those that were merely coincident with MFAS use, as well as those for which the evidence suggests that MFAS exposure was a contributing factor), a detailed discussion of the multiple hypotheses that describe how acoustically-mediated or behaviorally-mediated bubble growth can lead to marine mammal strandings, as well as a comprehensive discussion

of the more general potential effects to marine mammals of MFAS exposure. NMFS analyses fully considers the impacts to marine mammals, which allows us to determine that the specified activites will have a negligible impact on the affected species or stocks.

Comment 33: One commenter states: ''NMFS fails to take proper account of published research on bubble growth in marine mammals, which separately indicates the potential for injury and death at lower [received sound] levels. According to the best available scientific evidence, gas bubble growth is the causal mechanism most consistent with the observed injuries. NMFS' argument to the contrary simply misrepresents the available literature.''

Response: The proposed rule contained a detailed discussion of the many hypotheses involving both acoustically-mediated and behaviorally-mediated bubble growth. NMFS concluded that there is not sufficient evidence to definitively say that any of these hypotheses accurately describe the exact mechanism that leads from sonar exposure to a stranding. Despite the many theories involving bubble formation (both as a direct cause of injury and an indirect cause of stranding), Southall et al., (2007) summarizes that scientific disagreement or complete lack of information exists regarding the following important points: (1) Received acoustical exposure conditions for animals involved in stranding events; (2) pathological interpretation of observed lesions in stranded marine mammals; (3) acoustic exposure conditions required to induce such physical trauma directly; (4) whether noise exposure may cause behavioral reactions (such as atypical diving behavior) that secondarily cause bubble formation and tissue damage; and (5) the extent the post mortem artifacts introduced by decomposition before sampling, handling, freezing, or necropsy procedures affect interpretation of observed lesions.

Comment 34: One commenter states that the calculation of PTS (which is equated to the onset on injury) is based on studies of TTS that, as discussed below, are significantly limited.

Response: NMFS addressed this issue in response to comments 22, 24, and 27.

Effects Analysis

Comment 35: One commenter asserts that NMFS does not properly incorporate the latest available data on marine mammal population structure and abundance into its analysis. NMFS' (and the Navy's) analysis of marine mammal distribution, habitat abundance, population structure and ecology contains false, misleading or outdated assumptions that tend to both underestimate impacts on species and to impede consideration of mitigation measures. Specifically, commenters point to errors in the reported abundance of blue whales, Baird's beaked whales, and sei whales.

Response: The Navy began drafting and submitted the SOCAL Range Complex LOA application to NMFS prior to wide dissemination of the NMFS' 2007 U.S. Pacific Stock Assessment Reports (SAR). Information on estimated population size was obtained from the 2006 SAR and these numbers were carried forward into the Proposed Rule. Table 3 of this final rule shows updated population estimates based on the both the 2007 and 2008 DRAFT U.S. Pacific SARs. Discussion of population abundance is for general review of relative population size since these estimates can vary every year based on new survey information, or a revision of previous statistical analysis by NMFS. Alternately, for the estimated density of the affected marine mammal stocks reported in both the proposed rule and SOCAL EIS, the Navy used a different calculation provided by NMFS Southwest Fisheries Science Center (SWFSC). SWFSC provided a multi-year statistical analysis of potential marine mammal densities stratified on visual ship sightings from south of Point Conception, California. The density estimates used in the impact analysis described in the Proposed and Final rule are based on NMFS sighting data stratified for species specific sightings only occurring within SOCAL. Sighting data across a species or stock range, which can often be much broader than SOCAL, is used for calculating potential abundance for that stock in the Pacific SARs. NMFS feels that this approach to regional density calculation is more realistic and scientific given limitations to at-sea marine mammal surveys. Unlike the abundance numbers, these NMFS density estimates were directly used by the Navy in the model and analysis that generated the take estimates shown in table 4 of this final rule. In short, this error neither caused NMFS to underestimate impacts nor impeded consideration of mitigation measures.

Comment 36: The Navy compiled table of occurrence of marine mammals (page 60848 of the proposed rule) overstates the absence of some species during certain periods. For example, both humpback and blue whales are listed as not occurring November-April, when in fact lower numbers are present throughout this time, particularly in the early and late period of that range. This table also cites only one confirmed sighting of Bryde's whales in California; however we observed this species on two occasions in 2006 at SOAR.

Response: Table 4 was meant to be a generalized summary of SOCAL marine mammal presence subject to a number of caveats. Oceanographic variations within a season could impact relative occurrence of certain more migratory species such as blue whales, humpback whales, and some dolphin species. The main purpose of the warm and cold designations was to indicate if enough sighting data was available within the specified time in which to calculate a species density for use in the impact analysis. Species-specific densities were provided to the Navy by NMFS Southwest Fisheries Science Center based on best available science derived from NMFS marine mammal surveys and are shown in Table 4 of this final rule (same as table 13 in proposed rule). Status of Bryde's whales within SOCAL is perhaps more accurately defined as rarely documented and status of blue and humpback whales would more accurately be generalized by ''YES less''. The extent of this species occurrence within SOCAL is poorly known, primarily because morphologically Bryde's whales and fin whales are very similar when observed at sea. At the time of the Navy's LOA application and Proposed Rule, 1993 was the last known confirmed Bryde's whale sighting prior to the unpublished sighting reported by the commenter. Regardless of the words used in the generalized Table 4 of the proposed rule, a low density of Bryde's whale, as well as densities for blue and humpback whales, were incorporated into the impact analysis.

Comment 37: One commenter states that preliminary results of recent visual-acoustic surveys at SOAR (sponsored by the Navy) suggest that the population densities used to calculate takes may seriously underestimate the number of individuals to be exposed to MFAS/HFAS. This is most relevant for Cuvier's beaked whales, which (with acoustic direction from the M3R system) were among the most frequently encountered species in surveys conducted in 2007 and 2008. The group sizes of Cuvier's beaked whales at SOAR were larger on average than were reported in the line-transect surveys from which take estimates were derived, and a minimum 30 unique individuals were photo-identified within a limited area of the SOAR array in a 5-day period in October 2007 (Falcone *et al.*, submitted).

Response: As discussed in the SOCAL Monitoring Plan, the Navy already has a funded marine mammal research program within SOCAL specifically

looking at science issues related to beaked whales. Data collection, analysis, and reporting are ongoing over the next few years. The commenter is referring to preliminary data from this program that was not available to the Navy or NMFS at the time of the SOCAL proposed rule. For the SOCAL EIS and the proposed rule impact analysis, the Navy and NMFS used the latest beaked whale density provided by the NMFS Southwest Fisheries Science Center as the best available science as of rule making publication deadlines. As new small scale density data becomes published in peer-review literature, the Navy will consider this information for future NEPA documentation. Increased knowledge of beaked whale distribution within SOCAL is an important science gap to be filled. This is the intent of both the ongoing Navy funded research and the SOCAL Monitoring Plan. Therefore while quantitative re-analysis may not be currently warranted based on the preliminary unpublished data collected to date, it is interesting to note the frequency and visual re-sighting rate of Cuvier's beaked whales in an area that has been subject to Navy operations for over 40 years.

Comment 38: One commenter states that there are also a number of marine mammal populations (e.g., bottlenose dolphins, short-finned pilot whale, transient killer whale, and minke whale) in the Southern California region that, while not threatened or endangered, have very low abundance and are therefore particularly vulnerable to human impact. They are concerned that a lack of information has biased NMFS and the Navy's effects analysis and thus the potential risk to these species has been significantly underestimated. They cite the most recent NOAA stock assessments which indicate that the loss of 0.98 individual short-finned pilot whales and 5.4 individual minke whales would compromise survival of those species, and note that NMFS has authorized 45 and 126 respective takes of those whales per year.

Response: The NOAA stock assessment reports are referring to the loss, or death, of individuals. The takes that NMFS is authorizing as part of the current MMPA process are all Level B Harassment takes which are not expected to lead to the loss of any of these animals. Additionally, though these species have low abundance, the animals span the entire West Coast and beyond. The small numbers of these animals are not all focused in SOCAL and they are not experiencing repeated or regular exposures to sonar. NMFS does not believe that potential risk to these species has been underestimated and for the reasons discussed in the Negligible Impact Analysis section, we have determined that the Navy's activities in SOCAL will have a negligible impact on these species or stocks.

Comment 39: One commenter is concerned that by adopting the Navy's analysis wholesale—and finding that the ''there will be few, and more likely no, impacts'' on fish—NMFS disregards relevant scientific literature.

Response: The commenter misquotes the proposed rule. In the Effects on Marine Mammal habitat section, after some discussion, NMFS concludes that there ''will be few, and more likely no, impacts on the behavior of fish from active sonar.'' NMFS also discusses the potential for both threshold shifts and mortality to fish from MFAS, though we conclude that these impacts would be short-term (threshold shift) and insignificant to the population as a whole in light of natural daily mortality rates.

Comment 40: One commenter noted that the migratory range of gray whales is a well documented part of the SOCAL Range Complex, and is an area of specific importance for reproduction for pregnant females (who are documented to give birth in the area, and newly pregnant females transit the area) and calves, all of who are more vulnerable to adverse effects and impacts. The commenter stated that these impacts need to be included in the rule.

Response: As indicated in the Navy's SOCAL EIS and referenced in the proposed rule, gray whales have a well-defined north-south migratory path that takes them through SOCAL twice a year, and they do not spend much time, if any, feeding within SOCAL. Some calves are born along the coast of California, however, most are born in the shallow protected waters on the Pacific coast on Baja California from Morro de Santo Domingo south to Isla Creciente. These areas are well south of the SOCAL areas used for the majority of Navy operations. The potential impacts to mother-calf pairs from sonar are specifically discussed in the Potential Effects of Specified Activities on Marine Mammals section of the proposed rule. Given the transient nature of gray whale inshore mother-calf occurrence, which is on the order of hours to a day while moving along a more inshore migration path through SOCAL, and in light of the Navy's mitigation measures, though some mother-calf pairs may be behaviorally disturbed, more severe responses are not anticipated and NMFS determined that the take will have a negligible impact on the stock.

Comment 41: One commenter felt that the rule discounts the potential impacts on beaked whales within SOCAL based on assumptions that are unfounded. The first is that strandings are unlikely to occur because events are not planned ''in a location having a constricted channel less than 35 miles wide or with limited egress similar to the Bahamas (because none exist in the SOCAL Range Complex)'' (73 FR 60863). The commenter notes that sonar-associated beaked whale mortalities have occurred in other areas (e.g. the Canary Islands in 2002 and 2004) where such bathymetry was not present, suggesting this as not a requisite characteristic for sonar-influenced strandings. The second is the observation that unusual strandings have not been recorded to date in the region is not an indication that mortalities have not occurred. Given that most species of cetaceans sink upon death, and that most beaked whales occur in very deep water which would prevent decomposing carcasses from eventually refloating, it is highly unlikely that whales suffering mortal injury at sea would have been detected. This is especially true in offshore/island regions, where there is limited shoreline throughout much of the operational area, and much of it is steep or rocky and not conducive to holding moribund individuals or carcasses.

Response: The rule does not discount the potential impacts on beaked whales from sonar. NMFS specifically addresses the potential impacts to beaked whales in the ''Acoustically Mediated Bubble Growth'' , ''Behaviorally Mediated Responses to MFAS That May Lead to Stranding'', ''Stranding and Mortality'', and ''Association Between Mass Stranding Events and Exposure to MFAS'' sections of the proposed rule. Specifically, in recognition of potential impacts to beaked whales and the scientific uncertainty surrounding the exact mechanisms that lead to strandings, the Navy requested, and NMFS has authorized, the mortality of 10 beaked whales over the course of 5 years in the unlikely event that a stranding occurs as a result of Navy training exercises. Additionally, the commenter is misrepresenting a piece of text from the proposed rule—though NMFS points out that the five factors that contributed to the stranding in the Bahamas are not all present in southern California, we do not say that that alone means strandings are unlikely to occur. We also further suggest that caution is recommended when any of the three environmental factors are present (constricted channels, steep bathymetry, or surface

ducts) in the presence of MFAS and beaked whales. Also, NMFS does not ever say that the fact that strandings have not been recorded to date in the region is not an indication that mortalities have not occurred. Rather, we say ''Though not all dead or injured animals are expected to end up on the shore (some may be eaten or float out to sea), one might expect that if marine mammals were being harmed by active sonar with any regularity, more evidence would have been detected over the 40-yr period'' (25 of which, people have actively been collecting stranding data).

Comment 42: One commenter asserts that the Navy's exposure model fails to consider the following important points:

- Possible synergistic effects of using multiple sources in the same exercise, or the combined effects of multiple exercises.
- Indirect effects, such as the potential for mother-calf separation, that can result from short-term disturbance.
- In assuming animals are evenly distributed—the magnifying effects of social structure, whereby impacts on a single animal within a pod, herd, or other unit may affect the entire group.
- In assuming that every whale encountered during subsequent exercises is essentially a new whale—the cumulative impacts on the breeding, feeding, and other activities of species and stocks.

Response: Though the Navy's model does not quantitatively consider the points listed above (because the quantitative data necessary to include those concepts in a mathematical model do not currently exist), NMFS and the Navy have qualitatively addressed those concerns in their effects analyses in the rule and in the Navy's EIS.

Comment 43: One commenter stated: ''NMFS does not properly account for reasonably foreseeable reverberation effects (as in the Haro Strait incident), giving no indication that its modeling sufficiently represents areas in which the risk of reverberation is greatest.''

Response: The model does indirectly incorporate surface-ducting (surface reverberation), as conditions in the model are based on nominal conditions calculated from a generalized digitalized monthly average. Though the model does not directly consider reverberations, these effects are generally at received levels many orders of magnitude below those of direct exposures (as demonstrated in the Haro Strait analysis associated with bottom reverberation) and thus contribute essentially nothing to the cumulative SEL exposure and would not result in the exposure of an animal to a higher SPL than the direct exposure, which is already considered by the model. Additionally, within SOCAL, many of the modeling areas, defined based on regional bathymetry, are relatively deep (>1000 feet) and may not be as influenced by bottom revelation as the more shallow Haro Strait.

Comment 44: One commenter stated that NMFS does not consider the potential for acute synergistic [indirect] effects from sonar training. For example, the agency does not consider the greater susceptibility to vessel strike of animals that have been temporarily harassed or disoriented. The absence of analysis is particularly glaring in light of the 2004 Nowacek *et al.* study, which indicates that mid-frequency sources provoke surfacing and other behavior in North Atlantic right whales that increases the risk of vessel strike.

Response: In the proposed rule, NMFS refers the reader to a conceptual framework that illustrates the variety of avenues of effects that can result from sonar exposure, to include ''risk prone behavior'' resulting somewhat indirectly from attempting to avoid certain received levels. Though we consider the potential for this type of interaction, NMFS does not include detailed analysis of potential indirect effects that have not been empirically demonstrated. Though Nowacek showed that right whales responded to a signal with mid-frequency components (not an actual MFAS signal) in a way that appeared likely to put them at greater risk for ship strike, we do not have evidence that the hypothesized sequence of behaviors has actually led to a ship strike. Additionally, in general and if affected, marine mammals may be affected by (or respond to) sonar in more than one single way when exposed. However, when analyzing impacts, NMFS ''counts'' the most severe response. In the example given by the commenter, NMFS considers the overall possibility of ship strikes resulting from Navy activities, regardless of whether or not they would be preceded by a lesser response.

Comment 45: One commenter asked how oceanographic conditions (e.g., water temperature profiles, water depth, salinity, etc.) will be factored into the modeling of received sound levels of MFAS and underwater detonations. Which oceanographic data sources will be used?

Response: The Take Calculation section of the proposed rule generally discusses how these and other variables are factored into the take estimates and references the Navy's FEIS for the SOCAL Range Complex, which contains the details of the model and how these variables are incorporated. Due to the importance that propagation loss plays in ASW, the Navy has invested heavily over the last four to five decades in measuring and modeling environmental parameters. The result of this effort is the following collection of global databases of environmental parameters that are accepted as standards for all Navy modeling efforts:

- Water depth—Digital Bathymetry Data Base Variable Resolution (DBDBV),
- Sound speed—Generalized Dynamic Environmental Model (GDEM),
- Bottom loss—Low-Frequency Bottom Loss (LFBL), Sediment Thickness Database, and High-Frequency Bottom Loss (HFBL), and
- Wind speed—U.S. Navy Marine Climatic Atlas of the World.

In terms of predicting potential MFAS exposure to marine mammals sighted during Navy training events and in context of the research goals of the SOCAL Monitoring Plan, there are a number of general and classified Navy models using the databases listed above and real-world measurements that may be used to predict likely exposure to compare with concurrent scientific observation of marine mammal behavior conducted under the Monitoring Plan.

General Opposition

Comment 46: The NRDC urged NMFS to withdraw its proposed rule on SOCAL and to revise the document prior to its recirculation for public comment. They suggested NMFS revisit its profoundly flawed analysis of environmental impacts and prescribe mitigation measures that truly result in the least practicable adverse impact on marine species.

Response: NMFS has addressed specific comments related to the effects analysis here and the mitigation measures in the Mitigation Environmental Assessment. We do not believe that the analysis is flawed and we believe that the prescribed measures will result in the least practicable adverse impacts on the affected species or stock. Therefore, NMFS does not intend to withdraw its rule on SOCAL.

Comment 47: A few commenters expressed general opposition to Navy activities and NMFS' issuance of an MMPA authorization and presented several reasons why MFAS was not necessary.

Response: NMFS appreciates the commenter's concern for the marine mammals that live in the area of the proposed activities. However, the MMPA directs NMFS to issue an incidental take authorization if certain findings can be made. Under the

MMPA, NMFS must make the decision of whether or not to issue an authorization based on the proposed action that the applicant submits—the MMPA does not contain a mechanism for NMFS to question the need for the action that the applicant has proposed (unless the action is illegal). Similarly, any U.S. citizen (including the Navy) can request and receive an MMPA authorization as long as all of the necessary findings can be made. NMFS has determined that the Navy training activities in the SOCAL Range Complex will have a negligible impact on the affected species or stocks and, therefore, we plan to issue the requested MMPA authorization.

Other

Comment 48: Two commenters voiced general opposition to the Navy's capture, caging, or harnessing of marine mammals.

Response: The Navy does not intend to capture marine mammals during these activities and this rule does not authorize the capture of marine mammals.

Comment 49: A few members of the public submitted comments on the Navy's EIS that they did not clearly tie to the proposed rule.

Response: The purpose of this comment period was for the public to provide comments on the proposed rule. Responses were not provided to comments on the EIS if their bearing on the MMPA authorization was not clear.

Comment 50: One commenter noted that in the second column of 73 FR 60860, NMFS correctly asserts that ''As discussed in the Bahamas report, there is no likely association between the minke whale and spotted dolphin strandings and the operation of MFAS'' However, on page 60861, third column under Association of Strandings and MFAS, the NMFS incorrectly still lists these species (minke whale and spotted dolphin) as associated with MFAS.'' This is incorrect as NMFS previously states. The sentence reads, ''Other species (*Stenella coeruleoalba, Kogia breviceps* and *Balaenoptera acutorostrata*) have stranded, but in much lower numbers and less consistently than beaked whales'' This sentence should be removed from the NMFS' Final Rule.

Response: NMFS concurs that this sentence is incorrect in the context of discussing the 5 strandings associated with MFAS use and has modified the final rule.

Comment 51: On the third column of 73 FR 60883, after the last sentence in this section, another sentence should be inserted to accurately frame the biological distribution for the species (harbor porpoise) in question. The harbor porpoise is more commonly found in near shore water from Central California north of Point Conception to Alaska.

Response: The commenter is correct. To add clarity, though the harbor porpoise criteria were discussed in the rule, no harbor porpoises are expected to be harassed incidental to the SOCAL action, since SOCAL is outside the normal range of harbor porpoise distribution.

Comment 52: The MMC recommends that NMFS work with the Navy to prepare an adequate analysis under the National Environmental Policy Act of proposed operations at Tanner Bank, but until such an analysis has been completed, NMFS withhold authorization for the taking of marine mammals at that site. MMC noted that the biological importance of Tanner Banks is well documented and any plans to increase naval activity in that area should be carefully evaluated and weighed against the options of increasing the use of alternative, existing countermeasure sites or placing the new minefield site elsewhere where it would be less likely to have a significant biological impact.

Response: The Navy adequately considered alternative minefield sites to the new minefield site at Tanner Banks. As discussed in the SOCAL Draft and Final EIS, the Navy proposed to establish an offshore shallow water minefield in the SOCAL Range Complex to support an overall increased requirement for mine countermeasure training. The EIS proposed an increase in mine warfare training operations at the existing sites, as well as new sites based on expanding mine warfare training requirements in SOCAL associated with:

- Introduction of the MH–60S Helicopters (which have a new mine warfare mission focus),
- Introduction of the Littoral Combat Ship (LCS),
- Transfer of the Navy's mine warfare surface ships to San Diego from other homeports based on BRAC decision, and
- Overall increased emphasis on mine warfare training as a result of concerns about moored mines

Two existing shallow water minefields were considered as alternatives to new proposed sites: ARPA off La Jolla, California and the Kingfisher Range northwest of Eel Point at San Clemente Island. In addition, the Navy evaluated new sites at Tanner Banks, offshore of Camp Pendleton, and off the southern end of San Clemente Island. The feasibility of each of these proposed alternatives were evaluated to determine if they satisfied the following environmental, infrastructure, and operationally-related criteria:

- Provide enough training opportunities and sites to accommodate all the various mine warfare training requirements which may overlap in time and space.
- Provide the unique oceanographic characteristics (depths less than 150 feet and offshore bathymetry with steep sloping canyons) that is representative of real world potential mine warfare operational areas.
- Provide the unique oceanographic characteristics where shallower water depths occur in a relatively open ocean area well away from land masses thereby offering minimal interference from civilian activities.
- Provide proximity to existing undersea ranges to include other mine warfare and anti-submarine ranges with complimentary features such that training opportunities could be optimized in one area reducing time/costs/personnel tempo and fuel (primarily aviation but also fuel costs for ships).
- Geography that optimizes use of the SOCAL Range Complex space during exercises and enhances realism of training (as compared to any other site) by providing a mine warfare training opportunity in the same area where units would be doing other operations at the same time as could be expected while deployed.

The sites off Camp Pendleton and off San Clemente Islands meet several of the sighting requirements and were considered by the Navy. The Tanner Bank site, however, was found to meet all five of the necessary environmental, infrastructure, and operational criteria:

- The new Tanner Bank site ensures that there would be enough sites to provide the required increase mine warfare training by providing a new site away from the existing sites near San Clemente Island and offshore of La Jolla significantly enhancing the availability of training opportunities for the expanded mine warfare training requirements.
- The Tanner Bank site provides a realistic mine warfare environment that contains a series of underwater escarpments, canyons, banks, and sea mounts. Tanner Bank is the highest peak of the undersea ridges.
- The proposed site is approximately 90 nautical miles from the California coastline at San Diego and over 10 miles from San Clemente Island. This location is sufficiently distant to ensure minimal interference from civilian activities.

• The Tanner Bank site is in proximity to the existing Southern California Anti-Submarine Warfare Range (SOAR) and is within the area proposed for expansion of the SOAR, as well as the other ranges available on and around San Clemente Island Offshore Range (SCIUR). This location would allow the co-location of anti-submarine warfare and mine countermeasures training thereby optimizing the undersea warfare training available to a Strike Group, thereby saving time and fuel.

• Overall, the geographic location of the Tanner Bank site would enhance the quality and realism of training available in the SOCAL Range Complex. Significant portions of advanced Strike Group exercise training activities are concentrated in the areas southwest of San Clemente Island; adding a mine warfare range in this area at Tanner Banks allows mine warfare training to be conducted with other training enhancing realism.

Estimated Take of Marine Mammals

As mentioned previously, with respect to the MMPA, NMFS' effects assessments serve three primary purposes: (1) To put forth the permissible methods of taking (i.e., Level B Harassment (behavioral harassment), Level A Harassment (injury), or mortality, including an identification of the number and types of take that could occur by Level A or B harassment or mortality)) and to prescribe other means of effecting the least practicable adverse impact on such species or stock and its habitat (i.e., mitigation); (2) to determine whether the specified activity will have a negligible impact on the affected species or stocks of marine mammals (based on the likelihood that the activity will adversely affect the species or stock through effects on annual rates of recruitment or survival); (3) to determine whether the specified activity will have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (however, there are no subsistence communities that would be affected in southern California, so this determination is inapplicable for this rulemaking); and (4) to prescribe requirements pertaining to monitoring and reporting.

In the Estimated Take of Marine Mammals section of the proposed rule, NMFS related the potential effects to marine mammals from MFAS/HFAS and underwater detonation of explosives (discussed in the Potential Effects of Specified Activities on Marine Mammals Section) to the MMPA definitions of Level A and Level B Harassment and quantified (estimated) the effects on marine mammals that could result from the specific activities that the Navy intends to conduct. The subsections of this analysis are discussed individually below.

Definition of Harassment

The Definition of Harassment section of the proposed rule contained the definitions of Level A and Level B Harassments, and a discussion of which of the previously discussed potential effects of MFAS/HFAS or explosive detonations fall into the categories of Level A Harassment (permanent threshold shift (PTS), acoustically mediated bubble growth, behaviorally mediated bubble growth, and physical disruption of tissues resulting from explosive shock wave) or Level B Harassment (temporary threshold shift (TTS), acoustic masking and communication impairment, and behavioral disturbance rising to the level of harassment). See 73 FR 60836, pages 60876–60877. No changes have been made to the discussion contained in this section of the proposed rule.

Acoustic Take Criteria

In the Acoustic Take Criteria section of the proposed rule, NMFS described the development and application of the acoustic criteria for both MFAS/HFAS and explosive detonations. See 73 FR 60836, pages 60877–60883. No changes have been made to the discussion contained in this section of the proposed rule. NMFS has also summarized the acoustic criteria below.

For MFAS/HFAS, NMFS uses acoustic criteria for PTS, TTS, and behavioral harassment.

NMFS' TTS criteria (which indicate the received level at which onset TTS (>6dB) is induced) for MFAS/HFAS are as follows:

• Cetaceans—195 dB re 1 μPa^2-s (based on mid-frequency cetaceans—no published data exist on auditory effects of noise in low or high frequency cetaceans (Southall *et al.* (2007))

• Harbor Seals (and closely related species)—183 dB re 1 μPa^2-s

• Northern Elephant Seals (and closely related species)—204 dB re 1 μPa^2-s

• California Sea Lions (and closely related species)—206 dB re 1 μPa^2-s

NMFS uses the following acoustic criteria for injury (Level A Harassment):

• Cetaceans—215 dB re 1 μPa^2-s (based on mid-frequency cetaceans—no published data exist on auditory effects of noise in low or high frequency cetaceans (Southall *et al.* (2007))

• Harbor Seals (and closely related species)—203 dB re 1 μPa^2-s

• Northern Elephant Seals (and closely related species)—224 dB re 1 μPa^2-s

• California Sea Lions (and closely related species)—226 dB re 1 μPa^2-s

For the behavioral harassment criteria, NMFS uses acoustic risk functions developed by NMFS, with input from the Navy, to estimate the probability of behavioral responses to MFAS/HFAS (interpreted as the percentage of the exposed population) that NMFS would classify as harassment for the purposes of the MMPA given exposure to specific received levels of MFA sonar. See 73 FR 60836, pages 60879–60883.

Table 13 in the proposed rule summarizes the acoustic criteria for explosive detonations. See 73 FR 60836, page 60883.

Estimates of Potential Marine Mammal Exposures and Authorized Take

Estimating the take that will result from the proposed activities entails the following four general steps: (1) Propagation model estimates animals exposed to sources at different levels; (2) further modeling determines number of exposures to levels indicated in criteria above (i.e., number of takes); (3) post-modeling corrections refine estimates to make them more accurate; and, (4) mitigation is taken into consideration. More information regarding the models used, the assumptions used in the models, and the process of estimating take is available in Appendix F of the Navy's SOCAL Range Complex FEIS.

(1) In order to quantify the types of take described in previous sections that are predicted to result from the Navy's specified activities, the Navy first uses a sound propagation model that predicts the number of animals that will be exposed to a range of levels of pressure and energy (of the metrics used in the criteria) from MFAS/HFAS and explosive detonations based on several important pieces of information, including:

• Characteristics of the sound sources

○ Active sonar source characteristics include: Source level (with horizontal and vertical directivity corrections), source depth, center frequency, source directivity (horizontal/vertical beam width and horizontal/vertical steer direction), and ping spacing.

○ Explosive source characteristics include: The net explosive weight (NEW) of an explosive, the type of explosive, the detonation depth, number of successive explosions.

• Transmission loss (in 13 representative environmental provinces across 8 sonar modeling areas in two

seasons) based on: water depth; sound speed variability throughout the water column (warm season exhibits a weak surface duct, cold season exhibits a relatively strong surface duct); bottom geo-acoustic properties (bathymetry); and wind speed.

• The estimated density of each marine mammal species in the SOCAL Range Complex (see Table 4), horizontally distributed uniformly and vertically distributed according to dive profiles based on field data.

(2) Next, the criteria discussed in the previous section are applied to the estimated exposures to predict the number of exposures that exceed the criteria, i.e., the number of takes by Level B Harassment, Level A Harassment, and mortality.

(3) During the development of the EIS for the SOCAL Range Complex, NMFS and the Navy determined that the output of the model could be made more realistic by applying post-modeling corrections to account for the following:

• Acoustic footprints for active sonar sources must account for land masses (by subtracting them out).

• Acoustic footprints for active sonar sources should not be added independently, rather, the degree to which the footprints from multiple ships participating in the same exercise would typically overlap needs to be taken into consideration.

• Acoustic modeling should account for the maximum number of individuals of a species that could potentially be exposed to active sonar within the course of 1 day or a discreet continuous sonar event if less than 24 hours.

(4) Mitigation measures are taken into consideration by NMFS and adjustments may be applied to the numbers produced by the Navy's modeled estimates. For example, in some cases the raw modeled numbers of exposures to levels predicted to result in Level A Harassment from exposure to MFAS/HFAS might indicate that 1 blue whale would be exposed to levels of active sonar anticipated to result in PTS. However, a blue whale would need to be within approximately 10 m of the source vessel in order to be exposed to these levels. Because of the mitigation measures (watchstanders and shutdown zone), size of blue whales, and nature of blue whale behavior, it is highly unlikely that a blue whale would be exposed to those levels, and therefore the Navy would not request authorization for Level A Harassment of 1 blue whale. Table 6 contains the Navy's modeled take estimates and the number of takes that NMFS is authorizing in these regulations.

(5) Last, the Navy's specified activities have been described based on best estimates of the number of MFAS/HFAS hours that the Navy will conduct. The exact number of hours may vary from year to year, but will not exceed the 5-year total indicated in Table 2 (by multiplying the yearly estimate by 5) by more than 10 percent. NMFS estimates that a 10-percent increase in active sonar hours would result in approximately a 10-percent increase in the number of takes, and we have considered this possibility in our analysis.

	Navy's Estimated Sonar Exposures at Indicated Threshold			Navy's Estimated Explosive Exposures at Indicated Thresholds				NMFS Proposed Take Authorization		
	Level B Take		Level A Take	Level B Take		Level A Take	Mortality	Level B	Level A	Mortality
Species	behavioral	TTS	PTS	sub-TTS	TTS					
Mysticetes										
Blue whale	545	67	1	2	2	0	0	617 (0-1)	0	0
Fin whale	159	12	0	2	1	0	0	174 (0-1)	0	0
Humpback whale	20	2	0	0	0	0	0	22	0	0
Sei whale	0	0	0	0	0	0	0	0	0	0
Bryde's whale	0	0	0	0	0	0	0	0	0	0
Gray whale	4,910	544	1	6	7	0	0	5468 (0-4)	0	0
Minke whale	117	16	0	0	0	0	0	133 (0-16)	0	0
Odontocetes										
Sperm whale	144	8	0	2	1	0	0	155 (0-9)	0	0
Bottlenose dolphin	1,298	194	0	14	10	0	0	1516 (0-101)	0	0
Long beaked common dolphin	4,090	435	1	61	41	1	0	4629 (0-236)	0	0
Northern right whale dolphin	1,347	169	0	19	12	0	0	1547	0	0
Pacific white-sided dolphin	1,191	192	0	12	9	0	0	1404 (0-100)	0	0
Pantropical spotted dolphin	N/A	N/A	N/A	N/A	N/A	N/A	N/A	20*	0	0
Risso's dolphin	3,164	343	0	57	34	1	0	3599 (0-187)	0	0
Rough-toothed dolphin	N/A	N/A	N/A	N/A	N/A	N/A	N/A	20*	0	0
Short beaked common dolphin	34,836	3,730	6	528	354	12	4	39470 (0-1940)	0	0
Spinner dolphin	N/A	N/A	N/A	N/A	N/A	N/A	N/A	20*	0	0
Striped dolphin	1,576	249	1	6	6	0	0	1838 (0-128)	0	0
Dall's porpoise	537	88	0	2	2	0	0	629	0	0
False killer whale	N/A	N/A	N/A	N/A	N/A	N/A	N/A	20*	0	0
Killer whale	13	1	0	0	0	0	0	14	0	0
Melon-headed whale	N/A	N/A	N/A	N/A	N/A	N/A	N/A	20*	0	0
Pygmy killer whale	N/A	N/A	N/A	N/A	N/A	N/A	N/A	20*	0	0
Short-finned pilot whale	46	6	0	0	0	0	0	52	0	0
Dwarf sperm whale	N/A	N/A	N/A	N/A	N/A	N/A	N/A	20*	0	0
Pygmy sperm whale	148	16	0	1	1	0	0	166 (8-17)	0	0
Baird's beaked whale	19	1	0	0	0	0	0	20 (0-1)	0	10 (over 5 years)
Cuvier's beaked whale	390	37	0	5	3	0	0	435 (18-40)	0	
Mesoplodon spp.	122	13	0	2	1	0	0	138(6-14)	0	
Ziphiid whales	93	8	0	2	1	0	0	104 (4-9)	0	
Pinnipeds										
Guadalupe fur seal	874	190	0	2	2	0	0	1068 (0-1)	0	0
Northern elephant seal	837	5	0	76	41	0	0	959 (30-44)	0	0
Pacific harbor seal	1,052	4,562	9	26	26	1	0	5676 (2863-4559)	0	0
California sea lion	54,384	6	0	584	510	16	6	55506 (0-255)	0	0
Northern fur seal	1,076	3	0	90	64	3	1	1237 (0-32)	0	0
Total	**112,988**	**10,897**	**19**	**1,499**	**1,128**	**34**	**11**	126,576	0	10

Table 7. Navy's estimated exposures to indicated criteria and NMFS proposed take authorization. Though exposures are predicted by the model, NMFS does not anticipate any injury/PTS to occur because of the mitigation measures (as related to certain characteristics of animals, such as size, gregariousness, or group size) and likely avoidance behavior of marine mammals. As discussed in the Estimated Take of Marine Mammals Section of the proposed rule for SOCAL, NMFS also anticipates fewer takes by TTS will actually occur than were modeled. Anticipated TTS occurences are indicated in parentheses in the last column (and are already counted within the broad Level B harassment number that NMFS proposes to authorize)

Mortality

Evidence from five beaked whale strandings, all of which have taken place outside of the SOCAL Range Complex, and have occurred over approximately a decade, suggests that the exposure of beaked whales to mid-frequency sonar in the presence of certain conditions (e.g., multiple units using tactical sonar, steep bathymetry, constricted channels, strong surface ducts, etc.) may result in strandings, potentially leading to mortality. Although these physical factors believed to contribute to the likelihood of beaked whale strandings are not present in southern California in the aggregate, scientific uncertainty exists regarding what other factors, or combination of factors, may contribute to beaked whale strandings. Accordingly, to allow for scientific uncertainty regarding contributing causes of beaked whale strandings and the exact behavioral or physiological mechanisms that can lead to the ultimate physical effects (stranding and/or death), the Navy has requested authorization for (and NMFS is authorizing) take, by injury or mortality. Although the Navy has requested take by injury or mortality of 10 beaked whales over the course of the 5-yr regulations, the Navy's model did not predict injurious takes of beaked whales and neither NMFS, nor the Navy anticipates that marine mammal strandings or mortality will result from the operation of MFAS during Navy exercises within the SOCAL Range Complex.

Effects on Marine Mammal Habitat

NMFS' SOCAL Range Complex proposed rule included a detailed section that addressed the effects of the Navy's activities on Marine Mammal Habitat. See 73 FR 60836, pages 60886–60888. The analysis concluded that the Navy's activities would have minimal effects on fish or invertebrates (in their roles as food sources for marine mammals), or water quality in the SOCAL Range Complex. No changes have been made to the discussion

contained in this section of the proposed rule.

Analysis and Negligible Impact Determination

Pursuant to NMFS' regulations implementing the MMPA, an applicant is required to estimate the number of animals that will be ''taken'' by the specified activities (i.e., takes by harassment only, or takes by harassment, injury, and/or death). This estimate informs the analysis that NMFS must perform to determine whether the activity will have a ''negligible impact'' on the species or stock. Level B (behavioral) harassment occurs at the level of the individual(s) and does not assume any resulting population-level consequences, though there are known avenues through which behavioral disturbance of individuals can result in population-level effects (for example: pink-footed geese (*Anser brachyrhynchus*) in undisturbed habitat gained body mass and had about a 46-percent reproductive success compared with geese in disturbed habitat (being consistently scared off the fields on which they were foraging) which did not gain mass and had a 17-percent reproductive success). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (i.e., population-level effects). An estimate of the number of Level B harassment takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), or any of the other variables mentioned in the first paragraph (if known), as well as the number and nature of estimated Level A takes, the number of estimated mortalities, and effects on habitat. Generally speaking, and especially with other factors being equal, the Navy and NMFS anticipate more severe effects from takes resulting from exposure to higher received levels (though this is in no way a strictly linear relationship throughout species, individuals, or circumstances) and less severe effects from takes resulting from exposure to lower received levels.

In the Analysis and Negligible Impact Determination section of the proposed rule, NMFS addressed the issues identified in the preceding paragraph in combination with additional detailed analysis regarding the severity of the anticipated effects, and including species (or group)-specific discussions, to determine that Navy activities utilizing MFAS/HFAS and underwater detonations will have a negligible impact on the marine mammal species and stocks present in the SOCAL Range Complex. No changes have been made to the discussion contained in this section of the proposed rule. See 73 FR 60836, pages 60889–60899.

Subsistence Harvest of Marine Mammals

NMFS has determined that the issuance of these regulations and subsequent LOAs for Navy activities in the SOCAL Range Complex would not have an unmitigable adverse impact on the availability of the affected species or stocks for taking for subsistence uses, since there are no such uses in the specified area.

ESA

There are nine marine mammal species and four sea turtle species listed as threatened or endangered under the ESA with confirmed or possible occurrence in the study area: Humpback whale, North Pacific right whale, sei whale, fin whale, blue whale, sperm whale, southern resident killer whale, Guadalupe fur seal, Steller sea lion, loggerhead sea turtle, the green sea turtle, leatherback sea turtle, and olive ridley sea turtle. White Abalone (*Haliotis sorenseni*) are also present in the Navy's action area. Pursuant to Section 7 of the ESA, the Navy has consulted with NMFS on this action. NMFS has also consulted internally on the issuance of regulations under section 101(a)(5)(A) of the MMPA for this activity. In a Biological Opinion (BiOp), NMFS concluded that the Navy's activities in the SOCAL Range Complex and NMFS' issuance of these regulations are not likely to jeopardize the continued existence of threatened or endangered species or destroy or adversely modify any designated critical habitat.

NMFS (the Endangered Species Division) will also issue BiOps and associated incidental take statements (ITSs) to NMFS (the Permits, Conservation, and Recreation Division) to exempt the take (under the ESA) that NMFS authorizes in the LOAs under the MMPA. Because of the difference between the statutes, it is possible that ESA analysis of the applicant's action could produce a take estimate that is different than the takes requested by the applicant (and analyzed for authorization by NMFS under the MMPA process), despite the fact that the same proposed action (i.e. number of sonar hours and explosive detonations) was being analyzed under each statute. When this occurs, NMFS staff coordinate to ensure that that the most conservative (lowest) number of takes are authorized. For the Navy's proposed training in the SOCAL Range Complex, coordination with the Endangered Species Division indicates that they will likely allow for a lower level of take of ESA-listed marine mammals than were requested by the applicant (because their analysis indicates that fewer will be taken than estimated by the applicant). Therefore, the number of authorized takes in NMFS' LOA(s) will reflect the lower take numbers from the ESA consultation, though the specified activities (i.e., number of sonar hours, etc.) will remain the same. Alternately, these regulations indicate the maximum number of takes that may be authorized under the MMPA.

The ITS(s) issued for each LOA will contain implementing terms and conditions to minimize the effect of the marine mammal take authorized through the 2009 LOA (and subsequent LOAs in 2010, 2011, 2012, and 2013). With respect to listed marine mammals, the terms and conditions of the ITSs will be incorporated into the LOAs.

NEPA

NMFS participated as a cooperating agency on the Navy's Final Environmental Impact Statement (FEIS) for the Southern California Range Complex. NMFS subsequently adopted the Navy's EIS for the purpose of complying with the MMPA. Additionally, NMFS prepared an Environmental Assessment (EA) that tiered off the Navy's FEIS. The EA analyzed the environmental effects of several different mitigation alternatives for the issuance of the SOCAL Range Complex rule and subsequent LOAs. A finding of no significant impact for the mitigation EA was issued in January, 2009.

Determination

Based on the analysis contained herein and in the proposed rule (and other related documents) of the likely effects of the specified activity on marine mammals and their habitat and dependent upon the implementation of the mitigation measures, NMFS finds that the total taking from Navy training, maintenance, and RDT&E activities utilizing MFAS/HFAS and underwater explosives in the SOCAL Range Complex over the 5 year period will have a negligible impact on the affected species or stocks and will not result in an unmitigable adverse impact on the availability of marine mammal species

or stocks for taking for subsistence uses because no subsistence uses exist in the SOCAL Range Complex. NMFS has issued regulations for these exercises that prescribe the means of effecting the least practicable adverse impact on marine mammals and their habitat and set forth requirements pertaining to the monitoring and reporting of that taking.

Classification

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

Pursuant to the procedures established to implement section 6 of Executive Order 12866, the Office of Management and Budget has determined that this final rule is significant.

Pursuant to the Regulatory Flexibility Act, the Chief Counsel for Regulation of the Department of Commerce certified at the proposed rule stage to the Chief Counsel for Advocacy of the Small Business Administration that this final rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The Regulatory Flexibility Act requires Federal agencies to prepare an analysis of a rule's impact on small entities whenever the agency is required to publish a notice of proposed rulemaking. However, a Federal agency may certify, pursuant to 5 U.S.C. section 605(b), that the action will not have a significant economic impact on a substantial number of small entities. The Navy is the entity that will be affected by this rulemaking, not a small governmental jurisdiction, small organization or small business, as defined by the Regulatory Flexibility Act. Any requirements imposed by a Letter of Authorization issued pursuant to these regulations, and any monitoring or reporting requirements imposed by these regulations, will be applicable only to the Navy. Because this action, if adopted, would directly affect the Navy and not a small entity, NMFS concludes the action would not result in a significant economic impact on a substantial number of small entities.

The Assistant Administrator for Fisheries has determined that there is good cause under the Administrative Procedure Act (5 U.S.C. 553(d)(3)) to waive the 30-day delay in effective date of the measures contained in the final rule. Since January 23, 2007, the Navy has been conducting military readiness activities employing mid-frequency active sonar (MFAS) pursuant to a 2-year MMPA National Defense Exemption (NDE). The NDE served as a bridge to long-term compliance with the MMPA while the Navy prepared its Environmental Impact Statement and pursued the necessary MMPA incidental take authorization for the SOCAL Range Complex. The NDE will expire on January 23, 2009, by which time it is imperative that the regulations and the measures identified in a subsequent LOA become effective. Any delay of these measures would result in either: (1) A suspension of ongoing or planned naval exercises, which would disrupt vital sequential training and certification processes essential to national security; or (2) the Navy's non-compliance with the MMPA (should the Navy conduct exercises without an LOA), thereby resulting in the potential for unauthorized takes of marine mammals upon expiration of the NDE. National security and NMFS' and Navy's preference that the Navy be in compliance with the MMPA after January 23, 2009, dictate that these measures go into effect immediately. The Navy is the entity subject to the regulations and has informed NMFS that it is imperative that these measures be effective on or before January 23, 2009. Finally, as recognized by the President when issuing the Presidential Exemption under the CZMA for the SOCAL COMPTUEX/JTFEX exercises, the training proposed to be conducted in SOCAL is in the paramount interest of the United States. Also, the Supreme Court noted SOCAL is an ideal location for conducting integrated training exercises as the only area on the west coast that is relatively close to land, air and sea bases as well as amphibious landings areas. Any delay in the implementation of these measures would raise serious national security implications. Therefore, these measures will become effective upon filing.

List of Subjects in 50 CFR Part 216

Exports, Fish, Imports, Incidental take, Indians, Labeling, Marine mammals, Navy, Penalties, Reporting and recordkeeping requirements, Seafood, Sonar, Transportation.

Dated: January 14, 2009.

Samuel D. Rauch III,

Deputy Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For reasons set forth in the preamble, 50 CFR Part 216 is amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

■ 2. Subpart X is added to part 216 to read as follows:

Subpart X—Taking Marine Mammals Incidental to U.S. Navy Training in the Southern California Range Complex

Sec.
216.270 Specified activity and specified geographical region.
216.271 Effective dates and definitions.
216.272 Permissible methods of taking.
216.273 Prohibitions.
216.274 Mitigation.
216.275 Requirements for monitoring and reporting.
216.276 Applications for Letters of Authorization.
216.277 Letters of Authorization.
216.278 Renewal of Letters of Authorization.
216.279 Modifications to Letters of Authorization.

Subpart X—Taking Marine Mammals Incidental to U.S. Navy Training in the Southern California Range Complex (SOCAL Range Complex)

§ 216.270 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the U.S. Navy for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occurs incidental to the activities described in paragraph (c) of this section.

(b) The taking of marine mammals by the Navy is only authorized if it occurs within the SOCAL Range Complex (as depicted in Figure ES–1 in the Navy's Final Environmental Impact Statement for the SOCAL Range Complex), which extends southwest from southern California in an approximately 700 by 200 nm rectangle with the seaward corners at 27°30′00″ N. lat.; 127°10′04″ W. long. and 24°00′01″ N. lat.; 125°00′03″ W. long.

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities within the designated amounts of use:

(1) The use of the following mid-frequency active sonar (MFAS) sources, high frequency active sonar (HFAS) sources for U.S. Navy anti-submarine warfare (ASW), mine warfare (MIW) training, maintenance, or research, development, testing, and evaluation (RDT&E) in the amounts indicated below (+/ − 10 percent):

(i) AN/SQS–53 (hull-mounted active sonar)—up to 9885 hours over the course of 5 years (an average of 1977 hours per year)

(ii) AN/SQS–56 (hull-mounted active sonar)—up to 2470 hours over the course of 5 years (an average of 494 hours per year)

(iii) AN/BQQ–10 (submarine active sonar)—up to 4075 hours over the course of 5 years (an average of 815 hours per year)(an average of 2 pings per hour during training events, 60 pings per hour for maintenance)
(iv) AN/AQS–22 or 13 (active helicopter dipping sonar)—up to 13595 dips over the course of 5 years (an average of 2719 dips per year—10 pings per dip)
(v) SSQ–62 (Directional Command Activated Sonobuoy System (DICASS) sonobuoys)—up to 21275 sonobuoys over the course of 5 years (an average of 4255 sonobuoys per year)
(vi) MK–48 (heavyweight torpedoes)—up to 435 torpedoes over the course of 5 years (an average of 87 torpedoes per year)
(vii) AN/BQQ–15 (submarine navigational sonar)—up to 610 hours over the course of 5 years (an average of 122 hours per year)
(viii) MK–46 (lightweight torpedoes)—up to 420 torpedoes over the course of 5 years (an average of 84 torpedoes per year)
(ix) AN/SLQ–25A NIXIE—up to 1135 hours over the course of 5 years (an average of 227 hours per year)
(x) AN/SSQ–125 (AEER sonar sonobuoy)—up to 540 sonobuoys (total, of EER/IEER and AEER) over the course of 5 years (an average of 108 per year))

(2) The detonation of the underwater explosives identified in paragraph (c)(2)(i) conducted as part of the training exercises identified in paragraph (c)(2)(ii):
(i) Underwater Explosives:
(A) 5'' Naval Gunfire (9.5 lbs)
(B) 76 mm rounds (1.6 lbs)
(C) Maverick (78.5 lbs)
(D) Harpoon (448 lbs)
(E) MK–82 (238 lbs)
(F) MK–83 (574 lbs)
(G) MK–84 (945 lbs)
(H) MK–48 (851 lbs)
(I) Demolition Charges (20 lbs)
(J) AN/SSQ–110A (IEER explosive sonobuoy—5 lbs)
(ii) Training Events:
(A) Surface-to-surface Gunnery Exercises (S–S GUNEX)—up to 2010 exercises over the course of 5 years (an average of 402 per year)
(B) Air-to-surface Missile Exercises (A-S MISSILEX)—up to 250 exercises over the course of 5 years (an average of 50 per year)
(C) Bombing Exercises (BOMBEX)—up to 200 exercises over the course of 5 years (an average of 40 per year)
(D) Sinking Exercises (SINKEX)—up to 10 exercises over the course of 5 years (an average of 2 per year)
(E) Extended Echo Ranging and Improved Extended Echo Ranging (EER/IEER) Systems—up to 15 exercises (total, of EER/IEER and AEER combined) over the course of 5 years (an average of 3 exercises, or 108 sonobuoy deployments, per year).

§ 216.271 Effective dates and definitions.

(a) Regulations are effective January 14, 2009 through January 14, 2014.

(b) The following definitions are utilized in these regulations:

(1) Uncommon Stranding Event (USE)—A stranding event that takes place during an integrated, coordinated, or major training exercise (MTE) and involves any one of the following:

(i) Two or more individuals of any cetacean species (not including mother/calf pairs, unless of species of concern listed in § 216.271(b)(1)(ii) found dead or live on shore within a two day period and occurring within 30 miles of one another.

(ii) A single individual or mother/calf pair of any of the following marine mammals of concern: Beaked whale of any species, dwarf or pygmy sperm whales, short-finned pilot whales, humpback whales, sperm whales, blue whales, fin whales, or sei whales.

(iii) A group of 2 or more cetaceans of any species exhibiting indicators of distress as defined in the SOCAL Range Complex Stranding Response Plan.

(2) Shutdown—The cessation of MFAS/HFAS operation or detonation of explosives within 14 nm of any live, in the water, animal involved in a USE.

§ 216.272 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§ 216.106 and 216.277, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals within the area described in § 216.270(b), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The activities identified in § 216.270(c) must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals and their habitat.

(c) The incidental take of marine mammals under the activities identified in § 216.270(c) is limited to the following species, by the indicated method of take and the indicated number of times:

(1) Level B Harassment (+/−10 percent of the number of takes indicated below):
(i) Mysticetes:
(A) Humpback whale (*Megaptera novaeangliae*)—110 (an average of 22 annually)
(B) Fin whale (*Balaenoptera physalus*)—870 (an average of 174 annually)
(C) Blue whale (*Balaenoptera musculus*)—3085 (an average of 617 annually)
(D) Minke whale (*Balaenoptera acutorostrata*)—665 (an average of 133 annually)
(E) Gray whale (*Eschrichtius robustus*)—27340 (an average of 5468 annually)
(ii) Odontocetes:
(A) Sperm whales (*Physeter macrocephalus*)—775 (an average of 155 annually)
(B) Pygmy sperm whales (*Kogia breviceps*)—830 (an average of 166 annually)
(C) Dwarf sperm whale (*Kogia sima*)—100 (an average of 20 annually)
(D) Mesoplodont beaked whales (Blainville's, Hubb's, Perrin's, pygmy, and ginkgo-toothed) (*Mesoplodon densirostris, M. carlhubbsi, M. perrini, M. peruvianus, M. ginkgodens*)—690 (an average of 138 annually)
(E) Cuvier's beaked whales (*Ziphius cavirostris*)—2175 (an average of 435 annually)
(F) Baird's beaked whales (*Berardius bairdii*)—100 (an average of 20 annually)
(G) Unidentified beaked whales—555 (an average of 104 annually)
(H) Rough-toothed dolphin (*Steno bredanensis*)—100 (an average of 20 annually)
(I) Bottlenose dolphin (*Tursiops truncatus*)—7480 (an average of 1516 annually)
(J) Pan-tropical spotted dolphin (*Stenella attenuata*)—100 (an average of 20 annually)
(K) Spinner dolphin (*Stenella longirostris*)—100 (an average of 20 annually)
(L) Striped dolphin (*Stenella coeruleoalba*)—9190 (an average of 1838 annually)
(M) Long-beaked common dolphin (*Delphinus capensis*)—23145 (an average of 4629 annually)
(N) Risso's dolphin (*Grampus griseus*)—17995 (an average of 3599 annually)
(O) Northern right whale dolphin (*Lissodelphis borealis*)—7935 (an average of 1547 annually)
(P) Pacific white-sided dolphin (*Lagenorhynchus obliquidens*)—7020 (an average of 1404 annually)
(Q) Short-beaked common dolphin (*Delphinus delphis*)—197350 (an

average of 39470 annually)

(R) Melon-headed whale (*Peponocephala electra*)—100 (an average of 20 annually)

(S) Pygmy killer whale (*Feresa attenuata*)—100 (an average of 20 annually)

(T) False killer whale (*Pseudorca crassidens*)—100 (an average of 20 annually)

(U) Killer whale (*Orcinus orca*)—70 (an average of 14 annually)

(V) Short-finned pilot whale (*Globicephala macrorynchus*)—260 (an average of 52 annually)

(W) Dall's porpoise (*Phocoenoides dalli*)—3145 (an average of 629 annually)

(iii) Pinnipeds:

(A) Northern elephant seal (*Mirounga angustirostris*)—4795 (an average of 959 annually)

(B) Pacific harbor seal (*Phoca vitulina*)—28380 (an average of 5676 annually)

(C) California sea lion (*Zalophus californianus*)—277530 (an average of 55506 annually)

(D) Northern fur seal (*Callorhinus ursinus*)—6185 (an average of 1237 annually)

(E) Guadalupe fur seal (*Arctocephalus townsendi*)—5340 (an average of 1068 annually)

(2) Level A Harassment and/or mortality of no more than 10 beaked whales (total), of any of the species listed in § 216.272(c)(1)(ii)(D) through (G) over the course of the 5-year regulations.

§ 216.273 Prohibitions.

Notwithstanding takings contemplated in § 216.272 and authorized by a Letter of Authorization issued under §§ 216.106 and 216.277, no person in connection with the activities described in § 216.270 may:

(a) Take any marine mammal not specified in § 216.272(c);

(b) Take any marine mammal specified in § 216.272(c) other than by incidental take as specified in § 216.272(c)(1) and (2);

(c) Take a marine mammal specified in § 216.272(c) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or a Letter of Authorization issued under §§ 216.106 and 216.277.

§ 216.274 Mitigation.

(a) When conducting activities identified in § 216.270(c), the mitigation measures contained in the Letter of Authorization issued under §§ 216.106 and 216.277 must be implemented. These mitigation measures include, but are not limited to:

(1) Navy's General SOCAL Maritime Measures for All Training at Sea:

(i) Personnel Training (for all Training Types):

(A) All commanding officers (COs), executive officers (XOs), lookouts, Officers of the Deck (OODs), junior OODs (JOODs), maritime patrol aircraft aircrews, and Anti-submarine Warfare (ASW)/Mine Warfare (MIW) helicopter crews shall complete the NMFS-approved Marine Species Awareness Training (MSAT) by viewing the U.S. Navy MSAT digital versatile disk (DVD). All bridge lookouts shall complete both parts one and two of the MSAT; part two is optional for other personnel.

(B) Navy lookouts shall undertake extensive training in order to qualify as a watchstander in accordance with the Lookout Training Handbook (Naval Education and Training Command [NAVEDTRA] 12968–D).

(C) Lookout training shall include on-the-job instruction under the supervision of a qualified, experienced lookout. Following successful completion of this supervised training period, lookouts shall complete the Personal Qualification Standard Program, certifying that they have demonstrated the necessary skills (such as detection and reporting of partially submerged objects). Personnel being trained as lookouts can be counted among required lookouts as long as supervisors monitor their progress and performance.

(D) Lookouts shall be trained in the most effective means to ensure quick and effective communication within the command structure in order to facilitate implementation of mitigation measures if marine species are spotted.

(ii) Operating Procedures and Collision Avoidance:

(A) Prior to major exercises, a Letter of Instruction, Mitigation Measures Message or Environmental Annex to the Operational Order shall be issued to further disseminate the personnel training requirement and general marine species mitigation measures.

(B) COs shall make use of marine species detection cues and information to limit interaction with marine species to the maximum extent possible consistent with safety of the ship.

(C) While underway, surface vessels shall have at least two lookouts with binoculars; surfaced submarines shall have at least one lookout with binoculars. Lookouts already posted for safety of navigation and man-overboard precautions may be used to fill this requirement. As part of their regular duties, lookouts will watch for and report to the OOD the presence of marine mammals.

(D) On surface vessels equipped with a mid-frequency active sensor, pedestal mounted ''Big Eye'' (20x110) binoculars shall be properly installed and in good working order to assist in the detection of marine mammals in the vicinity of the vessel.

(E) Personnel on lookout shall employ visual search procedures employing a scanning methodology in accordance with the Lookout Training Handbook (NAVEDTRA 12968–D).

(F) After sunset and prior to sunrise, lookouts shall employ Night Lookout Techniques in accordance with the Lookout Training Handbook. (NAVEDTRA 12968–D).

(G) While in transit, naval vessels shall be alert at all times, use extreme caution, and proceed at a ''safe speed'' so that the vessel can take proper and effective action to avoid a collision with any marine animal and can be stopped within a distance appropriate to the prevailing circumstances and conditions.

(H) When marine mammals have been sighted in the area, Navy vessels shall increase vigilance and take reasonable and practicable actions to avoid collisions and activities that might result in close interaction of naval assets and marine mammals. Actions may include changing speed and/or direction and are dictated by environmental and other conditions (e.g., safety, weather).

(I) Floating weeds and kelp, algal mats, clusters of seabirds, and jellyfish are good indicators of marine mammals. Therefore, where these circumstances are present, the Navy shall exercise increased vigilance in watching for marine mammals.

(J) Navy aircraft participating in exercises at sea shall conduct and maintain, when operationally feasible and safe, surveillance for marine mammals as long as it does not violate safety constraints or interfere with the accomplishment of primary operational duties. Marine mammal detections shall be immediately reported to assigned Aircraft Control Unit for further dissemination to ships in the vicinity of the marine species as appropriate when it is reasonable to conclude that the course of the ship will likely result in a closing of the distance to the detected marine mammal.

(K) All vessels shall maintain logs and records documenting training operations should they be required for event reconstruction purposes. Logs and records will be kept for a period of 30

days following completion of a major training exercise.

(2) Navy's Measures for MFAS Operations:

(i) Personnel Training (for MFAS Operations):

(A) All lookouts onboard platforms involved in ASW training events shall review the NMFS-approved Marine Species Awareness Training material prior to use of mid-frequency active sonar.

(B) All COs, XOs, and officers standing watch on the bridge shall have reviewed the Marine Species Awareness Training material prior to a training event employing the use of mid-frequency active sonar.

(C) Navy lookouts shall undertake extensive training in order to qualify as a watchstander in accordance with the Lookout Training Handbook (Naval Educational Training [NAVEDTRA], 12968-D).

(D) Lookout training shall include on-the-job instruction under the supervision of a qualified, experienced watchstander. Following successful completion of this supervised training period, lookouts shall complete the Personal Qualification Standard program, certifying that they have demonstrated the necessary skills (such as detection and reporting of partially submerged objects). This does not forbid personnel being trained as lookouts from being counted as those listed in previous measures so long as supervisors monitor their progress and performance.

(E) Lookouts shall be trained in the most effective means to ensure quick and effective communication within the command structure in order to facilitate implementation of mitigation measures if marine species are spotted.

(ii) Lookout and Watchstander Responsibilities:

(A) On the bridge of surface ships, there shall always be at least three people on watch whose duties include observing the water surface around the vessel.

(B) All surface ships participating in ASW training events shall, in addition to the three personnel on watch noted previously, have at all times during the exercise at least two additional personnel on watch as marine mammal lookouts.

(C) Personnel on lookout and officers on watch on the bridge shall have at least one set of binoculars available for each person to aid in the detection of marine mammals.

(D) On surface vessels equipped with mid-frequency active sonar, pedestal mounted ''Big Eye'' (20x110) binoculars shall be present and in good working order to assist in the detection of marine mammals in the vicinity of the vessel.

(E) Personnel on lookout shall employ visual search procedures employing a scanning methodology in accordance with the Lookout Training Handbook (NAVEDTRA 12968–D).

(F) After sunset and prior to sunrise, lookouts shall employ Night Lookouts Techniques in accordance with the Lookout Training Handbook.

(G) Personnel on lookout shall be responsible for reporting all objects or anomalies sighted in the water (regardless of the distance from the vessel) to the Officer of the Deck, since any object or disturbance (e.g., trash, periscope, surface disturbance, discoloration) in the water may be indicative of a threat to the vessel and its crew or indicative of a marine species that may need to be avoided as warranted.

(iii) Operating Procedures:

(A) Navy will distribute final mitigation measures contained in the LOA and the Incidental take statement of NMFS' biological opinion to the Fleet.

(B) COs shall make use of marine species detection cues and information to limit interaction with marine species to the maximum extent possible consistent with safety of the ship.

(C) All personnel engaged in passive acoustic sonar operation (including aircraft, surface ships, or submarines) shall monitor for marine mammal vocalizations and report the detection of any marine mammal to the appropriate watch station for dissemination and appropriate action.

(D) During mid-frequency active sonar operations, personnel shall utilize all available sensor and optical systems (such as night vision goggles) to aid in the detection of marine mammals.

(E) Navy aircraft participating in exercises at sea shall conduct and maintain, when operationally feasible and safe, surveillance for marine species of concern as long as it does not violate safety constraints or interfere with the accomplishment of primary operational duties.

(F) Aircraft with deployed sonobuoys shall use only the passive capability of sonobuoys when marine mammals are detected within 200 yds (183 m) of the sonobuoy.

(G) Marine mammal detections shall be immediately reported to assigned Aircraft Control Unit for further dissemination to ships in the vicinity of the marine species as appropriate where it is reasonable to conclude that the course of the ship will likely result in a closing of the distance to the detected marine mammal.

(H) Safety Zones—When marine mammals are detected by any means (aircraft, shipboard lookout, or acoustically) within or closing to inside 1,000 yds (914 m) of the sonar dome (the bow), the ship or submarine shall limit active transmission levels to at least 6 decibels (dB) below normal operating levels.

(*1*) Ships and submarines shall continue to limit maximum transmission levels by this 6-dB factor until the animal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yds (1829 m) beyond the location of the last detection.

(*2*) Should a marine mammal be detected within or closing to inside 500 yds (457 m) of the sonar dome, active sonar transmissions shall be limited to at least 10–dB below the equipment's normal operating level. Ships and submarines shall continue to limit maximum ping levels by this 10–dB factor until the animal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yds (1829 m) beyond the location of the last detection.

(*3*) Should the marine mammal be detected within or closing to inside 200 yds (183 m) of the sonar dome, active sonar transmissions shall cease. Sonar shall not resume until the animal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yds (1829 m) beyond the location of the last detection.

(*4*) Special conditions applicable for dolphins and porpoises only: If, after conducting an initial maneuver to avoid close quarters with dolphins or porpoises, the OOD concludes that dolphins or porpoises are deliberately closing to ride the vessel's bow wave, no further mitigation actions are necessary while the dolphins or porpoises continue to exhibit bow wave riding behavior.

(*5*) If the need for power-down should arise as detailed in paragraph (a)(2)(iii)(H) of this section, the Navy shall follow the requirements as though they were operating at 235 dB—the normal operating level (i.e., the first power-down will be to 229 dB, regardless of at what level above 235 dB active sonar was being operated).

(I) Prior to start up or restart of active sonar, operators will check that the Safety Zone radius around the sound source is clear of marine mammals.

(J) Active sonar levels (generally)—Navy shall operate active sonar at the lowest practicable level, not to exceed 235 dB, except as required to meet tactical training objectives.

(K) Helicopters shall observe/survey the vicinity of an ASW training event for 10 minutes before the first deployment of active (dipping) sonar in the water.

(L) Helicopters shall not dip their active sonar within 200 yds (183 m) of a marine mammal and shall cease pinging if a marine mammal closes within 200 yds (183 m) after pinging has begun.

(M) Submarine sonar operators shall review detection indicators of close-aboard marine mammals prior to the commencement of ASW training events involving active mid-frequency sonar.

(N) Night vision goggles shall be available to all ships and air crews, for use as appropriate.

(3) Navy's Measures for Underwater Detonations:

(i) Surface-to-Surface Gunnery (explosive rounds):

(A) Lookouts shall visually survey for floating weeds and kelp. Intended impact (i.e., where the Navy is aiming) shall not be within 600 yds (585 m) of known or observed floating weeds and kelp, and algal mats.

(B) For exercises using targets towed by a vessel or aircraft, target-towing vessels/aircraft shall maintain a trained lookout for marine mammals, if applicable. If a marine mammal is sighted in the vicinity, the tow aircraft/vessel shall immediately notify the firing vessel, which shall suspend the exercise until the area is clear.

(C) A 600-yard radius buffer zone shall be established around the intended target.

(D) From the intended firing position, trained lookouts shall survey the buffer zone for marine mammals prior to commencement and during the exercise as long as practicable.

(E) The exercise shall be conducted only when the buffer zone is visible and marine mammals are not detected within it.

(ii) Surface-to-Surface Gunnery (non-explosive rounds):

(A) Lookouts shall visually survey for floating weeds and kelp, and algal mats. Intended impact will not be within 200 yds (183 m) of known or observed floating weeds and kelp, and algal mats.

(B) A 200-yd (183 m) radius buffer zone shall be established around the intended target.

(C) From the intended firing position, trained lookouts shall survey the buffer zone for marine mammals prior to commencement and during the exercise as long as practicable.

(D) If applicable, target towing vessels shall maintain a lookout. If a marine mammal is sighted in the vicinity of the exercise, the tow vessel shall immediately notify the firing vessel in order to secure gunnery firing until the area is clear.

(E) The exercise shall be conducted only when the buffer zone is visible and marine mammals are not detected within the target area and the buffer zone.

(iii) Surface-to-Air Gunnery (explosive and non-explosive rounds):

(A) Vessels shall orient the geometry of gunnery exercises in order to prevent debris from falling in the area of sighted marine mammals.

(B) Vessels will expedite the recovery of any parachute deploying aerial targets to reduce the potential for entanglement of marine mammals.

(C) Target towing aircraft shall maintain a lookout, if applicable. If a marine mammal is sighted in the vicinity of the exercise, the tow aircraft shall immediately notify the firing vessel in order to secure gunnery firing until the area is clear.

(iv) Air-to-Surface Gunnery (explosive and non-explosive rounds)

(A) If surface vessels are involved, lookouts will visually survey for floating kelp in the target area. Impact shall not occur within 200 yds (183 m) of known or observed floating weeds and kelp or algal mats.

(B) A 200 yd (183 m) radius buffer zone shall be established around the intended target.

(C) If surface vessels are involved, lookout(s) shall visually survey the buffer zone for marine mammals prior to and during the exercise.

(D) Aerial surveillance of the buffer zone for marine mammals shall be conducted prior to commencement of the exercise. Aircraft crew/pilot shall maintain visual watch during exercises. Release of ordnance through cloud cover is prohibited: aircraft must be able to actually see ordnance impact areas.

(E) The exercise shall be conducted only if marine mammals are not visible within the buffer zone.

(v) Small Arms Training—(grenades, explosive and non-explosive rounds)—Lookouts will visually survey for floating weeds or kelp, algal mats, and marine mammals. Weapons shall not be fired in the direction of known or observed floating weeds or kelp, algal mats, or marine mammals.

(vi) Air-to-Surface At-sea Bombing Exercises (explosive and non-explosive):

(A) If surface vessels are involved, trained lookouts shall survey for floating kelp and marine mammals. Ordnance shall not be targeted to impact within 1,000 yds (914 m) of known or observed floating kelp or marine mammals.

(B) A 1,000 yd (914 m) radius buffer zone shall be established around the intended target.

(C) Aircraft shall visually survey the target and buffer zone for marine mammals prior to and during the exercise. The survey of the impact area shall be made by flying at 1,500 ft (152 m) or lower, if safe to do so, and at the slowest safe speed. Release of ordnance through cloud cover is prohibited: aircraft must be able to actually see ordnance impact areas. Survey aircraft should employ most effective search tactics and capabilities.

(D) The exercise will be conducted only if marine mammals are not visible within the buffer zone.

(vii) Air-to-Surface Missile Exercises (explosive and non-explosive):

(A) Ordnance shall not be targeted to impact within 1,800 yds (1646 m) of known or observed floating kelp.

(B) Aircraft shall visually survey the target area for marine mammals. Visual inspection of the target area shall be made by flying at 1,500 (457 m) feet or lower, if safe to do so, and at slowest safe speed. Firing or range clearance aircraft must be able to actually see ordnance impact areas. Explosive ordnance shall not be targeted to impact within 1,800 yds (1646 m) of sighted marine mammals.

(viii) Demolitions, Mine Warfare, and Mine Countermeasures (up to a 20-lb NEW charge):

(A) Exclusion Zones—All Demolitions, Mine Warfare and Mine Countermeasures Operations involving the use of explosive charges must include exclusion zones for marine mammals to prevent physical and/or acoustic effects to those species. These exclusion zones shall extend in a 700-yard arc radius around the detonation site.

(B) Pre-Exercise Surveys—For Demolition and Ship Mine Countermeasures Operations, pre-exercise survey shall be conducted within 30 minutes prior to the commencement of the scheduled explosive event. The survey may be conducted from the surface, by divers, and/or from the air, and personnel shall be alert to the presence of any marine mammal. Should a marine mammal be present within the survey area, the exercise shall be paused until the animal voluntarily leaves the area. The Navy shall suspend detonation exercises and ensure the area is clear for a full 30 minutes prior to detonation. Personnel shall record any marine mammal observations during the exercise.

(C) Post-Exercise Surveys—Surveys within the same radius shall also be

conducted within 30 minutes after the completion of the explosive event.

(D) Reporting—If there is evidence that a marine mammal may have been stranded, injured or killed by the action, Navy activities shall be immediately suspended and the situation immediately reported by the participating unit to the Officer in Charge of the Exercise (OCE), who will follow Navy procedures for reporting the incident to Commander, Pacific Fleet, Commander, Third Fleet, Commander, Navy Region Southwest, Environmental Director, and the chain-of-command. The situation shall also be reported to NMFS (see Stranding Plan for details).

(ix) Mining Operations—Initial target points shall be briefly surveyed prior to inert ordnance (no live ordnance used) release from an aircraft to ensure the intended drop area is clear of marine mammals. To the extent feasible, the Navy shall retrieve inert mine shapes dropped during Mining Operations.

(x) Sink Exercise:

(A) All weapons firing shall be conducted during the period 1 hour after official sunrise to 30 minutes before official sunset.

(B) An exclusion zone with a radius of 1.5 nm shall be established around each target. This 1.5 nm zone includes a buffer of 0.5 nm to account for errors, target drift, and animal movement. In addition to the 1.5 nm exclusion zone, a further safety zone, which extends from the exclusion zone at 1.5 nm out an additional 0.5 nm, shall be surveyed. Together, the zones (exclusion and safety) extend out 2 nm from the target.

(C) A series of surveillance over-flights shall be conducted within the exclusion and the safety zones, prior to and during the exercise, when feasible. Survey protocol shall be as follows:

(*1*) Overflights within the exclusion zone shall be conducted in a manner that optimizes the surface area of the water observed. This may be accomplished through the use of the Navy's Search and Rescue Tactical Aid, which provides the best search altitude, ground speed, and track spacing for the discovery of small, possibly dark objects in the water based on the environmental conditions of the day. These environmental conditions include the angle of sun inclination, amount of daylight, cloud cover, visibility, and sea state.

(*2*) All visual surveillance activities shall be conducted by Navy personnel trained in visual surveillance. At least one member of the mitigation team shall have completed the Navy's marine mammal training program for lookouts.

(*3*) In addition to the overflights, the exclusion zone shall be monitored by passive acoustic means, when assets are available. This passive acoustic monitoring would be maintained throughout the exercise. Potential assets include sonobuoys, which can be utilized to detect any vocalizing marine mammals (particularly sperm whales) in the vicinity of the exercise. The sonobuoys shall be re-seeded as necessary throughout the exercise. Additionally, passive sonar onboard submarines may be utilized to detect any vocalizing marine mammals in the area. The OCE would be informed of any aural detection of marine mammals and would include this information in the determination of when it is safe to commence the exercise.

(*4*) On each day of the exercise, aerial surveillance of the exclusion and safety zones shall commence 2 hours prior to the first firing.

(*5*) The results of all visual, aerial, and acoustic searches shall be reported immediately to the OCE. No weapons launches or firing may commence until the OCE declares the safety and exclusion zones free of marine mammals.

(*6*) If a protected species observed within the exclusion zone is diving, firing shall be delayed until the animal is re-sighted outside the exclusion zone, or 30 minutes have elapsed. After 30 minutes, if the animal has not been re-sighted it would be assumed to have left the exclusion zone.

(*7*) During breaks in the exercise of 30 minutes or more, the exclusion zone shall again be surveyed for any protected species. If marine mammals are sighted within the exclusion zone, the OCE shall be notified, and the procedure described in paragraph (a)(3)(x)(C)(*6*) of this section would be followed.

(*8*) Upon sinking of the vessel, a final surveillance of the exclusion zone shall be monitored for 2 hours, or until sunset, to verify that no marine mammals were harmed.

(D) Aerial surveillance shall be conducted using helicopters or other aircraft based on necessity and availability. The Navy has several types of aircraft capable of performing this task; however, not all types are available for every exercise. For each exercise, the available asset best suited for identifying objects on and near the surface of the ocean would be used. These aircraft would be capable of flying at the slow safe speeds necessary to enable viewing of marine vertebrates with unobstructed, or minimally obstructed, downward and outward visibility. The exclusion and safety zone surveys may be cancelled in the event that a mechanical problem, emergency search and rescue, or other similar and unexpected event preempts the use of one of the aircraft onsite for the exercise.

(E) Where practicable, the Navy shall conduct the exercise in sea states that are ideal for marine mammal sighting, i.e., Beaufort Sea State 3 or less. In the event of a 4 or above, survey efforts shall be increased within the zones. This shall be accomplished through the use of an additional aircraft, if available, and conducting tight search patterns.

(F) The exercise shall not be conducted unless the exclusion zone can be adequately monitored visually.

(G) In the event that any marine mammals are observed to be harmed in the area, a detailed description of the animal shall be taken, the location noted, and if possible, photos taken. This information shall be provided to NMFS via the Navy's regional environmental coordinator for purposes of identification (see the Stranding Plan for detail).

(H) An after action report detailing the exercise's time line, the time the surveys commenced and terminated, amount, and types of all ordnance expended, and the results of survey efforts for each event shall be submitted to NMFS.

(xi) Extended Echo Ranging/Improved Extended Echo Ranging (EER/IEER/AEER):

(A) Crews shall conduct visual reconnaissance of the drop area prior to laying their intended sonobuoy pattern. This search shall be conducted at an altitude below 457 m (500 yd) at a slow speed, if operationally feasible and weather conditions permit. In dual aircraft operations, crews are allowed to conduct coordinated area clearances.

(B) For IEER (AN/SSQ–110A), crews shall conduct a minimum of 30 minutes of visual and aural monitoring of the search area prior to commanding the first post detonation. This 30-minute observation period may include pattern deployment time.

(C) For any part of the briefed pattern where a post (source/receiver sonobuoy pair) will be deployed within 914 m (1,000 yd) of observed marine mammal activity, the Navy shall deploy the receiver ONLY and monitor while conducting a visual search. When marine mammals are no longer detected within 914 m (1,000 yd) of the intended post position, the Navy shall co-locate the explosive source sonobuoy (AN/SSQ–110A) (source) with the receiver.

(D) When able, Navy crews shall conduct continuous visual and aural monitoring of marine mammal activity. This is to include monitoring of own-

aircraft sensors from first sensor placement to checking off station and out of RF range of these sensors.

(E) Aural Detection—If the presence of marine mammals is detected aurally, then that shall cue the Navy aircrew to increase the diligence of their visual surveillance. Subsequently, if no marine mammals are visually detected, then the crew may continue multi-static active search.

(F) Visual Detection—If marine mammals are visually detected within 914 m (1,000 yd) of the explosive source sonobuoy (AN/SSQ–110A) intended for use, then that payload shall not be detonated. Aircrews may utilize this post once the marine mammals have not been re-sighted for 30 minutes, or are observed to have moved outside the 914 m (1,000 yd) safety buffer. Aircrews may shift their multi-static active search to another post, where marine mammals are outside the 914 m (1,000 yd) safety buffer.

(G) For IEER (AN/SSQ–110A), aircrews shall make every attempt to manually detonate the unexploded charges at each post in the pattern prior to departing the operations area by using the ''Payload 1 Release'' command followed by the ''Payload 2 Release'' command. Aircrews shall refrain from using the ''Scuttle'' command when two payloads remain at a given post. Aircrews will ensure that a 914 m (1,000 yd) safety buffer, visually clear of marine mammals, is maintained around each post as is done during active search operations.

(H) Aircrews shall only leave posts with unexploded charges in the event of a sonobuoy malfunction, an aircraft system malfunction, or when an aircraft must immediately depart the area due to issues such as fuel constraints, inclement weather, and in-flight emergencies. In these cases, the sonobuoy will self-scuttle using the secondary or tertiary method.

(I) The Navy shall ensure all payloads are accounted for. Explosive source sonobuoys (AN/SSQ–110A) that can not be scuttled shall be reported as unexploded ordnance via voice communications while airborne, then upon landing via naval message.

(J) Marine mammal monitoring shall continue until out of own-aircraft sensor range.

(4) The Navy shall abide by the letter of the ''Stranding Response Plan for Major Navy Training Exercises in the SOCAL Range Complex'' (available at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*), which is incorporated herein by reference, to include the following measures:

(i) Shutdown Procedures—When an Uncommon Stranding Event (USE—defined in § 216.271) occurs during a Major Training Exercise (MTE) (as defined in the Stranding Plan, meaning including Sustainment, SHAREM, IAC2, JTFEX, or COMPTUEX) in the SOCAL Range Complex, the Navy shall implement the procedures described below.

(A) The Navy shall implement a Shutdown (as defined § 216.271) when advised by a NMFS Office of Protected Resources Headquarters Senior Official designated in the SOCAL Range Complex Stranding Communication Protocol that a USE involving live animals has been identified and that at least one live animal is located in the water. NMFS and Navy shall communicate, as needed, regarding the identification of the USE and the potential need to implement shutdown procedures.

(B) Any shutdown in a given area shall remain in effect in that area until NMFS advises the Navy that the subject(s) of the USE at that area die or are euthanized, or that all live animals involved in the USE at that area have left the area (either of their own volition or herded).

(C) If the Navy finds an injured or dead marine mammal floating at sea during an MTE, the Navy shall notify NMFS immediately or as soon as operational security considerations allow. The Navy shall provide NMFS with species or description of the animal(s), the condition of the animal(s) including carcass condition if the animal(s) is/are dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available). Based on the information provided, NMFS shall determine if, and advise the Navy whether a modified shutdown is appropriate on a case-by-case basis.

(D) In the event, following a USE, that: (a) Qualified individuals are attempting to herd animals back out to the open ocean and animals are not willing to leave, or (b) animals are seen repeatedly heading for the open ocean but turning back to shore, NMFS and the Navy shall coordinate (including an investigation of other potential anthropogenic stressors in the area) to determine if the proximity of MFAS/HFAS activities or explosive detonations, though farther than 14 nm from the distressed animal(s), is likely decreasing the likelihood that the animals return to the open water. If so, NMFS and the Navy shall further coordinate to determine what measures are necessary to further minimize that likelihood and implement those measures as appropriate.

(ii) Within 72 hours of NMFS notifying the Navy of the presence of a USE, the Navy shall provide available information to NMFS (per the SOCAL Range Complex Communication Protocol) regarding the location, number and types of acoustic/explosive sources, direction and speed of units using MFAS/HFAS, and marine mammal sightings information associated with training activities occurring within 80 nm (148 km) and 72 hours prior to the USE event. Information not initially available regarding the 80 nm (148 km), 72 hours, period prior to the event shall be provided as soon as it becomes available. The Navy shall provide NMFS investigative teams with additional relevant unclassified information as requested, if available.

(iii) Memorandum of Agreement (MOA)—The Navy and NMFS shall develop a MOA, or other mechanism consistent with federal fiscal law requirements (and all other applicable laws), that will establish a framework whereby the Navy can (and provide the Navy examples of how they can best) assist NMFS with stranding investigations in certain circumstances.

§ 216.275 Requirements for monitoring and reporting.

(a) As outlined in the SOCAL Range Complex Stranding Communication Plan, the Navy must notify NMFS immediately (or as soon as clearance procedures allow) if the specified activity identified in § 216.270(c) is thought to have resulted in the mortality or injury of any marine mammals, or in any take of marine mammals not identified in § 216.272(c).

(b) The Navy must conduct all monitoring and required reporting under the Letter of Authorization, including abiding by the SOCAL Range Complex Monitoring Plan.

(c) The Navy shall complete an Integrated Comprehensive Monitoring Plan (ICMP) in 2009. This planning and adaptive management tool shall include:

(1) A method for prioritizing monitoring projects that clearly describes the characteristics of a proposal that factor into its priority.

(2) A method for annually reviewing, with NMFS, monitoring results, Navy R&D, and current science to use for potential modification of mitigation or monitoring methods.

(3) A detailed description of the Monitoring Workshop to be convened in 2011 and how and when Navy/NMFS will subsequently utilize the findings of the Monitoring Workshop to potentially modify subsequent monitoring and mitigation.

(4) An adaptive management plan.

(5) A method for standardizing data collection across Range Complexes.

(d) General Notification of Injured or Dead Marine Mammals—Navy personnel shall ensure that NMFS (regional stranding coordinator) is notified immediately (or as soon as clearance procedures allow) if an injured or dead marine mammal is found during or shortly after, and in the vicinity of, any Navy training exercise utilizing MFAS, HFAS, or underwater explosive detonations. The Navy shall provide NMFS with species or description of the animal(s), the condition of the animal(s) (including carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available). The Navy shall consult the Stranding Response Plan to obtain more specific reporting requirements for specific circumstances.

(e) Annual SOCAL Range Complex Monitoring Plan Report—The Navy shall submit a report annually on October 1 describing the implementation and results (through August 1 of the same year) of the SOCAL Range Complex Monitoring Plan. Data collection methods will be standardized across range complexes to allow for comparison in different geographic locations. Although additional information will also be gathered, the marine mammal observers (MMOs) collecting marine mammal data pursuant to the SOCAL Range Complex Monitoring Plan shall, at a minimum, provide the same marine mammal observation data required in the data required in § 216.275(f)(1). The SOCAL Range Complex Monitoring Plan Report may be provided to NMFS within a larger report that includes the required Monitoring Plan Reports from multiple Range Complexes.

(f) Annual SOCAL Range Complex Exercise Report—The Navy shall submit an Annual SOCAL Range Complex Exercise Report on October 1 of every year (covering data gathered through August 1 of the same year). This report shall contain information identified in § 216.275(f)(1) through (5).

(1) MFAS/HFAS Major Training Exercises—This section shall contain the following information for Integrated, Coordinated, and Major Training Exercises (MTEs), which include Ship ASW Readiness and Evaluation Measuring (SHAREM), Sustainment Exercises, Integrated ASW Course Phase II (IAC2), Composite Training Unit Exercises (COMPTUEX), and Joint Task Force Exercises (JTFEX) conducted in the SOCAL Range Complex:

(i) Exercise Information (for each MTE):
- (A) Exercise designator
- (B) Date that exercise began and ended
- (C) Location
- (D) Number and types of active sources used in the exercise
- (E) Number and types of passive acoustic sources used in exercise
- (F) Number and types of vessels, aircraft, etc., participating in exercise
- (G) Total hours of observation by watchstanders
- (H) Total hours of all active sonar source operation
- (I) Total hours of each active sonar source (along with explanation of how hours are calculated for sources typically quantified in alternate way (buoys, torpedoes, etc.)).
- (J) Wave height (high, low, and average during exercise)

(ii) Individual marine mammal sighting info (for each sighting in each MTE)
- (A) Location of sighting
- (B) Species (if not possible—indication of whale/dolphin/pinniped)
- (C) Number of individuals
- (D) Calves observed (y/n)
- (E) Initial Detection Sensor
- (F) Indication of specific type of platform observation made from (including, for example, what type of surface vessel, i.e., FFG, DDG, or CG)
- (G) Length of time observers maintained visual contact with marine mammal
- (H) Wave height (in feet)
- (I) Visibility
- (J) Sonar source in use (y/n).
- (K) Indication of whether animal is < 200 yd, 200–500 yd, 500–1000 yd, 1000–2000 yd, or > 2000 yd from sonar source in paragraph (f)(1)(ii)(J) of this section.
- (L) Mitigation Implementation—Whether operation of sonar sensor was delayed, or sonar was powered or shut down, and how long the delay was.
- (M) If source in use (i.e., in paragraph (f)(1)(ii)(J) of this section) is hull-mounted, true bearing of animal from ship, true direction of ship's travel, and estimation of animal's motion relative to ship (opening, closing, parallel)
- (N) Observed behavior—Watchstanders shall report, in plain language and without trying to categorize in any way, the observed behavior of the animals (such as animal closing to bow ride, paralleling course/speed, floating on surface and not swimming, etc.)

(iii) An evaluation (based on data gathered during all of the MTEs) of the effectiveness of mitigation measures designed to avoid exposing marine mammals to mid-frequency sonar. This evaluation shall identify the specific observations that support any conclusions the Navy reaches about the effectiveness of the mitigation.

(2) ASW Summary—This section shall include the following information as summarized from both MTEs and non-major training exercises (unit-level exercises, such as TRACKEXs):

(i) Total annual hours of each type of sonar source (along with explanation of how hours are calculated for sources typically quantified in alternate way (buoys, torpedoes, etc.))

(ii) Cumulative Impact Report—To the extent practicable, the Navy, in coordination with NMFS, shall develop and implement a method of annually reporting non-major (i.e., other than MTEs) training exercises utilizing hull-mounted sonar. The report shall present an annual (and seasonal, where practicable) depiction of non-major training exercises geographically across the SOCAL Range Complex. The Navy shall include (in the SOCAL Range Complex annual report) a brief annual progress update on the status of the development of an effective and unclassified method to report this information until an agreed-upon (with NMFS) method has been developed and implemented.

(3) SINKEXs—This section shall include the following information for each SINKEX completed that year:

(i) *Exercise information (gathered for each SINKEX):*
- (A) Location
- (B) Date and time exercise began and ended
- (C) Total hours of observation by watchstanders before, during, and after exercise
- (D) Total number and types of rounds expended / explosives detonated
- (E) Number and types of passive acoustic sources used in exercise
- (F) Total hours of passive acoustic search time
- (G) Number and types of vessels, aircraft, etc., participating in exercise
- (H) Wave height in feet (high, low and average during exercise)
- (I) Narrative description of sensors and platforms utilized for marine mammal detection and timeline illustrating how marine mammal detection was conducted

(ii) *Individual marine mammal observation (by Navy lookouts) information (gathered for each marine mammal sighting)*
- (A) Location of sighting

(B) Species (if not possible, indicate whale, dolphin or pinniped)
(C) Number of individuals
(D) Whether calves were observed
(E) Initial detection sensor
(F) Length of time observers maintained visual contact with marine mammal
(G) Wave height
(H) Visibility
(I) Whether sighting was before, during, or after detonations/exercise, and how many minutes before or after
(J) Distance of marine mammal from actual detonations (or target spot if not yet detonated)—use four categories to define distance:
(*1*) The modeled injury threshold radius for the largest explosive used in that exercise type in that OPAREA (738 m for SINKEX in the SOCAL Range Complex);
(*2*) The required exclusion zone (1 nm for SINKEX in the SOCAL Range Complex);
(*3*) The required observation distance (if different than the exclusion zone (2 nm for SINKEX in the SOCAL Range Complex); and
(*4*) Greater than the required observed distance. For example, in this case, the observer would indicate if < 738 m, from 738 m to 1 nm, from 1 nm to 2 nm, and > 2 nm.
(K) Observed behavior—Watchstanders will report, in plain language and without trying to categorize in any way, the observed behavior of the animal(s) (such as animal closing to bow ride, paralleling course/speed, floating on surface and not swimming etc.), including speed and direction.
(L) Resulting mitigation implementation—Indicate whether explosive detonations were delayed, ceased, modified, or not modified due to marine mammal presence and for how long.
(M) If observation occurs while explosives are detonating in the water, indicate munition type in use at time of marine mammal detection.
(4) IEER Summary—This section shall include an annual summary of the following IEER information:
(i) Total number of IEER events conducted in the SOCAL Range Complex
(ii) Total expended/detonated rounds (buoys)
(iii) Total number of self-scuttled IEER rounds
(5) Explosives Summary—To the extent practicable, the Navy will provide the information described below for all of their explosive exercises. Until the Navy is able to report in full the information below, they will provide an annual update on the Navy's explosive tracking methods, including improvements from the previous year.
(i) Total annual number of each type of explosive exercises (of those identified as part of the ''specified activity'' in this final rule) conducted in the SOCAL Range Complex.
(ii) Total annual expended/detonated rounds (missiles, bombs, etc.) for each explosive type.
(g) Sonar Exercise Notification—The Navy shall submit to the NMFS Office of Protected Resources (specific contact information to be provided in LOA) either an electronic (preferably) or verbal report within fifteen calendar days after the completion of any MTE (Sustainment, IAC2, SHAREM, COMPTUEX, or JTFEX) indicating:
(1) Location of the exercise
(2) Beginning and end dates of the exercise
(3) Type of exercise (e.g., SHAREM, JTFEX, etc.)
(h) SOCAL Range Complex 5-yr Comprehensive Report—The Navy shall submit to NMFS a draft report that analyzes and summarizes all of the multi-year marine mammal information gathered during ASW and explosive exercises for which annual reports are required (Annual SOCAL Range Complex Exercise Reports and SOCAL Range Complex Monitoring Plan Reports). This report will be submitted at the end of the fourth year of the rule (November 2012), covering activities that have occurred through June 1, 2012
(i) Comprehensive National ASW Report—By June, 2014, the Navy shall submit a draft National Report that analyzes, compares, and summarizes the active sonar data gathered (through January 1, 2014) from the watchstanders and pursuant to the implementation of the Monitoring Plans for the SOCAL Range Complex, the Atlantic Fleet Active Sonar Training, the HRC, the Marianas Range Complex, the Northwest Training Range, the Gulf of Alaska, and the East Coast Undersea Warfare Training Range.
(j) The Navy shall respond to NMFS comments and requests for additional information or clarification on the SOCAL Range Complex Comprehensive Report, the Comprehensive National ASW report, the Annual SOCAL Range Complex Exercise Report, or the Annual SOCAL Range Complex Monitoring Plan Report (or the multi-Range Complex Annual Monitoring Plan Report, if that is how the Navy chooses to submit the information) if submitted within 3 months of receipt. These reports will be considered final after the Navy has addressed NMFS' comments or provided the requested information, or three months after the submittal of the draft if NMFS does not comment by then.
(k) In 2011, the Navy shall convene a Monitoring Workshop in which the Monitoring Workshop participants will be asked to review the Navy's Monitoring Plans and monitoring results and make individual recommendations (to the Navy and NMFS) of ways of improving the Monitoring Plans. The recommendations shall be reviewed by the Navy, in consultation with NMFS, and modifications to the Monitoring Plan shall be made, as appropriate.

§ 216.276 Applications for Letters of Authorization.

To incidentally take marine mammals pursuant to the regulations in this subpart, the U.S. citizen (as defined by § 216.103) conducting the activity identified in § 216.270(c) (the U.S. Navy) must apply for and obtain either an initial Letter of Authorization in accordance with § 216.277 or a renewal under § 216.278.

§ 216.277 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart, but must be renewed annually subject to annual renewal conditions in § 216.278.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses (i.e., mitigation); and

(3) Requirements for mitigation, monitoring and reporting.

(c) Issuance and renewal of the Letter of Authorization will be based on a determination that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the affected species or stock of marine mammal(s).

§ 216.278 Renewal of Letters of Authorization and Adaptive Management.

(a) A Letter of Authorization issued under § 216.106 and § 216.277 for the activity identified in § 216.270(c) will be renewed annually upon:

(1) Notification to NMFS that the activity described in the application submitted under § 216.276 will be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming 12 months;

(2) Timely receipt (by the dates indicated in these regulations) of the monitoring reports required under § 216.275(c) through (j); and

(3) A determination by the NMFS that the mitigation, monitoring and reporting measures required under § 216.274 and the Letter of Authorization issued under §§ 216.106 and 216.277, were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization.

(b) If a request for a renewal of a Letter of Authorization issued under §§ 216.106 and 216.278 indicates that a substantial modification, as determined by NMFS, to the described work, mitigation or monitoring undertaken during the upcoming season will occur, the NMFS will provide the public a period of 30 days for review and comment on the request. Review and comment on renewals of Letters of Authorization are restricted to:

(1) New cited information and data indicating that the determinations made in this document are in need of reconsideration, and

(2) Proposed changes to the mitigation and monitoring requirements contained in these regulations or in the current Letter of Authorization.

(c) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the **Federal Register**.

(d) NMFS, in response to new information and in consultation with the Navy, may modify the mitigation or monitoring measures in subsequent LOAs if doing so creates a reasonable likelihood of more effectively accomplishing the goals of mitigation and monitoring set forth in the preamble of these regulations. Below are some of the possible sources of new data that could contribute to the decision to modify the mitigation or monitoring measures:

(1) Results from the Navy's monitoring from the previous year (either from the SOCAL Range Complex or other locations).

(2) Findings of the Monitoring Workshop that the Navy will convene in 2011 (§ 216.275(l)).

(3) Compiled results of Navy funded research and development (R&D) studies (presented pursuant to the ICMP (§ 216.275(d)).

(4) Results from specific stranding investigations (either from the SOCAL Range Complex or other locations, and involving coincident MFAS/HFAS or explosives training or not involving coincident use).

(5) Results from the Long Term Prospective Study described in the preamble to these regulations.

(6) Results from general marine mammal and sound research (funded by the Navy (described below) or otherwise).

§ 216.279 Modifications to Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS, issued pursuant to §§ 216.106 and 216.277 and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under § 216.278, without modification (except for the period of validity), is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.272(c), a Letter of Authorization issued pursuant to §§ 216.106 and 216.277 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the **Federal Register** within 30 days subsequent to the action.

[FR Doc. E9–1073 Filed 1–14–09; 4:15 pm]

BILLING CODE 3510–22–P

Federal Register

Wednesday,
January 21, 2009

Part VI

Office of Management and Budget

2010 Standard Occupational Classification (SOC)—OMB's Final Decisions; Notice

OFFICE OF MANAGEMENT AND BUDGET

2010 Standard Occupational Classification (SOC)—OMB's Final Decisions

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of the Office of Management and Budget's Final Decisions for the 2010 Standard Occupational Classification.

SUMMARY: Under the authority of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 1104(d)) and the Paperwork Reduction Act of 1995 (44 U.S.C. 3504(e)), the Office of Management and Budget (OMB) is presenting in this notice its final decisions for revising the 2000 Standard Occupational Classification (SOC) for 2010.

The SOC is designed to reflect the current occupational structure of the United States; it classifies all occupations in which work is performed for pay or profit. The SOC covers all jobs in the national economy, including occupations in the public, private, and military sectors. All Federal agencies that publish occupational data for statistical purposes are required to use the SOC; State and local government agencies are strongly encouraged to use this national system to promote a common language for categorizing and analyzing occupations.

In two prior **Federal Register** notices regarding the 2010 SOC (May 16, 2006, 71 FR 28536–28538; and May 22, 2008, 73 FR 29930–29939), OMB and its interagency Standard Occupational Classification Policy Committee (SOCPC) requested comment on the revision process, classification principles and guidelines, corrections to the *2000 SOC Manual*, the intention to retain the 2000 SOC Major Group structure, and changes to the existing occupations. OMB, in conjunction with the SOCPC, reviewed and carefully considered the comments received in response to these notices in the process of making its final decisions presented in this notice. Based on these final decisions, OMB has requested that the SOCPC prepare the *2010 Standard Occupational Classification Manual* for publication. A complete crosswalk between the 2000 and the 2010 SOC will be available online after publication of the *2010 SOC Manual*. Committee members have completed definitions and agencies with occupational classification systems are developing crosswalks from their existing systems to the 2010 SOC.

In comparison to the 2000 SOC, the 2010 SOC realized a net gain of 19 detailed occupations, 12 broad occupations, and 1 minor group. The number of major groups is unchanged. The 2010 SOC system contains 840 detailed occupations, aggregated into 461 broad occupations. In turn, the SOC combines these 461 broad occupations into 97 minor groups and 23 major groups. More than 400 of the 840 detailed occupations in the 2010 SOC structure remained the same as in 2000, and over 300 others required only editing changes. Therefore, no substantive changes occurred in occupational coverage for about 4 out of 5 detailed occupations in the 2010 SOC.

As an indicator of the scope of changes to the structure of the SOC, 8 detailed occupations moved from one major group in the 2000 SOC to another in the 2010 SOC. Three occupations were placed in the major group 13–0000 Business and Financial Operations Occupations, including ''Farm Labor Contractors'' (13–1074)—previously classified in major group 45–0000 Farming, Fishing, and Forestry Occupations—and ''Fundraisers'' (13–1131)—previously classified in major group 41–0000 Sales and Related Occupations. Workers in ''Market Research Analysts and Marketing Specialists'' (13–1161) were previously classified in multiple SOC occupations including in ''Market Research Analysts'' in major group 19–0000 Life, Physical, and Social Science Occupations and in ''Public Relations Specialists'' in major group 27–0000 Arts, Design, Entertainment, Sports, and Media Occupations. Two occupations moved into the major group 53–0000 Transportation and Material Moving Occupations, both from major group 39–0000 Personal Care and Service Occupations. These were ''Flight Attendants'' (53–2031) and ''Transportation Attendants, Except Flight Attendants'' (53–6061). Workers in the newly created ''Morticians, Undertakers, and Funeral Directors'' (39–4031) were previously classified with ''Funeral Directors'' (11–9061) in the major group 11–0000 Management Occupations. Workers in another occupation new to the 2010 SOC, ''Solar Photovoltaic Installers'' (47–2231) were previously classified in multiple SOC occupations including two in major group 49–0000 Installation, Maintenance, and Repair Occupations, ''Heating, Air Conditioning, and Refrigeration Mechanics and Installers'' (49–9021) and ''Installation, Maintenance, and Repair Workers, All Other'' (49–9099). Lastly, the detailed occupation ''Emergency Management Directors'' (11–9161) was previously classified in major group 13–0000 Business and Financial Operations Occupations, under the title ''Emergency Management Specialists.''

Future activities: To ensure that the successful efforts of the SOCPC continue and that the SOC reflects the structure of the changing workforce, the SOCPC will continue its service as a standing committee. The SOCPC will meet periodically to monitor the implementation of the 2010 SOC across Federal agencies. This consultation will include regularly scheduled interagency communication to ensure a smooth transition to the 2010 SOC. The SOCPC will also perform SOC maintenance functions, such as recommending clarifications of the SOC occupational definitions, placement of new occupations within the existing structure, and updating title files.

The next major review and revision of the SOC is expected to begin in 2013, in preparation for a 2018 SOC. The intent of this revision schedule is to minimize disruption to data providers, producers, and users by promoting simultaneous adoption of revised occupational and industry classification systems for those data series that use both. Given the multiple interdependent programs that rely on the SOC, this is best accomplished by timing revisions of the SOC for the years following North American Industry Classification System (NAICS) revisions, which occur for years ending in 2 and 7. The next such year is 2018, which has the additional benefit of coinciding with the beginning year of the American Community Survey five-year set of surveys that bracket the 2020 Decennial Census. Thus, OMB intends to consider revisions of the SOC for 2018 and every 10 years thereafter.

Appendices: This notice includes three appendices in the **SUPPLEMENTARY INFORMATION** section below. Appendix A presents the adopted changes to the SOC Classification Principles. Appendix B provides a preliminary crosswalk between the occupation codes in the 2000 SOC and the revised codes for the 2010 SOC. Appendix C provides a preliminary crosswalk between the revised codes for the 2010 SOC and the 2000 SOC. Appendices B and C show only new occupations and occupations where a change was made to a title or code. The complete 2010 SOC structure is available on the Bureau of Labor Statistics Web site at *http://www.bls.gov/soc/home.htm*.

Electronic Availability: This document is available on the Internet

from the Bureau of Labor Statistics at *http://www.bls.gov/soc/home.htm*. This Web page contains links to previous SOC **Federal Register** notices and related documents, as well as the full 2010 SOC structure. To obtain this notice via e-mail, please send a message requesting the OMB SOC final decisions **Federal Register** notice to *soc@bls.gov*. After publication of the manual, inquiries about the definitions for particular occupations or requests for electronic copies of the SOC structure that cannot be satisfied by use of the Web site should be addressed to Theresa Cosca, Standard Occupational Classification Policy Committee, U.S. Bureau of Labor Statistics, Room 2135, Washington, DC 20212; e-mail: *soc@bls.gov*; telephone number: (202) 691–6500; fax number: (202) 691–6444.

DATES: Publication of the *2010 Standard Occupational Classification Manual* is planned to occur by the end of 2009. Information on how to purchase a manual will be available at *http://www.bls.gov/soc/home.htm*. Federal statistical agencies will begin using the 2010 SOC for occupational data they publish for reference years beginning on or after January 1, 2010. The 2010 SOC was designed and developed solely for statistical purposes. Use of the SOC for nonstatistical purposes (*e.g.*, for administrative, regulatory, or taxation functions) will be determined and supported by the agency or agencies that have chosen to do so. Readers interested in the effective dates for the use of the 2010 SOC for nonstatistical purposes should contact the relevant agency to determine the agency's plans, if any, for a transition from the 2000 SOC to the 2010 SOC.

ADDRESSES: Correspondence about the adoption and implementation of the SOC as described in this **Federal Register** notice should be sent to: Katherine K. Wallman, Chief Statistician, Office of Management and Budget, 10201 New Executive Office Building, Washington, DC 20503; telephone number: (202) 395–3093; fax number: (202) 395–7245; e-mail: *soc@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Paul Bugg, Office of Information and Regulatory Affairs, OMB, 10201 New Executive Office Building, 725 17th Street, NW., Washington, DC 20503; e-mail: *pbugg@omb.eop.gov*; telephone number: (202) 395–3095; fax number: (202) 395–7245.

SUPPLEMENTARY INFORMATION:

I. Purpose and History of the SOC

The Standard Occupational Classification (SOC) system is used by Federal statistical agencies to classify workers and jobs into occupational categories for the purpose of collecting, tabulating, analyzing, or disseminating data.

The SOC reflects the current occupational structure of the United States; it classifies all occupations in which work is performed for pay or profit. The SOC covers all jobs in the national economy, including occupations in the public, private, and military sectors. All Federal agencies that publish occupational data for statistical purposes are required to use the SOC in order to increase data comparability. State and local government agencies are strongly encouraged to use this national system to promote a common language for categorizing and analyzing occupations.

The SOC Revision for 2010

In 2005, the Office of Management and Budget met with the Standard Occupational Classification Policy Committee (SOCPC) to plan for the 2010 SOC revision. The SOCPC includes representatives from the Department of Labor's Bureau of Labor Statistics and Employment and Training Administration, the Department of Commerce's Census Bureau, the Department of Defense's Defense Manpower Data Center, the Department of Education, the Department of Health and Human Services, the Equal Employment Opportunity Commission, the National Science Foundation, the Office of Personnel Management, and, *ex officio*, the Office of Management and Budget.

To initiate the formal 2010 SOC revision process, OMB and the SOCPC requested public comment in a May 16, 2006, **Federal Register** notice (71 FR 28536) on: (1) The Standard Occupational Classification principles, (2) corrections to the *2000 SOC Manual*, (3) the intention to retain the current SOC Major Group structure, (4) changes to the existing detailed occupations, and (5) new detailed occupations to be added to the revised 2010 SOC. To carry out the bulk of the revision effort, the committee created six work groups to examine occupations in the following high-level aggregations of SOC major groups: Management, Professional, and Related Occupations (codes 11–0000 through 29–0000); Service Occupations (codes 31–0000 through 39–0000); Sales and Office Occupations (codes 41–0000 through 43–0000); Natural Resources, Construction, and Maintenance Occupations (codes 45–0000 through 49–0000); Production, Transportation, and Material Moving Occupations (codes 51–0000 through 53–0000) and Military Specific Occupations (code 55–0000).

The work groups were charged with reviewing the hundreds of comments received in response to the May 16, 2006, **Federal Register** notice and providing recommendations to the SOCPC. Guided by the classification principles, the SOCPC reviewed the recommendations from the work groups and reached decisions by consensus. Those recommendations were published in a subsequent **Federal Register** notice published on May 22, 2008 (73 FR 29930).

In the May 22, 2008, **Federal Register** notice (73 FR 29930), OMB and the SOCPC requested public comment on (1) The SOC Classification Principles and SOC Coding Guidelines recommended by the SOCPC; (2) the SOCPC's recommended changes to titles and codes of occupations from the 2000 SOC; (3) the SOCPC's recommended changes to the hierarchical structure of the SOC, including changes to major, minor, broad, and detailed groups and occupations; and (4) the titles, placement, and codes of new occupations that the SOCPC recommended adding to the revised 2010 SOC.

II. Significant Changes and Responses to Comments

Significant Changes in the 2010 SOC

In response to the May 22, 2008, **Federal Register** notice, OMB and the SOCPC received over 1,200 public comments. OMB and the SOCPC considered all comments and made many changes to the structure that was presented in the May 22, 2008 notice. Discussions of the changes to the Classification Principles and the changes by major group are provided below. The changes to the hierarchical structure and numbering system are shown in Appendices B and C. Rationales for recommending changes in response to specific comments are provided in conjunction with this **Federal Register** notice.

Two changes to the SOC Classification Principles were proposed in the May 22, 2008, **Federal Register** notice. Classification Principle 3 now clarifies that workers in management occupations may also supervise other workers. A new Classification Principle 5 was created to clarify that workers in Major Group 31–0000 Healthcare Support Occupations are usually supervised by workers in Major Group 29–0000 Healthcare Practitioners and Technical Occupations. The *2010 Standard Occupational Classification Manual* will also include Coding

Guidelines as presented in the May 22, 2008, **Federal Register** notice.

In the Management Occupations major group, the definition of ''Administrative Services Managers'' (11–3011) was modified.

In the Business and Financial Operations Occupations major group, the title and definition of ''Labor Relations Specialists'' (13–1075, formerly 13–1079 in the structure presented in the May 22, 2008, **Federal Register** notice) were modified. The title ''Meeting and Convention Planners'' was changed to ''Meeting, Convention, and Event Planners'' (13–1121). The definition of ''Claims Adjusters, Examiners, and Investigators'' (13–1031) was modified.

In the Computer and Mathematical Occupations major group, the proposed broad occupation ''Software and Web Developers and Computer Analysts'' was disaggregated: (1) Into two broad occupations, ''Computer and Information Analysts'' (15–1120) and ''Software Developers and Programmers'' (15–1130); (2) the detailed occupation ''Software Developers'' was disaggregated into ''Software Developers, Applications'' (15–1132) and ''Software Developers, Systems Software'' (15–1133); and (3) the detailed occupation ''Computer Programmers'' (15–1131) was moved to the broad occupation, ''Software Developers and Programmers'' (15–1130). The titles for ''Computer and Information Research Scientists'' (15–1111), ''Database Administrators'' (15–1141), and ''Computer Network Support Specialists'' (15–1152) were modified. ''Web Technicians'' and ''Software and Web Developers and Computer Analysts, All Other'' were deleted as detailed occupations and the detailed occupation ''Computer Network Architects'' (15–1143) was added to the revised 2010 SOC.

In the Architecture and Engineering Occupations major group, the definitions of ''Mechanical Engineering Technicians'' (17–3027), ''Industrial Engineering Technicians'' (17–3026), and ''Electro-Mechanical Technicians'' (17–3024) were modified.

In the Life, Physical, and Social Science Occupations major group, no significant changes were made to the structure presented in the May 22, 2008, **Federal Register** notice.

In the Community and Social Service Occupations major group, the title of ''Health Educators and Community Health Workers'' was changed to ''Health Educators (21–1091) and the definition was modified. A new detailed occupation ''Community Health Workers'' (21–1094) was added. The existing detailed occupation ''Health Care Social Workers'' was retitled ''Healthcare Social Workers'' (21–1022).

In the Legal Occupations major group, no significant changes were made to the structure presented in the May 22, 2008, **Federal Register** notice.

In the Education, Training, and Library Occupations major group, the definitions of ''Forestry and Conservation Science Teachers, Postsecondary'' (25–1043) and ''Health Specialties Teachers, Postsecondary'' (25–1071) were modified.

In the Arts, Design, Entertainment, Sports, and Media Occupations major group, no significant changes were made to the structure presented in the May 22, 2008, **Federal Register** notice.

In the Healthcare Practitioners and Technical Occupations major group, ''Hearing Aid Specialists'' (29–2092) and ''Genetic Counselors'' (29–9092) were added to the revised 2010 SOC, the definition for ''Veterinarians'' (29–1131) was modified, and the title of ''Radiologic Technologists and Technicians'' was changed to ''Radiologic Technologists'' (29–2034). The codes for ''Registered Nurses'' (29–1141), ''Nurse Anesthetists'' (29–1151), ''Nurse Practitioners'' (29–1171), and ''Audiologists'' (29–1181) were modified.

In the Healthcare Support Occupations major group, ''Nursing Aides, Orderlies, and Attendants'' was disaggregated into ''Nursing Assistants'' (31–1014) and ''Orderlies'' (31–1015). The definitions for ''Home Health Aides'' (31–1011) and ''Medical Transcriptionists'' (31–9094) were modified.

In the Protective Service Occupations major group, the titles for ''First-Line Supervisors of Correctional Officers'' (33–1011), ''First-Line Supervisors of Police and Detectives'' (33–1012), ''First-Line Supervisors of Fire Fighting and Prevention Workers'' (33–1021), and ''First-Line Supervisors of Protective Service Workers, All Other'' (33–1099) were modified.

In the Food Preparation and Serving Related Occupations major group, the title for ''First-Line Supervisors of Food Preparation and Serving Workers'' (35–1012) was modified.

In the Building and Grounds Cleaning and Maintenance Occupations major group, the titles for ''First-Line Supervisors of Housekeeping and Janitorial Workers'' (37–1011) and ''First-Line Supervisors of Landscaping, Lawn Service, and Groundskeeping Workers'' (37–1012), and the definition of ''Maids and Housekeeping Cleaners'' (37–2012) were modified.

In the Personal Care and Service Occupations major group, the minor group ''Transportation, Tourism, and Lodging Attendants'' was disaggregated into ''Baggage Porters, Bellhops, and Concierges'' (39–6000) and ''Tour and Travel Guides'' (39–7000). The title and definition of ''Personal Care Aides'' (39–9021) were modified. The title of ''First-Line Supervisors of Personal Service Workers'' (39–1021) and the definition of ''Fitness Trainers and Aerobics Instructors'' (39–9031) were modified. ''Flight Attendants'' (53–2031, formerly 39–6031 in the structure presented in the May 22, 2008, **Federal Register** notice) and ''Transportation Attendants, Except Flight Attendants'' (53–6061, formerly 39–6032 in the structure presented in the May 22, 2008, **Federal Register** notice) were moved to the Transportation and Material Moving Occupations major group.

In the Sales and Related Occupations major group, the titles of ''First-Line Supervisors of Retail Sales Workers'' (41–1011) and ''First-Line Supervisors of Non-Retail Sales Workers'' (41–1012) were modified.

In the Office and Administrative Support Occupations major group, the title of ''First-Line Supervisors of Office and Administrative Support Workers'' (43–1011) and the definition of ''Couriers and Messengers'' (43–5021) were modified.

In the Farming, Fishing, and Forestry Occupations major group, the title of ''Farmworkers, Farm and Ranch Animals'' was changed to ''Farmworkers, Farm, Ranch, and Aquacultural Animals'' (45–2093). The title of ''First-Line Supervisors of Farming, Fishing, and Forestry Workers'' (45–1011) and the definitions of ''Forest and Conservation Workers'' (45–4011) and ''Logging Equipment Operators'' (45–4022) were modified. The detailed occupation ''Farm Labor Contractors'' (13–1074, formerly 45–1012 in the 2000 SOC) was reinstated and moved to the Business and Financial Occupations major group.

In the Construction and Extraction Occupations major group, the detailed occupation ''Solar Photovoltaic Installers'' (47–2231) was added to the revised 2010 SOC. The title of ''First-Line Supervisors of Construction Trades and Extraction Workers'' (47–1011) was modified.

In the Installation, Maintenance, and Repair Occupations major group, the detailed occupation ''Wind Turbine Service Technicians'' (49–9081) was added to the revised 2010 SOC. The title of ''First-Line Supervisors of Mechanics, Installers, and Repairers'' (49–1011) was modified.

In the Production Occupations major group, the titles and definitions of ''Print Binding and Finishing Workers'' (51–5113) and ''Timing Device Assemblers and Adjusters'' (51–2093) were modified. In addition, the definitions of ''Sawing Machine Setters, Operators, and Tenders, Wood'' (51–7041), ''Woodworking Machine Setters, Operators, and Tenders, Except Sawing'' (51–7042), ''Prepress Technicians and Workers'' (51–5111), and ''Printing Press Operators'' (51–5112) were revised. The title of ''First-Line Supervisors of Production and Operating Workers'' (51–1011) was modified.

In the Transportation and Material Moving Occupations major group, the titles of ''First-Line Supervisors of Helpers, Laborers, and Material Movers, Hand'' (53–1021), ''First-Line Supervisors of Transportation and Material-Moving Machine and Vehicle Operators'' (53–1031), ''Heavy and Tractor-Trailer Truck Drivers'' (53–3032), ''Light Truck or Delivery Services Drivers'' (53–3033), and ''Automotive and Watercraft Service Attendants'' (53–6031) were modified. The definitions of ''Light Truck or Delivery Services Drivers'' (53–3033) and ''Driver/Sales Workers'' (53–3031) were also modified.

In the Military Specific Occupations major group, the titles of ''Military Officer Special and Tactical Operations Leaders'' (55–1010), ''Military Officer Special and Tactical Operations Leaders, All Other'' (55–1019), ''First-Line Enlisted Military Supervisors'' (55–2010), ''First-Line Supervisors of Air Crew Members'' (55–2011), ''First-Line Supervisors of Weapons Specialists/Crew Members'' (55–2012), and ''First-Line Supervisors of All Other Tactical Operations Specialists'' (55–2013) were modified.

Responses to Comments

OMB, in conjunction with the SOCPC, received and reviewed over 1,200 public comments on the information presented in the May 22, 2008, **Federal Register** notice. Each individual comment received a unique docket number when conveyed to the SOCPC secretariat at the Bureau of Labor Statistics. Dockets providing the same or essentially similar comments or suggestions were reviewed simultaneously by the SOCPC. In total, 202 unique issues were identified in commentors' correspondence. A full list of the responses to the comments received in response to the May 22, 2008, **Federal Register** notice will be provided at *http://www.bls.gov/soc/home.htm.* Selected topics are also discussed below.

In some cases, OMB's SOCPC recommended changing the 2010 SOC title to more clearly describe the existing content of an occupation. Title changes did not necessarily alter occupational coverage, but rather refined how occupations are described. For example, the SOCPC recommended accepting the suggestion to change the title of ''Radiologic Technologists and Technicians'' (29–2034) to ''Radiologic Technologists.''

The SOCPC frequently found that the work performed by a proposed occupation was already covered in the definition of an existing SOC occupation. For example, the SOCPC did not recommend accepting the request for a new detailed occupation, ''Clinical Nurse Specialists.'' The SOCPC researched the topic and determined that even though education for Clinical Nurse Specialists is different from that of Registered Nurses, the tasks of Clinical Nurse Specialists are not sufficiently unique from those of Registered Nurses who ''assess patient health problems and needs, develop and implement nursing care plans, and maintain medical records.''

The SOCPC carefully analyzed over 80 unique suggestions regarding ''green'' occupations and considered these recommendations from the perspective of the classification principles of the SOC. In many cases, the work performed in the ''green'' job was identical or similar to work performed in existing SOC occupations. For example, the work performed by a ''Sustainable Landscape Architect'' is already included in the SOC definition for ''Landscape Architects'' (17–1012). The SOCPC did recommend adding ''Wind Turbine Service Technicians'' (49–9081) and ''Solar Photovoltaic Installers'' (47–2231) to the revised 2010 SOC. Workers in both of these occupations perform tasks that are sufficiently distinct from tasks in existing SOC occupations, and analysis of reports provided by the U.S. Department of Energy and the California Employment Development Department, Labor Market Information Division provided evidence supporting the collectability of data on these proposed occupations.

In cases involving requests for occupations already covered in the existing SOC, the SOCPC often altered definitions and titles of existing SOC occupations to clarify where the workers specified in a particular comment should be classified. One example involves the many requests the SOCPC received to add one or more metrology-related occupations. The SOCPC's research found that the number of workers performing metrology and calibration tasks as their primary activity is not substantial enough to support new detailed occupations, and that metrology occupations are dispersed across many industries. Although there is no minimum required employment number, from a practical standpoint, occupations must be large enough to collect and publish at national, regional, State, and local levels. The current definitions of Engineers and Engineering Technicians meet those ''publishability'' goals. In contrast, metrology and calibration tasks may be performed by workers in several Engineering and Engineering Technician occupations, and calibrating is often a task performed in conjunction with other tasks. Therefore the definitions and titles for various engineers, engineering technicians, and production workers were modified to clarify coverage of metrology and calibration tasks.

In the May 22, 2008, **Federal Register** notice, the SOCPC proposed expanding the occupation, ''Health Educator'' to include ''Community Health Workers.'' OMB received multiple comments from individuals and associations expressing concern over the differences in work performed, skills, and education and training between these two occupations. The SOCPC concurred with the commentors and recommended two separate detailed occupations for ''Community Health Workers'' (21–1094) and ''Health Educators'' (21–1091) in the 2010 SOC. The work performed in these occupations is sufficiently distinct. Health Educators collect and analyze data, as well as plan, implement, monitor, evaluate, and manage health education programs. Community Health Workers conduct outreach for medical personnel or health organizations and may provide information on available resources.

OMB received multiple comments requesting the addition of ''Medical Staff Services Professionals'' as a new detailed occupation within the major group 11–0000 Management Occupations. The SOCPC did not accept this recommendation because it violates Classification Principles 2 and 3. As explained in Classification Principle 2, the organization of the SOC is determined by a focus on work performed. The commentors describe specialized functions or tasks performed in this proposed occupation that are sufficiently covered in existing human resources and compliance occupations. Classification Principle 3 excludes workers in this proposed occupation from Major Group 11–0000 because

management occupations ''primarily engage in planning and directing.''

Multiple commentors requested moving ''Dental Hygienists'' (29–2021) from the minor group 29–2000 Health Technologists and Technicians to the minor group 29–1000 Health Diagnosing and Treating Practitioners. Commentors noted that in some States, dental hygienists can practice independently and can make initial patient diagnoses without supervision by dentists. The SOCPC did not accept this recommendation because the lack of uniformity across various State and local jurisdictions would prevent consistent occupational classification. In addition, SOC definitions describe unique tasks all workers in an occupation must perform in order to be classified in that occupation. Expanding definitions to include additional tasks performed by only some of the workers in an occupation restricts inclusion in that occupation.

III. Next Steps in the Process

Future revisions. The next major review and revision of the SOC is expected to begin in 2013, in preparation for a 2018 SOC. The SOCPC recognizes the many advantages to coordinating implementation of SOC revisions with North American Industry Classification System (NAICS) revisions. The intent of this coordination is to minimize disruption to data providers, producers, and users by promoting simultaneous adoption of revised occupational and industry classification systems. Given the multiple interdependent programs that rely on the SOC, this is best accomplished by timing SOC revisions for the year following NAICS revisions. NAICS revisions occur in years ending in 2 and 7. Thus, OMB intends to consider revisions of the SOC for 2018 and every 10 years thereafter. In between revisions, the SOCPC will meet periodically to perform SOC maintenance functions and to monitor and help coordinate implementation of the 2010 SOC across Federal agencies.

Direct Match Title File. The SOCPC will continue to consult with OMB after publication of the *2010 SOC Manual,* particularly to consider new and emerging occupations and additional titles for the newly created Direct Match Title File. The Direct Match Title File lists associated job titles for many detailed SOC occupations. These titles are all one-to-one matches with a single SOC occupation. This means that the job title listed should be classified under that particular SOC code, and it can be used only for that particular SOC code. For example a ''Cardiologist'' would always be classified in ''Physicians and Surgeons, All Other'' (29–1079) and excluded from any other SOC code. All Federal agencies using the SOC will adopt the Direct Match Title File, although some may maintain separate program-specific title files. The Direct Match Title File will allow data users to compare occupational information for these job titles across Federal statistical agencies. It is expected that the Direct Match Title File will be available on the SOC Web site in the first half of 2009 at *http://www.bls.gov/soc.*

Susan E. Dudley,

Acting Administrator, Office of Information and Regulatory Affairs.

Appendix A: Classification Principles

OMB has adopted two changes to the SOC Classification Principles presented in the May 22, 2008, **Federal Register** notice. In response to a comment, Classification Principle 5 was created to clarify placement of supervisors for workers in Major Group 31–0000 in the revised 2010 SOC. Therefore, Classification Principles 5 through 8, as presented in the May 22, 2008 **Federal Register** notice, were renumbered. In addition, a sentence was added to Classification Principle 3 to clarify that duties of workers in management occupations may include supervision. The final 2010 SOC Classification Principles are as follows [italics indicate changes to content]:

The SOC Classification Principles form the basis on which the SOC system is structured.

1. The SOC covers all occupations in which work is performed for pay or profit, including work performed in family-operated enterprises by family members who are not directly compensated. It excludes occupations unique to volunteers. Each occupation is assigned to only one occupational category at the lowest level of the classification.

2. Occupations are classified based on work performed and, in some cases, on the skills, education, and/or training needed to perform the work at a competent level.

3. Workers primarily engaged in planning and directing are classified in management occupations in Major Group 11–0000. *Duties of these workers may include supervision.*

4. Supervisors of workers in Major Groups 13–0000 through 29–0000 usually have work experience and perform activities similar to those of the workers they supervise, and therefore are classified with the workers they supervise.

5. *Workers in Major Group 31–0000 Healthcare Support Occupations assist and are usually supervised by workers in Major Group 29–0000 Healthcare Practitioners and Technical Occupations. Therefore, there are no first-line supervisor occupations in Major Group 31–0000.*

6. Workers in Major Groups 33–0000 through 53–0000 whose primary duty is supervising are classified in the appropriate first-line supervisor category because their work activities are distinct from those of the workers they supervise.

7. Apprentices and trainees are classified with the occupations for which they are being trained, while helpers and aides are classified separately because they are not in training for the occupation they are helping.

8. If an occupation is not included as a distinct detailed occupation in the structure, it is classified in an appropriate ''All Other,'' or residual, occupation. ''All Other'' occupations are placed in the structure when it is determined that the detailed occupations comprising a broad occupation group do not account for all of the workers in the group. These occupations appear as the last occupation in the group with a code ending in ''9'' and are identified in their title by having ''All Other'' appear at the end.

9. The U.S. Bureau of Labor Statistics and the U.S. Census Bureau are charged with collecting and reporting data on total U.S. employment across the full spectrum of SOC major groups. Thus, for a detailed occupation to be included in the SOC, either the Bureau of Labor Statistics or the Census Bureau must be able to collect and report data on that occupation.

Appendix B: 2000 SOC to 2010 SOC

Appendix B is a chart listing every detailed occupation from the 2000 SOC that has been revised or replaced, with the preliminary corresponding new code(s) and title(s) appearing in the second column, including changes to only the code or title. An asterisk (*) after the occupation code and title in the second column means that the occupation in the first column makes up only part of the occupation in the second column; that is, the starred 2010 SOC occupation has been created from multiple old codes. Each occupation with the (*) notation appears multiple times in the chart.

A new occupation may have been created by breaking out a group of workers previously classified in a 2000 SOC occupation, but the new occupation may not completely replace the 2000 SOC occupation. In such cases, the 2000 occupation will indicate in italics which group has been removed to create a new occupation.

2000 SOC		2010 SOC	
11–0000	Management Occupations.		
11–2030	Public Relations Managers	11–2030	Public Relations and Fundraising Managers.
11–2031	Public Relations Managers	11–2031	Public Relations and Fundraising Managers.
11–3000	Operations Specialties Managers.		

2000 SOC	2010 SOC
11–3040 Human Resources Managers	11–3120 Human Resources Managers.
	11–3110 Compensation and Benefits Managers.
	11–3130 Training and Development Managers.
11–3041 Compensation and Benefits Managers	11–3111 Compensation and Benefits Managers.
11–3042 Training and Development Managers	11–3131 Training and Development Managers.
11–3049 Human Resources Managers, All Other	11–3121 Human Resources Managers.
11–9000 Other Management Occupations.	
11–9010 Agricultural Managers	11–9010 Farmers, Ranchers, and Other Agricultural Managers.
11–9011 Farm, Ranch, and Other Agricultural Managers	11–9013 Farmers, Ranchers, and Other Agricultural Managers.*
11–9012 Farmers and Ranchers	11–9013 Farmers, Ranchers, and Other Agricultural Managers.*
11–9031 Education Administrators, Preschool and Child Care Center/ Program.	11–9031 Education Administrators, Preschool and Childcare Center/ Program.
11–9040 Engineering Managers	11–9040 Architectural and Engineering Managers.
11–9041 Engineering Managers	11–9041 Architectural and Engineering Managers.
11–9061 Funeral Directors	11–9061 Funeral Service Managers.
	Except morticians, undertakers, and funeral directors.
	39–4031 Morticians, Undertakers, and Funeral Directors.
13–0000 Business and Financial Operations Occupations.	
13–1000 Business Operations Specialists.	
13–1021 Purchasing Agents and Buyers, Farm Products	13–1021 Buyers and Purchasing Agents, Farm Products.
13–1040 Compliance Officers, Except Agriculture, Construction, Health and Safety, and Transportation.	13–1040 Compliance Officers.
13–1041 Compliance Officers, Except Agriculture, Construction, Health and Safety, and Transportation.	13–1041 Compliance Officers.
	Except transportation security screeners.
	33–9093 Transportation Security Screeners.*
13–1060 Emergency Management Specialists	11–9160 Emergency Management Directors.
13–1061 Emergency Management Specialists	11–9161 Emergency Management Directors.
13–1070 Human Resources, Training, and Labor Relations Specialists	13–1070 Human Resources Workers.
	13–1140 Compensation, Benefits, and Job Analysis Specialists.
	13–1150 Training and Development Specialists.
13–1071 Employment, Recruitment, and Placement Specialists	13–1071 Human Resources Specialists.*
13–1072 Compensation, Benefits, and Job Analysis Specialists	13–1141 Compensation, Benefits, and Job Analysis Specialists.
13–1073 Training and Development Specialists	13–1151 Training and Development Specialists.
13–1079 Human Resources, Training, and Labor Relations Specialists, All Other.	13–1071 Human Resources Specialists.*
	13–1075 Labor Relations Specialists.
13–1120 Meeting and Convention Planners	13–1120 Meeting, Convention, and Event Planners.
13–1121 Meeting and Convention Planners	13–1121 Meeting, Convention, and Event Planners.*
13–1190 Miscellaneous Business Operations Specialists.	
13–1199 Business Operations Specialists, All Other	13–1121 Meeting, Convention, and Event Planners.*
	13–1161 Market Research Analysts and Marketing Specialists.*
	13–1199 Business Operations Specialists, All Other.
	Except meeting, convention, and event planners.
	Except market research analysts and marketing specialists.
13–2070 Loan Counselors and Officers	13–2070 Credit Counselors and Loan Officers.
13–2071 Loan Counselors	13–2071 Credit Counselors.
13–2081 Tax Examiners, Collectors, and Revenue Agents	13–2081 Tax Examiners and Collectors, and Revenue Agents.
15–0000 Computer and Mathematical Science Occupations	15–0000 Computer and Mathematical Occupations.
15–1000 Computer Specialists	15–1100 Computer Occupations.
15–1010 Computer and Information Scientists, Research	15–1110 Computer and Information Research Scientists.
15–1011 Computer and Information Scientists, Research	15–1111 Computer and Information Research Scientists.
15–1020 Computer Programmers.	
15–1021 Computer Programmers	15–1131 Computer Programmers.
15–1030 Computer Software Engineers.	
15–1031 Computer Software Engineers, Applications	15–1132 Software Developers, Applications.
15–1032 Computer Software Engineers, Systems Software	15–1133 Software Developers, Systems Software.
15–1040 Computer Support Specialists.	
15–1041 Computer Support Specialists	15–1151 Computer User Support Specialists.
15–1050 Computer Systems Analysts.	
15–1051 Computer Systems Analysts	15–1121 Computer Systems Analysts.
	15–1143 Computer Network Architects.*
15–1060 Database Administrators.	
15–1061 Database Administrators	15–1141 Database Administrators.
15–1070 Network and Computer Systems Administrators.	
15–1071 Network and Computer Systems Administrators	15–1142 Network and Computer Systems Administrators.*
15–1080 Network Systems and Data Communications Analysts	
15–1081 Network Systems and Data Communications Analysts	15–1122 Information Security Analysts.
	15–1134 Web Developers.
	15–1142 Network and Computer Systems Administrators.*
	115–1143 Computer Network Architects.*
	15–1152 Computer Network Support Specialists.
15–1090 Miscellaneous Computer Specialists	15–1190 Miscellaneous Computer Occupations.
15–1099 Computer Specialists, All Other	15–1199 Computer Occupations, All Other.

2000 SOC	2010 SOC
17–0000 Architecture and Engineering Occupations.	
17–3000 Drafters, Engineering, and Mapping Technicians	17–3000 Drafters, Engineering Technicians, and Mapping Technicians.
19–0000 Life, Physical, and Social Science Occupations.	
19–3000 Social Scientists and Related Workers.	
19–3020 Market and Survey Researchers	19–3020 Survey Researchers.
	13–1160 Market Research Analysts and Marketing Specialists.
19–3021 Market Research Analysts	13–1161 Market Research Analysts and Marketing Specialists.*
21–0000 Community and Social Services Occupations	21–0000 Community and Social Service Occupations.
21–1000 Counselors, Social Workers, and Other Community and Social Service Specialists.	
21–1012 Educational, Vocational, and School Counselors	21–1012 Educational, Guidance, School, and Vocational Counselors.
21–1022 Medical and Public Health Social Workers	21–1022 Healthcare Social Workers.
21–1090 Miscellaneous Community and Social Service Specialists.	
21–1091 Health Educators	21–1091 Health Educators.
	Except community health workers.
	21–1094 Community Health Workers.*
21–1099 Community and Social Service Specialists, All Other	21–1099 Community and Social Service Specialists, All Other.
	Except community health workers.
	21–1094 Community Health Workers.*
23–0000 Legal Occupations.	
23–1000 Lawyers, Judges, and Related Workers.	
23–1010 Lawyers	23–1010 Lawyers and Judicial Law Clerks.
23–2090 Miscellaneous Legal Support Workers.	
23–2092 Law Clerks	23–1012 Judicial Law Clerks.
	23–2011 Paralegals and Legal Assistants.
25–0000 Education, Training, and Library Occupations.	
25–2000 Primary, Secondary, and Special Education School Teachers.	25–2000 Preschool, Primary, Secondary, and Special Education School Teachers.
25–2020 Elementary and Middle School Teachers.	
25–2022 Middle School Teachers, Except Special and Vocational Education.	25–2022 Middle School Teachers, Except Special and Career/Technical Education.
25–2023 Vocational Education Teachers, Middle School	25–2023 Career/Technical Education Teachers, Middle School.
25–2030 Secondary School Teachers.	
25–2031 Secondary School Teachers, Except Special and Vocational Education.	25–2031 Secondary School Teachers, Except Special and Career/Technical Education.
25–2032 Vocational Education Teachers, Secondary School	25–2032 Career/Technical Education Teachers, Secondary School.
25–2040 Special Education Teachers	25–2050 Special Education Teachers.
25–2041 Special Education Teachers, Preschool, Kindergarten, and Elementary School.	25–2051 Special Education Teachers, Preschool.
	25–2052 Special Education Teachers, Kindergarten and Elementary School.
25–2042 Special Education Teachers, Middle School	25–2053 Special Education Teachers, Middle School.
25–2043 Special Education Teachers, Secondary School	25–2054 Special Education Teachers, Secondary School.
25–3000 Other Teachers and Instructors.	
25–3010 Adult Literacy, Remedial Education, and GED Teachers and Instructors.	25–3010 Adult Basic and Secondary Education and Literacy Teachers and Instructors.
25–3011 Adult Literacy, Remedial Education, and GED Teachers and Instructors.	25–3011 Adult Basic and Secondary Education and Literacy Teachers and Instructors.
25–3090 Miscellaneous Teachers and Instructors.	
25–3099 Teachers and Instructors, All Other	25–3099 Teachers and Instructors, All Other.
	Except all other special education teachers.
	25–2059 Special Education Teachers, All Other.
25–9010 Audio-Visual Collections Specialists	25–9010 Audio-Visual and Multimedia Collections Specialists.
25–9011 Audio-Visual Collections Specialists	25–9011 Audio-Visual and Multimedia Collections Specialists.
27–0000 Arts, Design, Entertainment, Sports, and Media Occupations.	
27–3030 Public Relations Specialists.	
27–3031 Public Relations Specialists	13–1121 Meeting, Convention, and Event Planners.*
	13–1161 Market Research Analysts and Marketing Specialists.*
	27–3031 Public Relations Specialists.
	Except meeting, convention, and event planners.
	Except market research analysts and marketing specialists.
27–1014 Multi-Media Artists and Animators	27–1014 Multimedia Artists and Animators.
29–0000 Healthcare Practitioner and Technical Occupations.	
29–1000 Health Diagnosing and Treating Practitioners.	
29–1110 Registered Nurses.	
29–1111 Registered Nurses	29–1141 Registered Nurses.
	Except nurse anesthetists, nurse practitioners, and nurse midwives.
	29–1151 Nurse Anesthetists.
	29–1161 Nurse Midwives.
	29–1171 Nurse Practitioners.
29–1120 Therapists.	
29–1121 Audiologists	29–1181 Audiologists.
29–1129 Therapists, All Other	29–1129 Therapists, All Other.

2000 SOC	2010 SOC
	Except exercise physiologists.
	29–1128 Exercise Physiologists.
29–2000 Health Technologists and Technicians.	
29–2030 Diagnostic Related Technologists and Technicians.	
29–2034 Radiologic Technologists and Technicians	29–2034 Radiologic Technologists.
	Except magnetic resonance imaging technologists.
	29–2035 Magnetic Resonance Imaging Technologists.
29–2050 Health Diagnosing and Treating Practitioner Support Technicians.	29–2050 Health Practitioner Support Technologists and Technicians.
29–2090 Miscellaneous Health Technologists and Technicians.	
29–2099 Health Technologists and Technicians, All Other	29–2099 Health Technologists and Technicians, All Other.
	Except ophthalmic medical technicians.
	Except hearing aid specialists.
	29–2057 Ophthalmic Medical Technicians.
	29–2092 Hearing Aid Specialists.
29–9000 Other Healthcare Practitioner and Technical Occupations	29–9000 Other Healthcare Practitioners and Technical Occupations.
29–9090 Miscellaneous Healthcare Practitioner and Technical Workers.	29–9090 Miscellaneous Healthcare Practitioners and Technical Workers.
29–9099 Healthcare Practitioners and Technical Workers, All Other	29–9099 Healthcare Practitioners and Technical Workers, All Other.
	Except genetic counselors.
	29–9092 Genetic Counselors.
31–0000 Healthcare Support Occupations.	
31–1000 Nursing, Psychiatric, and Home Health Aides.	
31–1010 Nursing, Psychiatric, and Home Health Aides.	
31–1012 Nursing Aides, Orderlies, and Attendants	31–1014 Nursing Assistants.
	31–1015 Orderlies.
31–2000 Occupational and Physical Therapist Assistants and Aides	31–2000 Occupational Therapy and Physical Therapist Assistants and Aides.
31–2010 Occupational Therapist Assistants and Aides	31–2010 Occupational Therapy Assistants and Aides.
31–2011 Occupational Therapist Assistants	31–2011 Occupational Therapy Assistants.
31–2012 Occupational Therapist Aides	31–2012 Occupational Therapy Aides.
31–9000 Other Healthcare Support Occupations.	
31–9090 Miscellaneous Healthcare Support Occupations.	
31–9099 Healthcare Support Workers, All Other	31–9099 Healthcare Support Workers, All Other.
	Except phlebotomists.
	31–9097 Phlebotomists.
33–0000 Protective Service Occupations.	
33–1000 First-Line Supervisors/Managers, Protective Service Workers	33–1000 Supervisors of Protective Service Workers.
33–1010 First-Line Supervisors/Managers, Law Enforcement Workers	33–1010 First-Line Supervisors of Law Enforcement Workers.
33–1011 First-Line Supervisors/Managers of Correctional Officers	33–1011 First-Line Supervisors of Correctional Officers.
33–1012 First-Line Supervisors/Managers of Police and Detectives	33–1012 First-Line Supervisors of Police and Detectives.
33–1020 First-Line Supervisors/Managers, Fire Fighting and Prevention Workers.	33–1020 First-Line Supervisors of Fire Fighting and Prevention Workers.
33–1021 First-Line Supervisors/Managers of Fire Fighting and Prevention Workers.	33–1021 First-Line Supervisors of Fire Fighting and Prevention Workers.
33–1090 Miscellaneous First-Line Supervisors/Managers, Protective Service Workers.	33–1090 Miscellaneous First-Line Supervisors, Protective Service Workers.
33–1099 First-Line Supervisors/Managers, Protective Service Workers, All Other.	33–1099 First-Line Supervisors of Protective Service Workers, All Other.
33–2010 Fire Fighters	33–2010 Firefighters.
33–2011 Fire Fighters	33–2011 Firefighters.
33–9000 Other Protective Service Workers.	
33–9030 Security Guards and Gaming Surveillance Officers.	
33–9032 Security Guards	33–9032 Security Guards.
	Except transportation security screeners.
	33–9093 Transportation Security Screeners.*
33–9090 Miscellaneous Protective Service Workers.	
33–9099 Protective Service Workers, All Other	33–9099 Protective Service Workers, All Other.
	Except transportation security screeners.
	33–9093 Transportation Security Screeners.*
35–0000 Food Preparation and Serving Related Occupations.	
35–1000 Supervisors, Food Preparation and Serving Workers	35–1000 Supervisors of Food Preparation and Serving Workers.
35–1010 First-Line Supervisors/Managers, Food Preparation and Serving Workers.	35–1010 Supervisors of Food Preparation and Serving Workers.
35–1012 First-Line Supervisors/Managers of Food Preparation and Serving Workers.	35–1012 First-Line Supervisors of Food Preparation and Serving Workers.
37–0000 Building and Grounds Cleaning and Maintenance Occupations.	
37–1000 Supervisors, Building and Grounds Cleaning and Maintenance Workers.	37–1000 Supervisors of Building and Grounds Cleaning and Maintenance Workers.
37–1010 First-Line Supervisors/Managers, Building and Grounds Cleaning and Maintenance Workers.	37–1010 First-Line Supervisors of Building and Grounds Cleaning and Maintenance Workers.
37–1011 First-Line Supervisors/Managers of Housekeeping and Janitorial Workers.	37–1011 First-Line Supervisors of Housekeeping and Janitorial Workers.

2000 SOC	2010 SOC
37–1012 First-Line Supervisors/Managers of Landscaping, Lawn Services, and Groundskeeping Workers.	37–1012 First-Line Supervisors of Landscaping, Lawn Services, and Groundskeeping Workers.
39–0000 Personal Care and Service Occupations.	
39–1000 Supervisors, Personal Care and Service Workers	39–1000 Supervisors of Personal Care and Service Workers.
39–1010 First-Line Supervisors/Managers of Gaming Workers	39–1010 First-Line Supervisors of Gaming Workers.
39–1012 Slot Key Persons	39–1012 Slot Supervisors.
39–1020 First-Line Supervisors/Managers of Personal Service Workers.	39–1020 First-Line Supervisors of Personal Service Workers.
39–1021 First-Line Supervisors/Managers of Personal Service Workers.	39–1021 First-Line Supervisors of Personal Service Workers.
39–5010 Barbers and Cosmetologists	39–5010 Barbers, Hairdressers, Hairstylists, and Cosmetologists.
39–5094 Skin Care Specialists	39–5094 Skincare Specialists.
39–6000 Transportation, Tourism, and Lodging Attendants	39–6000 Baggage Porters, Bellhops, and Concierges.
	39–7000 Tour and Travel Guides.
39–6020 Tour and Travel Guides	39–7010 Tour and Travel Guides.
39–6021 Tour Guides and Escorts	39–7011 Tour Guides and Escorts.
39–6022 Travel Guides	39–7012 Travel Guides.
39–6030 Transportation Attendants	53–2030 Flight Attendants.
	53–6060 Transportation Attendants, Except Flight Attendants.
39–6031 Flight Attendants	53–2031 Flight Attendants.
39–6032 Transportation Attendants, Except Flight Attendants and Baggage Porters.	53–6061 Transportation Attendants, Except Flight Attendants.
39–9010 Child Care Workers	39–9010 Childcare Workers.
39–9011 Child Care Workers	39–9011 Childcare Workers.
39–9020 Personal and Home Care Aides	39–9020 Personal Care Aides.
39–9021 Personal and Home Care Aides	39–9021 Personal Care Aides.
41–0000 Sales and Related Occupations.	
41–1000 Supervisors, Sales Workers	41–1000 Supervisors of Sales Workers.
41–1010 First-Line Supervisors/Managers, Sales Workers	41–1010 First-Line Supervisors of Sales Workers.
41–1011 First-Line Supervisors/Managers of Retail Sales Workers	41–1011 First-Line Supervisors of Retail Sales Workers.
41–1012 First-Line Supervisors/Managers of Non-Retail Sales Workers.	41–1012 First-Line Supervisors of Non-Retail Sales Workers.
41–9000 Other Sales and Related Workers.	
41–9090 Miscellaneous Sales and Related Workers.	
41–9099 Sales and Related Workers, All Other	41–9099 Sales and Related Workers, All Other.
	Except fundraisers.
	13–1131 Fundraisers.
43–0000 Office and Administrative Support Occupations.	
43–1000 Supervisors, Office and Administrative Support Workers	43–1000 Supervisors of Office and Administrative Support Workers.
43–1010 First-Line Supervisors/Managers of Office and Administrative Support Workers.	43–1010 First-Line Supervisors of Office and Administrative Support Workers.
43–1011 First-Line Supervisors/Managers of Office and Administrative Support Workers.	43–1011 First-Line Supervisors of Office and Administrative Support Workers.
43–3020 Billing and Posting Clerks and Machine Operators.	43–3020 Billing and Posting Clerks.
43–3021 Billing and Posting Clerks and Machine Operators	43–3021 Billing and Posting Clerks.
43–6011 Executive Secretaries and Administrative Assistants	43–6011 Executive Secretaries and Executive Administrative Assistants.
43–6014 Secretaries, Except Legal, Medical, and Executive	43–6014 Secretaries and Administrative Assistants, Except Legal, Medical, and Executive.
43–9000 Other Office and Administrative Support Workers.	
43–9190 Miscellaneous Office and Administrative Support Workers.	
43–9199 Office and Administrative Support Workers, All Other	43–9199 Office and Administrative Support Workers, All Other.
	Except all other financial clerks.
	43–3099 Financial Clerks, All Other.
45–0000 Farming, Fishing, and Forestry Occupations.	
45–1000 Supervisors, Farming, Fishing, and Forestry Workers	45–1000 Supervisors of Farming, Fishing, and Forestry Workers.
45–1010 First-Line Supervisors/Managers of Farming, Fishing, and Forestry Workers.	45–1010 First-Line Supervisors of Farming, Fishing, and Forestry Workers.
45–1011 First-Line Supervisors/Managers of Farming, Fishing, and Forestry Workers.	45–1011 First-Line Supervisors of Farming, Fishing, and Forestry Workers.
45–1012 Farm Labor Contractors	13–1074 Farm Labor Contractors.
45–2093 Farmworkers, Farm and Ranch Animals	45–2093 Farmworkers, Farm, Ranch, and Aquacultural Animals.
47–0000 Construction and Extraction Occupations.	
47–1000 Supervisors, Construction and Extraction Workers	47–1000 Supervisors of Construction and Extraction Workers.
47–1010 First-Line Supervisors/Managers of Construction Trades and Extraction Workers.	47–1010 First-Line Supervisors of Construction Trades and Extraction Workers.
47–1011 First-Line Supervisors/Managers of Construction Trades and Extraction Workers.	47–1011 First-Line Supervisors of Construction Trades and Extraction Workers.
47–2000 Construction Trades Workers.	
47–2110 Electricians.	
47–2111 Electricians	47–2111 Electricians.
	Except solar photovoltaic installers.
	47–2231 Solar Photovoltaic Installers.*
47–2180 Roofers.	

2000 SOC	2010 SOC
47–2181 Roofers	47–2181 Roofers. *Except solar photovoltaic installers.* 47–2231 Solar Photovoltaic Installers.*
47–4000 Other Construction and Related Workers.	
47–4090 Miscellaneous Construction and Related Workers.	
47–4099 Construction and Related Workers, All Other	47–4099 Construction and Related Workers, All Other. *Except solar photovoltaic installers.* 47–2231 Solar Photovoltaic Installers.*
49–0000 Installation, Maintenance, and Repair Occupations.	
49–1000 Supervisors of Installation, Maintenance, and Repair Workers.	
49–1010 First-Line Supervisors/Managers of Mechanics, Installers, and Repairers.	49–1010 First-Line Supervisors of Mechanics, Installers, and Repairers.
49–1011 First-Line Supervisors/Managers of Mechanics, Installers, and Repairers.	49–1011 First-Line Supervisors of Mechanics, Installers, and Repairers.
49–2021 Radio Mechanics	49–2021 Radio, Cellular, and Tower Equipment Installers and Repairers.
49–3041 Farm Equipment Mechanics	49–3041 Farm Equipment Mechanics and Service Technicians.
49–3051 Motorboat Mechanics	49–3051 Motorboat Mechanics and Service Technicians.
49–9000 Other Installation, Maintenance, and Repair Occupations.	
49–9020 Heating, Air Conditioning, and Refrigeration Mechanics and Installers.	
49–9021 Heating, Air Conditioning, and Refrigeration Mechanics and Installers.	49–9021 Heating, Air Conditioning, and Refrigeration Mechanics and Installers. *Except solar photovoltaic installers.* 47–2231 Solar Photovoltaic Installers.*
49–9040 Industrial Machinery Installation, Repair, and Maintenance Workers.	
49–9042 Maintenance and Repair Workers, General	49–9071 Maintenance and Repair Workers, General.
49–9090 Miscellaneous Installation, Maintenance, and Repair Workers.	
49–9099 Installation, Maintenance, and Repair Workers, All Other	49–9099 Installation, Maintenance, and Repair Workers, All Other. *Except wind turbine service technicians.* *Except solar photovoltaic installers.* 49–9081 Wind Turbine Service Technicians. 47–2231 Solar Photovoltaic Installers.*
51–0000 Production Workers.	
51–1000 Supervisors, Production Workers	51–1000 Supervisors of Production Workers.
51–1010 First-Line Supervisors/Managers of Production and Operating Workers.	51–1010 First-Line Supervisors of Production and Operating Workers.
51–1011 First-Line Supervisors/Managers of Production and Operating Workers.	51–1011 First-Line Supervisors of Production and Operating Workers.
51–2093 Timing Device Assemblers, Adjusters, and Calibrators	51–2093 Timing Device Assemblers and Adjusters.
51–4012 Numerical Tool and Process Control Programmers	51–4012 Computer Numerically Controlled Machine Tool Programmers, Metal and Plastic.
51–4050 Metal Furnace and Kiln Operators and Tenders	51–4050 Metal Furnace Operators, Tenders, Pourers, and Casters.
51–4190 Miscellaneous Metalworkers and Plastic Workers	51–4190 Miscellaneous Metal Workers and Plastic Workers.
51–4192 Lay-Out Workers, Metal and Plastic	51–4192 Layout Workers, Metal and Plastic.
51–5000 Printing Workers.	
51–5010 Bookbinders and Bindery Workers	51–5110 Printing Workers.*
51–5011 Bindery Workers	51–5113 Print Binding and Finishing Workers.*
51–5012 Bookbinders	51–5113 Print Binding and Finishing Workers.*
51–5020 Printers	51–5110 Printing Workers.*
51–5021 Job Printers	51–5112 Printing Press Operators.* 51–5113 Print Binding and Finishing Workers.*
51–5022 Prepress Technicians and Workers	51–5111 Prepress Technicians and Workers.
51–5023 Printing Machine Operators	51–5112 Printing Press Operators.*
51–8030 Water and Liquid Waste Treatment Plant and System Operators.	51–8030 Water and Wastewater Treatment Plant and System Operators.
51–8031 Water and Liquid Waste Treatment Plant and System Operators.	51–8031 Water and Wastewater Treatment Plant and System Operators.
51–9000 Other Production Occupations.	
51–9130 Photographic Process Workers and Processing Machine Operators.	51–9150 Photographic Process Workers and Processing Machine Operators.
51–9131 Photographic Process Workers	51–9151 Photographic Process Workers and Processing Machine Operators.*
51–9132 Photographic Processing Machine Operators	51–9151 Photographic Process Workers and Processing Machine Operators.*
51–9191 Cementing and Gluing Machine Operators and Tenders	51–9191 Adhesive Bonding Machine Operators and Tenders.
51–9190 Miscellaneous Production Workers.	
51–9199 Production Workers, All Other	51–9199 Production Workers, All Other. *Except food processing workers, all other .* 51–3099 Food Processing Workers, All Other.
53–0000 Transportation and Material Moving Occupations.	

2000 SOC	2010 SOC
53–1000 Supervisors, Transportation and Material Moving Workers	53–1000 Supervisors of Transportation and Material Moving Workers.
53–1020 First-Line Supervisors/Managers of Helpers, Laborers, and Material Movers, Hand.	53–1020 First-Line Supervisors of Helpers, Laborers, and Material Movers, Hand.
53–1021 First-Line Supervisors/Managers of Helpers, Laborers, and Material Movers, Hand.	53–1021 First-Line Supervisors of Helpers, Laborers, and Material Movers, Hand.
53–1030 First-Line Supervisors/Managers of Transportation and Material-Moving Machine and Vehicle Operators.	53–1030 First-Line Supervisors of Transportation and Material-Moving Machine and Vehicle Operators.
53–1031 First-Line Supervisors/Managers of Transportation and Material-Moving Machine and Vehicle Operators.	53–1031 First-Line Supervisors of Transportation and Material-Moving Machine and Vehicle Operators.
53–3022 Bus Drivers, School	53–3022 Bus Drivers, School or Special Client.
53–3032 Truck Drivers, Heavy and Tractor-Trailer	53–3032 Heavy and Tractor-Trailer Truck Drivers.
53–3033 Truck Drivers, Light or Delivery Services	53–3033 Light Truck or Delivery Services Drivers.
53–6030 Service Station Attendants	53–6030 Automotive and Watercraft Service Attendants.
53–6031 Service Station Attendants	53–6031 Automotive and Watercraft Service Attendants.
53–7110 Shuttle Car Operators	53–7110 Mine Shuttle Car Operators.
53–7111 Shuttle Car Operators	53–7111 Mine Shuttle Car Operators.
55–0000 Military Specific Occupations.	
55–1000 Military Officer Special and Tactical Operations Leaders/Managers.	55–1000 Military Officer Special and Tactical Operations Leaders.
55–1010 Military Officer Special and Tactical Operations Leaders/Managers.	55–1010 Military Officer Special and Tactical Operations Leaders.
55–1019 Military Officer Special and Tactical Operations Leaders/Managers, All Other.	55–1019 Military Officer Special and Tactical Operations Leaders, All Other.
55–2000 First-Line Enlisted Military Supervisors/ Managers	55–2000 First-Line Enlisted Military Supervisors.
55–2010 First-Line Enlisted Military Supervisors/ Managers	55–2010 First-Line Enlisted Military Supervisors.
55–2011 First-Line Supervisors/Managers of Air Crew Members	55–2011 First-Line Supervisors of Air Crew Members.
55–2012 First-Line Supervisors/Managers of Weapons Specialists/Crew Members.	55–2012 First-Line Supervisors of Weapons Specialists/Crew Members.
55–2013 First-Line Supervisors/Managers of All Other Tactical Operations Specialists.	55–2013 First-Line Supervisors of All Other Tactical Operations Specialists.

APPENDIX C: 2010 SOC TO 2000 SOC

Appendix C is a chart listing every new or revised detailed occupation for the 2010 SOC. The preliminary corresponding 2000 code(s) and title(s) appear in the second column, including changes to only the code or title. An asterisk (*) after the occupation code and title in the second column means that the occupation in the first column makes up only part of the occupation in the second column; that is, the asterisked 2000 SOC occupation has been divided into multiple new occupations. Each occupation with the (*) notation appears multiple times in the chart.

A new detailed occupation may have been created by breaking out a group of workers previously classified in a 2000 SOC occupation, but the new occupation does not completely replace the 2000 SOC occupation. In this case, the 2000 occupation will indicate in italics which group has been removed to create a new occupation. To aid the reader with the hierarchical location of the change, where a detailed occupation has been added or removed, the major group, minor group, and broad occupation codes for that occupation are also listed.

2010 SOC	2000 SOC
11–0000 Management Occupations.	
11–2030 Public Relations and Fundraising Managers	11–2030 Public Relations Managers.
11–2031 Public Relations and Fundraising Managers	11–2031 Public Relations Managers.
11–3000 Operations Specialties Managers.	
11–3110 Compensation and Benefits Managers	11–3040 Human Resources Managers.*
11–3111 Compensation and Benefits Managers	11–3041 Compensation and Benefits Managers.
11–3120 Human Resources Managers	11–3040 Human Resources Managers.*
11–3121 Human Resources Managers	11–3049 Human Resources Managers, All Other.
11–3130 Training and Development Managers	11–3040 Human Resources Managers.*
11–3131 Training and Development Managers	11–3042 Training and Development Managers.
11–9000 Other Management Occupations.	
11–9010 Farmers, Ranchers, and Other Agricultural Managers	11–9010 Agricultural Managers.
11–9013 Farmers, Ranchers, and Other Agricultural Managers	11–9011 Farm, Ranch, and Other Agricultural Managers.
	11–9012 Farmers and Ranchers.
11–9031 Education Administrators, Preschool and Childcare Center/Program.	11–9031 Education Administrators, Preschool and Child Care Center/Program.
11–9040 Architectural and Engineering Managers.	
11–9041 Architectural and Engineering Managers	11–9041 Engineering Managers.
11–9060 Funeral Service Managers.	
11–9061 Funeral Service Managers	11–9061 Funeral Directors.*
Except morticians, undertakers and funeral directors	
11–9160 Emergency Management Directors	13–1060 Emergency Management Specialists.
11–9161 Emergency Management Directors	13–1061 Emergency Management Specialists.
13–0000 Business and Financial Operations Occupations.	
13–1000 Business Operations Specialists.	
13–1021 Buyers and Purchasing Agents, Farm Products	13–1021 Purchasing Agents and Buyers, Farm Products.
13–1040 Compliance Officers.	

2010 SOC	2000 SOC
13–1041 Compliance Officers	13–1041 Compliance Officers, Except Agriculture, Construction, Health and Safety, and Transportation.
Except transportation security screeners	
13–1070 Human Resources Workers	13–1070 Human Resources, Training, and Labor Relations Specialists.*
13–1071 Human Resources Specialists	13–1071 Employment, Recruitment, and Placement Specialists.
	13–1079 Human Resources, Training, and Labor Relations Specialists, All Other.*
13–1074 Farm Labor Contractors	45–1012 Farm Labor Contractors.
13–1075 Labor Relations Specialists	13–1079 Human Resources, Training, and Labor Relations Specialists, All Other.*
13–1120 Meeting, Convention, and Event Planners.	
13–1121 Meeting, Convention, and Event Planners	13–1121 Meeting and Convention Planners.
	13–1199 Business Operations Specialists, All Other.*
	27–3031 Public Relations Specialists.*
13–1130 Fundraisers.	
13–1131 Fundraisers	41–9099 Sales and Related Workers, All Other.*
13–1140 Compensation, Benefits, and Job Analysis Specialists	13–1070 Human Resources, Training, and Labor Relations Specialists.*
13–1141 Compensation, Benefits, and Job Analysis Specialists	13–1072 Compensation, Benefits, and Job Analysis Specialists.
13–1150 Training and Development Specialists	13–1070 Human Resources, Training, and Labor Relations Specialists.*
13–1151 Training and Development Specialists	13–1073 Training and Development Specialists.
13–1160 Market Research Analysts and Marketing Specialists.	
13–1161 Market Research Analysts and Marketing Specialists	19–3021 Market Research Analysts.
	13–1199 Business Operations Specialists, All Other.*
	27–3031 Public Relations Specialists.*
13–1190 Miscellaneous Business Operations Specialists.	
13–1199 Business Operations Specialists, All Other	13–1199 Business Operations Specialists, All Other.
Except meeting, convention, and event planners	
Except market research analysts and marketing specialists	
13–2070 Credit Counselors and Loan Officers	13–2070 Loan Counselors and Officers.
13–2071 Credit Counselors	13–2071 Loan Counselors.
13–2080 Tax Examiners, Collectors and Preparers, and Revenue Agents.	
13–2081 Tax Examiners and Collectors, and Revenue Agents	13–2081 Tax Examiners, Collectors, and Revenue Agents.
15–0000 Computer and Mathematical Occupations	15–0000 Computer and Mathematical Science Occupations.
15–1100 Computer Occupations	15–1000 Computer Specialists.
15–1110 Computer and Information Research Scientists	15–1010 Computer and Information Scientists, Research.
15–1111 Computer and Information Research Scientists	15–1011 Computer and Information Scientists, Research.
15–1120 Computer and Information Analysts.	
15–1121 Computer Systems Analysts	15–1051 Computer Systems Analysts.*
15–1122 Information Security Analysts	15–1081 Network Systems and Data Communications Analysts.*
15–1130 Software Developers and Programmers.	
15–1131 Computer Programmers	15–1021 Computer Programmers.
15–1132 Software Developers, Applications	15–1031 Computer Software Engineers, Applications.
15–1133 Software Developers, Systems Software	15–1032 Computer Software Engineers, Systems Software.
15–1134 Web Developers	15–1081 Network Systems and Data Communications Analysts.*
15–1140 Database and Systems Administrators and Network Architects.	
15–1141 Database Administrators	15–1061 Database Administrators.
15–1142 Network and Computer Systems Administrators	15–1071 Network and Computer Systems Administrators.
	15–1081 Network Systems and Data Communications Analysts.*
15–1143 Computer Network Architects	15–1081 Network Systems and Data Communications Analysts.*
	15–1051 Computer Systems Analysts.*
15–1150 Computer Support Specialists.	
15–1151 Computer User Support Specialists	15–1041 Computer Support Specialists.
15–1152 Computer Network Support Specialists	15–1081 Network Systems and Data Communications Analysts.*
15–1190 Miscellaneous Computer Occupations.	
15–1199 Computer Occupations, All Other	15–1099 Computer Specialists, All Other.
17–0000 Architecture and Engineering Occupations.	
17–3000 Drafters, Engineering Technicians, and Mapping Technicians	17–3000 Drafters, Engineering, and Mapping Technicians.
19–0000 Life, Physical, and Social Science Occupations.	
19–3000 Social Scientists and Related Workers.	
19–3020 Survey Researchers	19–3020 Market and Survey Researchers.*
21–0000 Community and Social Service Occupations	21–0000 Community and Social Services Occupations.
21–1000 Counselors, Social Workers, and Other Community and Social Service Specialists.	
21–1012 Educational, Guidance, School, and Vocational Counselors	21–1012 Educational, Vocational, and School Counselors.
21–1022 Healthcare Social Workers	21–1022 Medical and Public Health Social Workers.
21–1090 Miscellaneous Community and Social Service Specialists.	
21–1091 Health Educators	121–1091 Health Educators.*
Except community health workers	
21–1094 Community Health Workers	21–1091 Health Educators.*

2010 SOC	2000 SOC
	21–1099 Community and Social Service Specialists, All Other.*
21–1099 Community and Social Service Specialists, All Other	21–1099 Community and Social Service Specialists, All Other.*
Except community health workers	
23–0000 Legal Occupations.	
23–1000 Lawyers, Judges, and Related Workers.	
23–1010 Lawyers and Judicial Law Clerks	23–1010 Lawyers.
23–1012 Judicial Law Clerks	23–2092 Law Clerks.*
23–2000 Legal Support Workers.	
23–2011 Paralegals and Legal Assistants	23–2011 Paralegals and Legal Assistants.
	23–2092 Law Clerks.*
25–0000 Education, Training, and Library Occupations.	
25–2000 Preschool, Primary, Secondary, and Special Education School Teachers.	25–2000 Primary, Secondary, and Special Education School Teachers.
25–2020 Elementary and Middle School Teachers.	
25–2022 Middle School Teachers, Except Special and Career/Technical Education.	25–2022 Middle School Teachers, Except Special and Vocational Education.
25–2023 Career/Technical Education Teachers, Middle School	25–2023 Vocational Education Teachers, Middle School.
25–2030 Secondary School Teachers.	
25–2031 Secondary School Teachers, Except Special and Career/Technical Education.	25–2031 Secondary School Teachers, Except Special and Vocational Education.
25–2032 Career/Technical Education Teachers, Secondary School	25–2032 Vocational Education Teachers, Secondary School.
25–2050 Special Education Teachers	25–2040 Special Education Teachers.
25–2051 Special Education Teachers, Preschool	25–2041 Special Education Teachers, Preschool, Kindergarten, and Elementary School.*
25–2052 Special Education Teachers, Kindergarten and Elementary School.	25–2041 Special Education Teachers, Preschool, Kindergarten, and Elementary School.*
25–2053 Special Education Teachers, Middle School	25–2042 Special Education Teachers, Middle School.
25–2054 Special Education Teachers, Secondary School	25–2043 Special Education Teachers, Secondary School.
25–2059 Special Education Teachers, All Other	25–3099 Teachers and Instructors, All Other.*
25–3000 Other Teachers and Instructors.	
25–3010 Adult Basic and Secondary Education and Literacy Teachers and Instructors.	25–3010 Adult Literacy, Remedial Education, and GED Teachers and Instructors.
25–3011 Adult Basic and Secondary Education and Literacy Teachers and Instructors.	25–3011 Adult Literacy, Remedial Education, and GED Teachers and Instructors.
25–3090 Miscellaneous Teachers and Instructors	25–3090 Miscellaneous Teachers and Instructors.
Except special education teachers, all other	
25–3099 Teachers and Instructors, All Other	25–3099 Teachers and Instructors, All Other.*
Except special education teachers, all other	
25–9010 Audio-Visual and Multimedia Collections Specialists.	
25–9011 Audio-Visual and Multimedia Collections Specialists	25–9011 Audio-Visual Collections Specialists.
27–0000 Arts, Design, Entertainment, Sports, and Media Occupations.	
27–1014 Multimedia Artists and Animators	27–1014 Multi-Media Artists and Animators.
27–3030 Public Relations Specialists	
27–3031 Public Relations Specialists	27–3031 Public Relations Specialists.*
Except meeting, convention, and event planners	
Except market research analysts and marketing specialists	
29–0000 Healthcare Practitioners and Technical Occupations	29–0000 Healthcare Practitioner and Technical Occupations.
29–1000 Health Diagnosing and Treating Practitioners.	
29–1120 Therapists.	
29–1128 Exercise Physiologists	29–1129 Therapists, All Other.*
29–1129 Therapists, All Other	29–1129 Therapists, All Other.*
Except exercise physiologists	
29–1140 Registered Nurses	29–1110 Registered Nurses.*
29–1141 Registered Nurses	29–1111 Registered Nurses.*
Except nurse anesthetists, nurse practitioners, and nurse midwives	
29–1150 Nurse Anesthetists.	
29–1151 Nurse Anesthetists	29–1111 Registered Nurses.*
29–1160 Nurse Midwives.	
29–1161 Nurse Midwives	29–1111 Registered Nurses.*
29–1170 Nurse Practitioners.	
29–1171 Nurse Practitioners	29–1111 Registered Nurses.*
29–1180 Audiologists.	
29–1181 Audiologists	29–1121 Audiologists.
29–2000 Health Technologists and Technicians.	
29–2030 Diagnostic Related Technologists and Technicians.	
29–2034 Radiologic Technologists	29–2034 Radiologic Technologists and Technicians.*
Except magnetic resonance imaging technologists	
29–2035 Magnetic Resonance Imaging Technologists	29–2034 Radiologic Technologists and Technicians.*
29–2050 Health Practitioner Support Technologists and Technicians	29–2050 Health Diagnosing and Treating Practitioner Support Technicians.
29–2057 Ophthalmic Medical Technicians	29–2099 Health Technologists and Technicians, All Other.*
29–2090 Miscellaneous Health Technologists and Technicians.	
29–2092 Hearing Aid Specialists	29–2099 Health Technologists and Technicians, All Other.*
29–2099 Health Technologists and Technicians, All Other	29–2099 Health Technologists and Technicians, All Other.*

2010 SOC	2000 SOC
Except ophthalmic medical technicians	
Except hearing aid specialists	
29–9000 Other Healthcare Practitioners and Technical Occupations	29–9000 Other Healthcare Practitioner and Technical Occupations.
29–9090 Miscellaneous Healthcare Practitioners and Technical Workers.	29–9090 Miscellaneous Healthcare Practitioner and Technical Workers.
29–9092 Genetic Counselors	29–9099 Healthcare Practitioner and Technical Workers, All Other.*
29–9099 Healthcare Practitioners and Technical Workers, All Other	29–9099 Healthcare Practitioner and Technical Workers, All Other.*
Except genetic counselors	
31–0000 Healthcare Support Occupations.	
31–1000 Nursing, Psychiatric, and Home Health Aides.	
31–1010 Nursing, Psychiatric, and Home Health Aides.	
31–1014 Nursing Assistants	31–1012 Nursing Aides, Orderlies, and Attendants.*
31–1015 Orderlies	31–1012 Nursing Aides, Orderlies, and Attendants.*
31–2000 Occupational Therapy and Physical Therapist Assistants and Aides.	31–2000 Occupational and Physical Therapist Assistants and Aides.
31–2010 Occupational Therapy Assistants and Aides	31–2010 Occupational Therapist Assistants and Aides.
31–2011 Occupational Therapy Assistants	31–2011 Occupational Therapist Assistants.
31–2012 Occupational Therapy Aides	31–2012 Occupational Therapist Aides.
31–9000 Other Healthcare Support Occupations.	
31–9090 Miscellaneous Healthcare Support Occupations.	
31–9097 Phlebotomists	31–9099 Healthcare Support Workers, All Other.*
31–9099 Healthcare Support Workers, All Other	31–9099 Healthcare Support Workers, All Other.*
Except phlebotomists	
33–0000 Protective Service Occupations.	
33–1000 Supervisors of Protective Service Workers	33–1000 First-Line Supervisors/Managers, Protective Service Workers.
33–1010 First-Line Supervisors of Law Enforcement Workers	33–1010 First-Line Supervisors/Managers, Law Enforcement Workers.
33–1011 First-Line Supervisors of Correctional Officers	33–1011 First-Line Supervisors/Managers of Correctional Officers.
33–1012 First-Line Supervisors of Police and Detectives	33–1012 First-Line Supervisors/Managers of Police and Detectives.
33–1020 First-Line Supervisors of Fire Fighting and Prevention Workers.	33–1020 First-Line Supervisors/Managers, Fire Fighting and Prevention Workers.
33–1021 First-Line Supervisors of Fire Fighting and Prevention Workers.	33–1021 First-Line Supervisors/Managers of Fire Fighting and Prevention Workers.
33–1090 Miscellaneous First-Line Supervisors, Protective Service Workers.	33–1090 Miscellaneous First-Line Supervisors/Managers, Protective Service Workers.
33–1099 First-Line Supervisors of Protective Service Workers, All Other.	33–1099 First-Line Supervisors/Managers, Protective Service Workers, All Other.
33–2010 Firefighters	33–2010 Fire Fighters.
33–2011 Firefighters	33–2011 Fire Fighters.
33–9000 Other Protective Service Workers.	
33–9030 Security Guards and Gaming Surveillance Officers.	
33–9032 Security Guards	33–9032 Security Guards.*
Except transportation security screeners	
33–9090 Miscellaneous Protective Service Workers.	
33–9093 Transportation Security Screeners	13–1041 Compliance Officers, Except Agriculture, Construction, Health and Safety, and Transportation.*
	33–9032 Security Guards.*
	33–9099 Protective Service Workers, All Other.*
33–9099 Protective Service Workers, All Other	33–9099 Protective Service Workers, All Other.*
Except transportation security screeners	
35–0000 Food Preparation and Serving Related Occupations.	
35–1000 Supervisors of Food Preparation and Serving Workers	35–1000 Supervisors, Food Preparation and Serving Workers.
35–1010 Supervisors of Food Preparation and Serving Workers	35–1010 First-Line Supervisors/Managers, Food Preparation and Serving Workers.
35–1012 First-Line Supervisors of Food Preparation and Serving Workers.	35–1012 First-Line Supervisors/Managers of Food Preparation and Serving Workers.
37–0000 Building and Grounds Cleaning and Maintenance Occupations.	
37–1000 Supervisors of Building and Grounds Cleaning and Maintenance Workers.	37–1000 Supervisors, Building and Grounds Cleaning and Maintenance Workers.
37–1010 First-Line Supervisors of Building and Grounds Cleaning and Maintenance Workers.	37–1010 First-Line Supervisors/Managers, Building and Grounds Cleaning and Maintenance Workers.
37–1011 First-Line Supervisors of Housekeeping and Janitorial Workers.	37–1011 First-Line Supervisors/Managers of Housekeeping and Janitorial Workers.
37–1012 First-Line Supervisors of Landscaping, Lawn Services, and Groundskeeping Workers.	37–1012 First-Line Supervisors/Managers of Landscaping, Lawn Services, and Groundskeeping Workers.
39–0000 Personal Care and Service Occupations.	
39–1000 Supervisors of Personal Care and Service Workers	39–1000 Supervisors, Personal Care and Service Workers.
39–1010 First-Line Supervisors of Gaming Workers	39–1010 First-Line Supervisors/Managers of Gaming Workers.
39–1012 Slot Supervisors	39–1012 Slot Key Persons.
39–1020 First-Line Supervisors of Personal Service Workers	39–1020 First-Line Supervisors/Managers of Personal Service Workers.

2010 SOC	2000 SOC
39–1021 First-Line Supervisors of Personal Service Workers	39–1021 First-Line Supervisors/Managers of Personal Service Workers.
39–4000 Funeral Service Workers.	
39–4030 Morticians, Undertakers, and Funeral Directors.	
39–4031 Morticians, Undertakers, and Funeral Directors	11–9061 Funeral Directors.*
39–5010 Barbers, Hairdressers, Hairstylists, and Cosmetologists	39–5010 Barbers and Cosmetologists.
39–5094 Skincare Specialists	39–5094 Skin Care Specialists.
39–6000 Baggage Porters, Bellhops, and Concierges	39–6000 Transportation, Tourism, and Lodging Attendants.
39–7000 Tour and Travel Guides.	
39–7010 Tour and Travel Guides	39–6020 Tour and Travel Guides.
39–7011 Tour Guides and Escorts	39–6021 Tour Guides and Escorts.
39–7012 Travel Guides	39–6022 Travel Guides.
39–9010 Childcare Workers	39–9010 Child Care Workers.
39–9011 Childcare Workers	39–9011 Child Care Workers.
39–9020 Personal Care Aides	39–9020 Personal and Home Care Aides.
39–9021 Personal Care Aides	39–9021 Personal and Home Care Aides.
41–0000 Sales and Related Occupations.	
41–1000 Supervisors of Sales Workers	41–1000 Supervisors, Sales Workers.
41–1010 First-Line Supervisors of Sales Workers	41–1010 First-Line Supervisors/Managers, Sales Workers.
41–1011 First-Line Supervisors of Retail Sales Workers	41–1011 First-Line Supervisors/Managers of Retail Sales Workers.
41–1012 First-Line Supervisors of Non-Retail Sales Workers	41–1012 First-Line Supervisors/Managers of Non-Retail Sales Workers.
41–9000 Other Sales and Related Workers.	
41–9090 Miscellaneous Sales and Related Workers.	
41–9099 Sales and Related Workers, All Other	41–9099 Sales and Related Workers, All Other.*
Except fundraisers	
43–0000 Office and Administrative Support Occupations.	
43–1000 Supervisors of Office and Administrative Support Workers	43–1000 Supervisors, Office and Administrative Support Workers.
43–1010 First-Line Supervisors of Office and Administrative Support Workers.	43–1010 First-Line Supervisors/Managers of Office and Administrative Support Workers.
43–1011 First-Line Supervisors of Office and Administrative Support Workers.	43–1011 First-Line Supervisors/Managers of Office and Administrative Support Workers.
43–3000 Financial Clerks.	
43–3020 Billing and Posting Clerks	43–3020 Billing and Posting Clerks and Machine Operators.
43–3021 Billing and Posting Clerks	43–3021 Billing and Posting Clerks and Machine Operators.
43–3090 Miscellaneous Financial Clerks.	
43–3099 Financial Clerks, All Other	43–9199 Office and Administrative Support Workers, All Other.*
43–6011 Executive Secretaries and Executive Administrative Assistants.	43–6011 Executive Secretaries and Administrative Assistants.
43–6014 Secretaries and Administrative Assistants, Except Legal, Medical, and Executive.	43–6014 Secretaries, Except Legal, Medical, and Executive.
43–9000 Other Office and Administrative Support Workers.	
43–9190 Miscellaneous Office and Administrative Support Workers.	
43–9199 Office and Administrative Support Workers, All Other	43–9199 Office and Administrative Support Workers, All Other.*
Except financial clerks, all other	
45–0000 Farming, Fishing, and Forestry Occupations.	
45–1000 Supervisors of Farming, Fishing, and Forestry Workers	45–1000 Supervisors, Farming, Fishing, and Forestry Workers.
45–1010 First-Line Supervisors of Farming, Fishing, and Forestry Workers.	45–1010 First-Line Supervisors/Managers of Farming, Fishing, and Forestry Workers.
45–1011 First-Line Supervisors of Farming, Fishing, and Forestry Workers.	45–1011 First-Line Supervisors/Managers of Farming, Fishing, and Forestry Workers.
45–2090 Miscellaneous Agricultural Workers.	
45–2093 Farmworkers, Farm, Ranch, and Aquacultural Animals	45–2093 Farmworkers, Farm and Ranch Animals.
47–0000 Construction and Extraction Occupations.	
47–1000 Supervisors of Construction and Extraction Workers	47–1000 Supervisors, Construction and Extraction Workers.
47–1010 First-Line Supervisors of Construction Trades and Extraction Workers.	47–1010 First-Line Supervisors/Managers of Construction Trades and Extraction Workers.
47–1011 First-Line Supervisors of Construction Trades and Extraction Workers.	47–1011 First-Line Supervisors/Managers of Construction Trades and Extraction Workers.
47–2000 Construction Trades Workers.	
47–2110 Electricians.	
47–2111 Electricians	47–2111 Electricians.*
Except solar photovoltaic installers	
47–2180 Roofers.	
47–2181 Roofers	47–2181 Roofers.*
Except solar photovoltaic installers	
47–2230 Solar Photovoltaic Installers.	
47–2231 Solar Photovoltaic Installers	47–2111 Electricians.*
	47–2181 Roofers.*
	47–4099 Construction and Related Workers, All Other.*
	49–9021 Heating, Air Conditioning, and Refrigeration Mechanics and Installers.*
	49–9099 Installation, Maintenance, and Repair Workers, All Other.*
47–4000 Other Construction and Related Workers.	

2010 SOC	2000 SOC
47–4090 Miscellaneous Construction and Related Workers.	
47–4099 Construction and Related Workers, All Other	47–4099 Construction and Related Workers, All Other.*
Except solar photovoltaic installers	
49–0000 Installation, Maintenance, and Repair Occupations.	
49–1000 Supervisors of Installation, Maintenance, and Repair Workers.	
49–1010 First-Line Supervisors of Mechanics, Installers, and Repairers.	49–1010 First-Line Supervisors/Managers of Mechanics, Installers, and Repairers.
49–1011 First-Line Supervisors of Mechanics, Installers, and Repairers.	49–1011 First-Line Supervisors/Managers of Mechanics, Installers, and Repairers.
49–2021 Radio, Cellular, and Tower Equipment Installers and Repairers.	49–2021 Radio Mechanics.
49–3041 Farm Equipment Mechanics and Service Technicians	49–3041 Farm Equipment Mechanics.
49–3051 Motorboat Mechanics and Service Technicians	49–3051 Motorboat Mechanics.
49–9000 Other Installation, Maintenance, and Repair Occupations.	
49–9020 Heating, Air Conditioning, and Refrigeration Mechanics and Installers.	
49–9021 Heating, Air Conditioning, and Refrigeration Mechanics and Installers.	49–9021 Heating, Air Conditioning, and Refrigeration Mechanics and Installers.*
Except solar photovoltaic installers	
49–9070 Maintenance and Repair Workers, General.	
49–9071 Maintenance and Repair Workers, General	49–9042 Maintenance and Repair Workers, General.
49–9080 Wind Turbine Service Technicians.	
49–9081 Wind Turbine Service Technicians	49–9099 Installation, Maintenance, and Repair Workers, All Other.*
49–9090 Miscellaneous Installation, Maintenance, and Repair Workers.	
49–9099 Installation, Maintenance, and Repair Workers, All Other	49–9099 Installation, Maintenance, and Repair Workers, All Other.*
Except wind turbine service technicians	
Except solar photovoltaic installers	
51–0000 Production Workers.	
51–1000 Supervisors of Production Workers	51–1000 Supervisors, Production Workers.
51–1010 First-Line Supervisors of Production and Operating Workers	51–1010 First-Line Supervisors/Managers of Production and Operating Workers.
51–1011 First-Line Supervisors of Production and Operating Workers	51–1011 First-Line Supervisors/Managers of Production and Operating Workers.
51–2093 Timing Device Assemblers and Adjusters	51–2093 Timing Device Assemblers, Adjusters, and Calibrators.
51–3000 Food Processing Workers.	
51–3090 Miscellaneous Food Processing Workers.	
51–3099 Food Processing Workers, All Other	51–9199 Production Workers, All Other.*
51–4012 Computer Numerically Controlled Machine Tool Programmers, Metal and Plastic.	51–4012 Numerical Tool and Process Control Programmers.
51–4050 Metal Furnace Operators, Tenders, Pourers, and Casters	51–4050 Metal Furnace and Kiln Operators and Tenders.
51–4190 Miscellaneous Metal Workers and Plastic Workers	51–4190 Miscellaneous Metalworkers and Plastic Workers.
51–4192 Layout Workers, Metal and Plastic	51–4192 Lay-Out Workers, Metal and Plastic.
51–5100 Printing Workers	51–5000 Printing Workers.
51–5110 Printing Workers	51–5010 Bookbinders and Bindery Workers.
	51–5020 Printers.
51–5111 Prepress Technicians and Workers	51–5022 Prepress Technicians and Workers.
51–5112 Printing Press Operators	51–5021 Job Printers.*
	51–5023 Printing Machine Operators.
51–5113 Print Binding and Finishing Workers	51–5011 Bindery Workers.
	51–5012 Bookbinders.
	51–5021 Job Printers.*
51–8030 Water and Wastewater Treatment Plant and System Operators.	51–8030 Water and Liquid Waste Treatment Plant and System Operators.
51–8031 Water and Wastewater Treatment Plant and System Operators.	51–8031 Water and Liquid Waste Treatment Plant and System Operators.
51–9000 Other Production Occupations.	
51–9150 Photographic Process Workers and Processing Machine Operators.	51–9130 Photographic Process Workers and Processing Machine Operators.
51–9151 Photographic Process Workers and Processing Machine Operators.	51–9131 Photographic Process Workers.
	51–9132 Photographic Processing Machine Operators.
51–9191 Adhesive Bonding Machine Operators and Tenders	51–9191 Cementing and Gluing Machine Operators and Tenders.
51–9190 Miscellaneous Production Workers.	
51–9199 Production Workers, All Other	51–9199 Production Workers, All Other.*
Except food processing workers, all other	
53–0000 Transportation and Material Moving Occupations.	
53–1000 Supervisors of Transportation and Material Moving Workers	53–1000 Supervisors, Transportation and Material Moving Workers.
53–1020 First-Line Supervisors of Helpers, Laborers, and Material Movers, Hand.	53–1020 First-Line Supervisors/Managers of Helpers, Laborers, and Material Movers, Hand.
53–1021 First-Line Supervisors of Helpers, Laborers, and Material Movers, Hand.	53–1021 First-Line Supervisors/Managers of Helpers, Laborers, and Material Movers, Hand.

2010 SOC	2000 SOC
53–1030 First-Line Supervisors of Transportation and Material-Moving Machine and Vehicle Operators.	53–1030 First-Line Supervisors/Managers of Transportation and Material-Moving Machine and Vehicle Operators.
53–1031 First-Line Supervisors of Transportation and Material-Moving Machine and Vehicle Operators.	53–1031 First-Line Supervisors/Managers of Transportation and Material-Moving Machine and Vehicle Operators.
53–2030 Flight Attendants	39–6030 Transportation Attendants.*
53–2031 Flight Attendants	39–6031 Flight Attendants.
53–3022 Bus Drivers, School or Special Client	53–3022 Bus Drivers, School.
53–3032 Heavy and Tractor-Trailer Truck Drivers	53–3032 Truck Drivers, Heavy and Tractor-Trailer.
53–3033 Light Truck or Delivery Services Drivers	53–3033 Truck Drivers, Light or Delivery Services.
53–6030 Automotive and Watercraft Service Attendants	53–6030 Service Station Attendants.
53–6031 Automotive and Watercraft Service Attendants	53–6031 Service Station Attendants.
53–6060 Transportation Attendants, Except Flight Attendants	39–6030 Transportation Attendants.*
53–6061 Transportation Attendants, Except Flight Attendants	39–6032 Transportation Attendants, Except Flight Attendants and Baggage Porters.
53–7110 Mine Shuttle Car Operators	53–7110 Shuttle Car Operators.
53–7111 Mine Shuttle Car Operators	53–7111 Shuttle Car Operators.
55–0000 Military Specific Occupations.	
55–1000 Military Officer Special and Tactical Operations Leaders	55–1000 Military Officer Special and Tactical Operations Leaders/Managers.
55–1010 Military Officer Special and Tactical Operations Leaders	55–1010 Military Officer Special and Tactical Operations Leaders/Managers.
55–1019 Military Officer Special and Tactical Operations Leaders, All Other.	55–1019 Military Officer Special and Tactical Operations Leaders/Managers, All Other.
55–2000 First-Line Enlisted Military Supervisors	55–2000 First-Line Enlisted Military Supervisors/Managers.
55–2010 First-Line Enlisted Military Supervisors	55–2010 First-Line Enlisted Military Supervisors/Managers.
55–2011 First-Line Supervisors of Air Crew Members	55–2011 First-Line Supervisors/Managers of Air Crew Members.
55–2012 First-Line Supervisors of Weapons Specialists/Crew Members.	55–2012 First-Line Supervisors/Managers of Weapons Specialists/Crew Members.
55–2013 First-Line Supervisors of All Other Tactical Operations Specialists.	55–2013 First-Line Supervisors/Managers of All Other Tactical Operations Specialists.

[FR Doc. E9–1094 Filed 1–16–09; 8:45 am]

BILLING CODE 3110–01–P

Federal Register

Wednesday,
January 21, 2009

Part VII

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910

Occupational Exposure to Diacetyl and Food Flavorings Containing Diacetyl; Proposed Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. OSHA–2008–0046]

RIN 1218–AC33

Occupational Exposure to Diacetyl and Food Flavorings Containing Diacetyl

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: OSHA is requesting data, information, and comment on issues related to occupational exposure to diacetyl and food flavorings containing diacetyl, including current employee exposures to diacetyl; the relationship between exposure to diacetyl and the development of adverse health effects; exposure assessment and monitoring methods; exposure control methods; employee training; medical surveillance for adverse health effects related to diacetyl exposure; and other pertinent subjects. In this notice, OSHA intends the term ''diacetyl and food flavorings containing diacetyl'' to encompass other constituents of food flavorings containing diacetyl. In addition to information on diacetyl, OSHA seeks information on acetoin, acetaldehyde, acetic acid, furfural, and other compounds present in food flavorings that may cause or contribute to flavoring-related lung disease. The Agency is also interested in and seeks information about diacetyl present in substances other than food flavorings (*e.g.*, naturally occurring diacetyl or diacetyl in fragrances) as well as substitutes used in place of diacetyl (*e.g.*, diacetyl trimer). The information received in response to this document will assist the Agency in developing a proposed standard addressing occupational exposure to diacetyl and food flavorings containing diacetyl.

DATES: Comments must be submitted (postmarked, sent, or received) by April 21, 2009.

ADDRESSES: You may submit comments, identified by Docket No. OSHA–2008–0046, by any of the following methods:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Fax: If your comments, including attachments, do not exceed 10 pages, you may fax them to the OSHA Docket Office at 202–693–1648.

Mail, hand delivery, express mail, messenger or courier service: You must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2008–0046, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone 202–693–2350 (TTY number 877–889–5627). Deliveries (hand, express mail, messenger or courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and the OSHA docket number (Docket No. OSHA–2008–0046). Because of security-related procedures, submissions by regular mail may result in significant delay in their receipt. Please contact the OSHA Docket Office at the above address for information about security procedures for submitting comments by hand delivery, express delivery, and messenger or courier service.

All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at *http://www.regulations.gov.* Therefore, OSHA cautions you about submitting certain personal information, such as social security numbers and birthdates. For further information on submitting comments, see the ''Public Participation'' heading in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: To read or download comments submitted in response to this **Federal Register** notice or other materials in the docket, go to Docket No. OSHA–2008–0046 at *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket are listed in the *http://www.regulations.gov* index, however, some information (for example, copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This notice, as well as news releases and other relevant information, also are available at OSHA's Web site at *http://www.osha.gov.*

FOR FURTHER INFORMATION CONTACT:

Press Inquiries: Jennifer Ashley, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: 202–693–1999.

General and Technical Information: David O'Connor, OSHA Directorate of Standards and Guidance, Office of Chemical Hazards—Non-Metals, Room N–3718, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone 202–693–2090.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
A. Events Leading to This Action
B. Properties and Uses
C. Health Effects Studies of Exposure to Butter Flavorings and Diacetyl
II. Request for Data, Information, and Comment
A. Production and Uses
B. Employee Exposure
C. Health Effects
D. Risk Assessment
E. Exposure Assessment and Monitoring Methods
F. Control Measures
G. Employee Training
H. Medical Surveillance Programs
I. Environmental Impacts
J. Economic Impacts
K. Impacts on Small Entities
L. Duplication/Overlapping/Conflicting Rules
M. Approaches to Regulation
III. Public Participation
IV. References
V. Authority and Signature

In this document, OSHA references a number of supporting materials, and includes a list of these materials (see Section IV—References). These materials are posted in Docket No. OSHA–2008–0046. See **ADDRESSES** section above and Section III (Public Participation) for further information about accessing exhibits referenced in this **Federal Register** notice.

I. Background

A. Events Leading to This Action

On July 26, 2006, the United Food and Commercial Workers International Union and the International Brotherhood of Teamsters petitioned OSHA for an Emergency Temporary Standard (ETS) covering all employees exposed to diacetyl. The petition cited evidence from NIOSH Health Hazard Evaluations to show that some employees exposed to butter flavorings developed bronchiolitis obliterans, a serious and sometimes fatal lung disease. OSHA denied the ETS petition on September 25, 2007, indicating that the evidence available at that time did not support the stringent legal findings required for an ETS. However, the

Agency acknowledged that the available evidence showed that employees exposed to butter flavoring vapors containing diacetyl may be at risk of material impairment, and initiated rulemaking under Section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651, 655).

The information available to date indicates that regulating occupational exposures to diacetyl and food flavorings containing diacetyl presents a number of complex and difficult issues. Flavorings, including butter flavoring, are complex mixtures and may contain a number of potential airway reactive substances (*e.g.*, diacetyl, acetoin, acetaldehyde, acetic acid, furfural). Diacetyl has been used as an indicator of exposure to butter flavoring vapors in a variety of occupational studies in microwave popcorn plants. While there is evidence that diacetyl is a factor in flavoring-related airway injury, other compounds may contribute to the development of obstructive airway disease and bronchiolitis obliterans. Gaps also exist in the available data on current usage of and exposure to diacetyl and food flavorings containing diacetyl.

As part of the information-gathering process, OSHA hosted a stakeholder meeting on October 17, 2007. The meeting provided OSHA representatives and stakeholders an opportunity for informal discussion, open conversation, and the exchange of data, ideas, and points of view regarding occupational exposure to diacetyl and food flavorings containing diacetyl. The meeting addressed not only specific OSHA information requests, but also identified stakeholder concerns associated with developing a standard addressing occupational exposure to diacetyl and food flavorings containing diacetyl. A summary report of this stakeholder meeting is available in the docket and on OSHA's Web page (OSHA, 2007a).

OSHA has initiated a number of enforcement and compliance assistance activities. On July 27, 2007, the Agency announced a National Emphasis Program requiring inspections of all workplaces where butter flavored microwave popcorn is produced (OSHA, 2007b). OSHA has published a Safety and Health Information Bulletin that addresses respiratory disease among employees in microwave popcorn processing plants (OSHA, 2007c). The Agency has also published a guidance document that addresses responsibilities of flavoring manufacturers and employers who must comply with OSHA's Hazard Communication Standard with regard to diacetyl and food flavorings that contain diacetyl (OSHA, 2007d).

In this notice, OSHA is seeking information to help the Agency resolve some of the issues discussed above. OSHA believes that its decisionmaking process will benefit from gathering public input on relevant studies and scientific information; data regarding the frequency, intensity, duration, and other parameters of employee exposure in the affected industries, occupations, and activities; key default factors and assumptions; and other relevant information related to the development of a health standard regulating occupational exposure to diacetyl and food flavorings containing diacetyl.

B. Properties and Uses

Flavorings containing diacetyl are in a variety of foods. Of particular note is the use of butter flavorings that contain diacetyl in microwave popcorn. Butter flavoring is mixed with oils and other ingredients and added to the bag during microwave popcorn production. Both natural and artificial butter-flavored popcorn may contain diacetyl. Diacetyl ($C_4H_6O_2$, other names: butanedione or 2,3-butanedione, CAS number 431–03–8) is an organic chemical that occurs naturally in dairy products, and is a natural byproduct of fermentation and brewing. It also is widely used in flavorings, particularly flavorings designed to provide a dairy, buttery, or ripe taste. In addition, diacetyl is used in some fragrances.

Diacetyl can be produced several ways, including by extraction from dairy products, fermentation processes or chemical synthesis. Under Food and Drug Administration classifications, diacetyl produced by extraction from natural products is classified as a natural flavoring while diacetyl produced by other means is classified as an artificial flavoring. There is no difference in the chemistry of ''natural'' and ''artificial'' diacetyl.

The Flavor and Extract Manufacturers Association (FEMA) estimates that each year the U.S. flavorings industry consumes approximately 228,000 pounds of diacetyl, most of which is imported (FEMA, 2005). Flavoring manufacturers are largely firms that mix natural and artificial substances to create flavorings. OSHA has identified 139 establishments, employing an estimated 8,972 employees, that produce flavorings containing diacetyl (ERG, 2007).

The principal types of flavorings that use diacetyl are dairy flavors such as butter, cheese, sour cream, egg, or yogurt flavors; and the so-called ''brown flavors'' such as caramel, butterscotch, brown sugar, maple or coffee flavors. Some fruit flavors (*e.g.*, strawberry and banana) may also contain diacetyl. There are also a variety of special uses of diacetyl such as in vanilla, tea, and other flavorings that are difficult to categorize broadly.

Food flavorings containing diacetyl are used in a wide variety of products throughout the food processing sector. In addition to microwave popcorn, flavorings containing diacetyl are commonly used in the production of margarine and butter-flavored oils and cooking sprays, in retail and commercial bakeries, the production of some snack foods (particularly those with cheese flavoring), and in many confectionaries. Dairy, butter, and cheese flavors are sometimes used in frozen foods, canned foods, salad dressings, cheese and dairy substitutes, flavored wines and liquors, pet food, and specialty preparations. Fruit flavorings containing diacetyl are used in some yogurt and ice cream products.

When food preparation facilities and restaurants heat food and other products containing butter-flavored margarines, oils, cooking sprays, and butter, food preparation employees may be exposed to diacetyl. Diacetyl is reported to be used in fragrances for some fruit scents and for some floral scents, such as geranium and magnolia. Diacetyl may in turn appear in some fragrance-using products such as scented candles (Lone Star, 2003). Diacetyl also has anti-bacterial properties and may be used as a preservative (Bibek, 2004).

Flavorings, including butter flavoring, are complex mixtures and may contain volatile compounds, including other potential airway reactive substances. Apart from diacetyl, one of those substances is acetoin ($C_4H_8O_2$, other names: 3-hydroxybutanone or acetyl methyl carbonol, CAS number 513–86–0). Acetoin is known to be used in butter flavorings and may be used in other flavorings, including flavorings in which diacetyl is used. Acetoin is structurally similar to diacetyl and shares common metabolic pathways with diacetyl. It has been found in the same workplace environments at concentrations approaching those of diacetyl. Like diacetyl, acetoin also occurs naturally in dairy products and has uses similar to diacetyl. Other volatile organic compounds found in some food flavorings include acetaldehyde, acetic acid, and furfural.

Motivated by public concerns about possible health effects of diacetyl, some flavoring and food product manufacturers have begun or are planning to substitute other chemicals for diacetyl, since most flavorings can

be made without diacetyl. For example, many microwave popcorn producers have substituted or are seeking to substitute alternatives to diacetyl in butter flavoring (ConAgra, 2007; Pop Weaver, 2008). OSHA has noted three substances promoted as diacetyl substitutes—acetoin, diacetyl trimer (OSHA, 2007a), and a sulfite adduct of diacetyl (Turin, 2007). Both diacetyl trimer and the sulfite adduct of diacetyl have a low vapor pressure in their basic form, and are thus less likely to evaporate and result in employee inhalation exposures during the production process. However, both are converted to diacetyl during consumer food preparation, so that the foods when consumed will contain diacetyl. For example, if placed on popcorn, both convert to diacetyl when the popcorn is popped.

C. Health Effects Studies of Exposure to Butter Flavorings and Diacetyl

A number of studies, including several occupational investigations and case reports, have documented obstructive airway disease among employees exposed to airborne butter flavoring chemicals (Kanwal *et al.*, 2008). While cases of obstructive lung disease had been described among employees at flavoring manufacturing sites in a few earlier reports, the scientific community did not become aware of flavoring-related obstructive airway disease until 2000 after a case cluster was identified at a microwave popcorn production plant. Subsequent investigations at microwave popcorn production plants demonstrated higher rates of respiratory symptoms such as chronic cough, shortness of breath, and wheezing among employees engaged in certain job activities when compared to the rates expected among the U.S. population adjusted for age and smoking status. In some cases, these effects may be symptomatic of a potentially disabling obstructive lung disease known as constrictive bronchiolitis obliterans. Higher-than-expected rates of physician-diagnosed asthma and chronic bronchitis have also been reported. Some employees exposed to butter flavoring have also experienced eye, skin, nose, and throat irritation.

Spirometry surveys in the investigations of microwave popcorn production plants revealed higher prevalences of airway obstruction, defined as a reduction in FEV_1 and FEV_1/FVC ratio,[1] than expected based on the adjusted rates among the U.S. population. Airway obstruction is described as *fixed* when abnormal pulmonary function test results do not improve with bronchodilator treatment. The onset of symptoms associated with fixed airway obstruction has been reported to occur after a few months to several years of exposure to butter flavorings that contained diacetyl in a microwave popcorn production facility (Akpinar-Elci *et al.*, 2004).

Fixed airway obstruction is characteristic of bronchiolitis obliterans. This lung disease results from inflammation and scarring of the tissue lining the small airways of the lung. In response to the damage, the airways become thickened, narrowed, and sometimes completely obstructed, limiting movement of air into and out of the lung. Because it is an uncommon condition, bronchiolitis obliterans may be misdiagnosed as the more frequently encountered obstructive lung diseases of chronic bronchitis, emphysema, or asthma. A high resolution computerized tomography (CT) scan or, sometimes, a specialized lung biopsy is needed to confirm a diagnosis of bronchiolitis obliterans. As airways become more severely damaged, employees with bronchiolitis obliterans suffer persistent symptoms and permanent loss of pulmonary function. Several employees with severe disease are on waiting lists to receive lung transplants. At least three employee deaths have been attributed to flavoring-related bronchiolitis obliterans (Egilman *et al.*, 2007).

Investigations of Microwave Popcorn Plants

The respiratory hazards associated with butter flavoring came under scrutiny with the diagnosis of bronchiolitis obliterans in eight former employees who had worked in mixing and packaging operations at a Missouri microwave popcorn plant (Parmet *et al.*, 2002). The National Institute of Occupational Safety and Health (NIOSH) evaluated the medical condition of current employees at the plant (Kreiss *et al.*, 2002). The prevalence of airway obstruction was 3.3 times higher than expected for all employees and 10.8 times higher than expected for employees who had never smoked based on national statistics. The frequency and extent of the airway obstruction was greatest among mixing room and packaging area employees with the highest exposures to the butter flavoring vapors. Medical symptoms that were elevated among production workers included chronic cough, shortness of breath upon exertion, wheezing, physician diagnosed asthma and chronic bronchitis, unusual fatigue, and skin and mucous membrane irritation. Rates of physician-diagnosed asthma and chronic bronchitis were also higher than expected based on national statistics. NIOSH noted that five of six current employees who worked in the quality control room popping nearly 100 bags of product in microwave ovens per shift suffered airway obstruction despite relatively low full shift exposure to butter flavoring vapors.

NIOSH then investigated five additional microwave popcorn plants which confirmed and extended its initial findings (Kanwal *et al.*, 2006). The prevalence of airways obstruction and respiratory symptoms was highest among flavorings mixers with longer work histories and packaging operators who worked in close proximity to mixing tanks of oil and flavorings. Six employees currently engaged in these job operations at four microwave popcorn plants were found to have clinical evidence consistent with bronchiolitis obliterans. Production and non-production employees with the least exposure to butter flavoring chemicals had the lowest rates of airway disease and respiratory symptoms.

As an indicator of exposure to butter flavoring vapors, NIOSH measured full shift area and personal time-weighted average (TWA) air concentrations of diacetyl in several job locations of the six investigated plants (Kanwal *et al.*, 2006). The average full shift air levels of diacetyl in the mixing areas and production locations in close proximity to mixing tanks ranged from 0.2 to 38 ppm.[2] By contrast, average diacetyl concentrations were 0.03 ppm or less in the packaging areas that were isolated from the mixing tanks. Several task-based measurements at one plant showed that diacetyl concentrations averaged 5 to 10 ppm for 30 to 60 minutes following the open transfer of

[1] The most common pulmonary function tests, including FEV_1 and FVC, are often measured using *spirometry*, which measures the flow of air in and out of the lungs. Forced expiratory volume—one second (FEV_1) is the volume of air that a person can exhale through a mouthpiece in one second. Forced vital capacity (FVC) is the amojunt of air that can be exhaled following full inspiration. For accurate measurement of FVC, a person must inhale as deeply as possible and then exhale as forcefully as possible through a mouthpiece, for as long as posssible.

[2] NIOSH subsequently determined that the diacetyl sampling method used in its investigations of microwave popcorn and flavor manufacturing facilities can be affected by relative humidity and that high humidity levels may result in an underestimation of true airborne diacetyl concentrations (NIOSH, 2003b). NOISH is working to develop a set of correction factors and to validate a new method for the measurement of diacetyl in the workplace.

butter flavoring to heated mixing tanks (NIOSH, 2003a).

Investigations of Plants That Manufacture Food Flavors That Contain Diacetyl

Cases of airway obstruction have also been reported and investigated in food flavor manufacturing facilities. NIOSH described severe fixed airway obstruction compatible with bronchiolitis obliterans in two former employees of a company that blended large batches of flavoring ingredients with corn starch and flour to make ''cinnabutter'' and other flavors for use in the baking industry (NIOSH, 1986). Researchers at the University of Cincinnati College of Medicine reported severe respiratory disease with clinical findings consistent with bronchiolitis obliterans in five employees at a large flavor manufacturing facility (Lockey *et al.*, 2002). The State of California began an active investigation of obstructive airway disease at flavoring manufacturing establishments in the State after learning of two employees with confirmed bronchiolitis obliterans at separate Southern California plants (CDC, 2007). By January 2007, the State identified six additional employees with suspected fixed obstructive lung disease at three additional flavor manufacturing establishments (Materna, 2007). The eight individuals were flavoring compounders and their jobs involved mixing chemicals, including diacetyl, to make food flavorings.

Recently, NIOSH conducted health hazard evaluations at two Southern California flavor manufacturing plants (NIOSH, 2007a; 2007b) where four current or former employees who worked in powder production and handled diacetyl or diacetyl-containing flavors had severe fixed airway obstruction. Personal air sampling completed at one plant found mean full-shift TWA diacetyl air levels of 0.22 ppm (range: 0.002 ppm to 1.1 ppm) and mean process-associated diacetyl air levels of 7.7 to 21 ppm over one to two hour productions of diacetyl-containing butter-flavored and vanilla-flavored powders.[2]

A study by the National Jewish Medical and Research Center (NJMRC) found that production employees from eleven flavoring manufacturing sites reported higher than expected rates of respiratory symptoms and asthma (Rose, 2007). The study also found that employees with the highest cumulative exposures to diacetyl were more likely to experience process-related breathing problems and eye, nose, and throat irritation than employees with the lowest cumulative exposures. The highest diacetyl air levels were measured during the production of powder and liquid formulations using the NIOSH sampling method [2] (Martyny *et al.*, 2008).

Workplace air levels of diacetyl in powder production areas of monitored plants as well as the type of respiratory problems experienced by the employees were similar to those found in the mixing areas of microwave popcorn plants. However, one important distinction is that employees who work in mixing operations at microwave popcorn plants are typically exposed to butter flavorings on a daily basis while flavoring compounders are usually exposed less frequently at some flavor manufacturing facilities. Thus, based on currently available information, it is not clear whether the risk of airway obstruction among blenders working at food flavoring manufacturing would be similar to mixers in microwave popcorn production.

Investigation at a Diacetyl Production Plant

Four cases of obstructive airway disease compatible with bronchiolitis obliterans were found among diacetyl process operators who worked at a Dutch chemical plant that produced diacetyl (Van Rooy *et al.*, 2007). These workers were regularly exposed to diacetyl and a limited number of other agents, as opposed to the much larger number of compounds present during flavor manufacture or use of butter flavoring in microwave popcorn production. In addition to diacetyl, acetoin was manufactured as a co-product during the diacetyl production process. Acetaldehyde and acetic acid were also formed as side products during the process. The employees in the study reported a greater prevalence of certain respiratory symptoms, such as trouble breathing, chronic cough, and physician-diagnosed asthma than the general Dutch population when adjusted for age and smoking habits (Van Rooy *et al.*, 2008).

Inhalation Studies in Experimental Animals

NIOSH examined the effects of liquid butter flavoring vapors (BFV) and pure diacetyl on the respiratory tract of Sprague Dawley rats exposed to a one-time six hour inhalation study (Hubbs *et al.*, 2002; 2008). Rats exposed to diacetyl above 200 ppm either as pure vapor or as a mixture with other butter flavoring compounds suffered dose-dependant inflammation and necrosis of the epithelium extending from the nose into the bronchii. The epithelial injury in rats exposed to pure diacetyl covered a less extensive area of the respiratory tract than BFV-exposed animals receiving similar diacetyl concentrations. This suggests that other butter flavoring components in addition to diacetyl may contribute to the flavoring-induced airway damage. There also was no difference in respiratory damage whether the total diacetyl dose was administered continuously over six hours or in four 15 minute pulses. There were no significant pathological changes in bronchiolar epithelium or alveoli at any diacetyl concentration.

A National Institute of Environmental Health Sciences (NIEHS) study found respiratory effects in mice exposed to pure diacetyl. NIEHS evaluated the respiratory tract toxicity in C57BL/6 mice exposed to repeated inhalations of pure diacetyl for up to twelve weeks (Morgan *et al.*, 2008). Mice exposed to 50 ppm and 100 ppm dose levels were found to have dose-dependant mild to moderate nasal tissue necrosis. A lymphocytic bronchitis extending into the lower airways was found in the mice exposed to 100 ppm. In an effort to bypass the extensive removal of water-soluble diacetyl vapors that occurs in the nasal passages of mice, liquid diacetyl was forced deep into the lung by oropharyngeal aspiration. This caused fibrotic focii in the terminal bronchioles and alveolar ducts. Although these lesions were not identical to bronchiolitis obliterans, there was sufficient similarity to suspect that they may progress to bronchiolitis with continued exposure. The National Toxicology Program has approved the nomination of BFV, diacetyl, and acetoin for longer term inhalation testing.

II. Request for Data, Information, and Comment

OSHA is seeking data, information, and comment on a variety of topics relevant to the Agency's development of a proposed rule addressing occupational exposure to diacetyl and food flavorings containing diacetyl. The questions below highlight specific areas of concern to OSHA. When answering specific numbered questions below, please key your responses to the number of the question, explain the reasons supporting your views, and identify and provide relevant information on which you rely, including any studies or articles that support your comments. In addition to the questions presented below, respondents are encouraged to address any aspect of occupational exposure to diacetyl and food flavorings containing diacetyl that they feel is pertinent.

When requesting information, OSHA refers to ''diacetyl and food flavorings containing diacetyl.'' In addition to food flavorings, OSHA intends the term to encompass diacetyl present in substances other than food flavorings (*e.g.*, naturally occurring diacetyl or diacetyl in fragrances), as well as other constituents of food flavorings containing diacetyl. ''Starter distillate,'' also referred to as ''butter starter distillate,'' should be considered a form of diacetyl.

As discussed previously, butter flavorings are complex and variable mixtures, containing a number of respiratory irritants and potential airway reactive substances. In addition to information on diacetyl, OSHA seeks information on acetoin, acetaldehyde, acetic acid, furfural, and other compounds present in food flavorings that may cause or contribute to flavoring-related lung disease. The Agency is also interested in information on substitutes used in place of diacetyl (*e.g.*, diacetyl trimer).

A. Production and Uses

Diacetyl and food flavorings containing diacetyl are used in a wide variety of industries and processes, and employee exposure to these substances occurs in many different occupational settings. Exposures have been recorded in various operations in the microwave popcorn and the flavor manufacturing industries. Exposures are also likely in a wide range of food processing and food service industries where diacetyl and food flavorings containing diacetyl are used and in other industries where diacetyl is volatilized (*e.g.*, fragrance-related exposures). OSHA would appreciate detailed responses to these questions concerning the production and use of diacetyl and food flavorings containing diacetyl.

1. What is your primary line of business? Please indicate the types of products or services your firm produces or provides, the number of establishments you have, and how many full-time and part-time employees work at each establishment.

2. Does your firm or any other U.S. firm produce diacetyl? If so, indicate the form of diacetyl (*e.g.*, powder, liquid, encapsulated) and the quantity produced, how frequently it is produced, and the circumstances in which it is produced.

3. Does your firm use diacetyl? If so, indicate the form of diacetyl (*e.g.*, powder, liquid, encapsulated) and quantity used, the purpose(s) it is used for, how frequently it is used, and the circumstances in which it is used. OSHA is particularly interested in the extent of diacetyl use as a preservative. Does your firm use diacetyl for that purpose? If so, please describe the nature of the use, the total volume of diacetyl used and potential employee exposure.

4. Does your firm use any natural or artificial flavorings that might contain diacetyl, such as dairy (*e.g.*, butter, cheese, sour cream, yogurt), ''brown'' (*e.g.*, caramel, butterscotch, brown sugar, maple, coffee flavors), fruit, marshmallow, or egg flavorings? If so, please indicate which flavorings you use, the quantity you use, and the purpose(s) for their use. If any of these flavorings are known to contain diacetyl, please indicate which flavorings contain diacetyl and the percentage of diacetyl, by weight, they contain.

5. Does your firm heat margarine or use butter-flavored cooking oils or cooking sprays? If so, please indicate the quantity of these substances you use and the purpose(s) for their use. If any of these substances are known to contain diacetyl, please indicate which substances contain diacetyl and the percentage of diacetyl, by weight, they contain.

6. Does your firm use, add, or handle flavorings or food products that contain naturally occurring diacetyl, such as dairy products, wine or beer? Please describe the circumstances in which you use, add, or handle naturally occurring diacetyl.

7. Does your firm manufacture or use fragrances? If so, do any of these fragrances contain diacetyl? Please indicate which fragrances contain diacetyl, how much diacetyl they contain, how the fragrances are used, and the quantities produced or used.

B. Employee Exposure

8. What are the job categories and operations in which employees are potentially exposed to diacetyl or food flavorings containing diacetyl in your company or industry? For each job category or operation, please provide a description of how the exposure takes place. OSHA is particularly interested in any operations that involve manual tasks; operations that involve products being sprayed, sprinkled, or coated with flavorings or ingredients containing diacetyl; operations that involve heating of ingredients; and tasks in laboratories for product testing or research and development that involve handling of diacetyl or food flavorings containing diacetyl.

9. How many employees are exposed to diacetyl or food flavorings containing diacetyl, or have the potential for exposure, in each job category or operation in your company or industry?

10. What are the frequency, duration, and levels of employee exposures to diacetyl in each job category in your company or industry? Please indicate the engineering or other controls in place when exposures were measured, as well as the analytical method and type of samples used for determining exposure levels. If possible, OSHA requests that you provide personal exposure sampling data with clear descriptions of the length of time the samples were collected. If personal sampling data are not available, OSHA requests any exposure data you provide indicate the form and length of the exposure. If sampling was performed using NIOSH Method 2557, please indicate the flow rate used and the temperature and relative humidity at the time sampling was performed, if possible.

11. How many years do employees potentially exposed to diacetyl or food flavorings containing diacetyl remain in their jobs? Do employees who leave such positions typically move to new jobs that do not involve exposure, or are they likely to transfer to jobs that involve potential exposure to diacetyl or food flavorings containing diacetyl?

C. Health Effects

The Background section discusses several studies that report an increased occurrence of airway obstruction, bronchiolitis obliterans, and other respiratory disorders among employees in jobs involving exposure to diacetyl and food flavorings containing diacetyl. Diacetyl and other potential airway reactive compounds (*e.g.*, acetoin, acetaldehyde, acetic acid, furfural) present in food flavorings may contribute to the observed respiratory effects. The Agency is seeking additional studies, articles, data, and information that OSHA can use to evaluate health effects related to occupational exposure to these substances. The Agency specifically requests the following:

12. Describe and provide any additional case reports, epidemiological and animal studies, and data not mentioned in this notice that OSHA should consider in evaluating the potential health risks associated with exposure to diacetyl and food flavorings containing diacetyl. If available, please include associated short-term, task-oriented, and full-shift time weighted average exposure data and indicate the method of sampling and analysis used. If sampling was performed using NIOSH Method 2557, please indicate the flow rate used and the temperature and

relative humidity at the time sampling was performed. Describe and provide any studies and data that report changes in the occurrence of flavoring-related health risks from implementing exposure controls and work practices.

13. Describe and provide any available reports and data, not mentioned in this notice, on employees experiencing respiratory symptoms, pulmonary function abnormalities, clinical evidence of respiratory disease, or other adverse health outcomes associated with exposure to diacetyl or food flavorings containing diacetyl at your establishment or other establishments where these substances are manufactured or used. Please include information on the nature of the use, processes, job tasks, and exposures.

14. Describe any ongoing efforts to collect information and data that would assist in the identification of adverse health effects associated with diacetyl and food flavorings containing diacetyl. Please provide any currently available reporting information, anticipated date of completion and when the completed research report and/or data collection could be made available to OSHA for the development of a proposed rule.

15. Occupational investigations have reported respiratory symptoms and spirometry abnormalities, particularly reduced FEV_1 and FEV_1/FVC, among employees in jobs involving exposure to diacetyl and food flavorings containing diacetyl. What respiratory symptomatology and declines in these spirometry test values should OSHA consider to be indicative of flavoring-related respiratory disease? Please identify the prevalence of symptoms and other clinical findings associated with various levels of reduction in FEV_1 and FEV_1/FVC. Please cite your sources.

16. Where longitudinal information is available, please describe any progression of symptoms, pulmonary function test results, and other clinical findings or abnormalities that may have preceded cases of bronchiolitis obliterans.

17. Is there any evidence that other potential airway-reactive flavoring compounds, such as those mentioned in the lead paragraph of this section, contribute to flavoring-related respiratory disease? Are there structure activity data that may be useful for predicting compounds likely to cause airway damage? Please explain and provide supporting data.

18. Describe and provide any studies and data related to respiratory tract absorption, clearance, and metabolism of diacetyl or other flavoring agents that may be likely to contribute to flavoring-related respiratory disease. Describe and provide studies and data pertinent to understanding the mechanism of action by which these compounds may cause adverse respiratory system effects.

19. Research studies report that diacetyl preferentially damages the lining of the nose and upper respiratory tract when inhaled by rats and mice. Should OSHA consider the upper airway damage in experimental animals exposed to diacetyl or butter flavoring vapors as clinically relevant to the respiratory disease that occurs in the lower airways of employees exposed to food flavorings containing diacetyl? Please explain. Are there other examples of toxic agents that damage the nose and upper airways when inhaled by rodents but cause primarily lower airway disease in humans? Please support your response with specific examples and studies.

D. Risk Assessment

OSHA is interested in data that will assist the Agency in developing quantitative estimates of any occupational risk of airway obstruction, fixed airways obstruction, bronchiolitis obliterans, and any other relevant biological endpoints from exposures to diacetyl and food flavorings containing diacetyl.

20. What biological endpoints should OSHA consider to estimate the occupational risk to employees exposed to diacetyl or food flavorings containing diacetyl? Are there endpoints other than airway obstruction, fixed airway obstruction, and bronchiolitis obliterans that OSHA should consider? Please explain.

21. What studies or data should be used to derive a quantitative estimate of the risk resulting from exposure to diacetyl or food flavorings containing diacetyl? OSHA seeks studies, scientific information, and data regarding frequency, intensity, duration, and other parameters of worker exposure in the affected industries, occupations, and activities; key default factors and assumptions; and other relevant information related to the potential development of a health standard regulating diacetyl and food flavorings containing diacetyl.

22. In its risk assessment, how should the Agency treat cross-sectional data describing the prevalence of airway obstruction? Please describe the relationship that might be expected, in an occupational setting, between the prevalence and incidence of airway obstruction.

23. In studies investigating employees exposed to diacetyl or food flavorings containing diacetyl, what proportion, if any, of employees who experienced airway obstruction in those studies might be expected to develop bronchiolitis obliterans? Please explain your reasoning.

24. When developing dose-response assessments from animal studies, what adjustments and/or scaling factors should OSHA consider to account for species differences between animals and humans in the dose delivered to the lower respiratory tract? Are there toxicokinetic models that can assist in these interspecies extrapolations? Please explain.

25. Some of the job categories associated with higher-than-expected prevalences of airway obstruction involved tasks that generated very high short-term peak exposures to food flavorings containing diacetyl. What role may short-term and cumulative exposures to diacetyl or food flavorings containing diacetyl play in causing health effects and how should OSHA account for this in the risk assessment?

26. What exposure metric(s) (*e.g.*, cumulative exposure, duration of exposure, and short-term task-based exposure) should OSHA consider in assessing the risk associated with exposure to diacetyl or food flavorings containing diacetyl? Are means, geometric means, or medians preferable as measures of central tendency of group exposure data?

27. What statistical methods, models, and data should OSHA consider for estimating the risk from exposure to diacetyl and food flavorings containing diacetyl?

28. What job classifications, tasks, or operations involving diacetyl or food flavorings containing diacetyl may be associated with an elevated occurrence of adverse health effects? For example, some studies have reported higher-than-expected prevalences of airway obstruction in employees performing mixing and quality control tasks.

29. Please describe and provide any studies or data you believe the Agency should consider regarding dose-response behavior and mode of action of diacetyl including physiochemical, metabolic, cellular, mechanistic, and dosimetric considerations. For instance, are adverse health effects dependent on the dose rate and intensity over the exposure period rather than the total cumulative dose received? Please explain. Do the data and mode of action suggest a threshold effect? Please explain.

30. Does the form of diacetyl (*e.g.*, liquid vs. powdered) affect dose-response behavior? For example, does the form of diacetyl affect its respiratory deposition? If so, please explain.

31. Are there any existing risk assessments addressing diacetyl or food flavorings containing diacetyl that OSHA should consider? Please identify and provide.

E. Exposure Assessment and Monitoring Methods

32. Do you conduct exposure monitoring for diacetyl or other chemicals (*e.g.*, acetoin, acetaldehyde, acetic acid, furfural) found in food flavorings? If so, please indicate the chemical(s) sampled for; the method(s) of sampling and analysis used; the type of samples collected (*i.e.*, personal or area samples); the job categories, tasks, operations, or areas where sampling is performed; the duration of sampling (*e.g.*, 8-hour time-weighted average, 15 minute peak); and the frequency of sampling.

33. What type of sampling methods are available for measuring diacetyl in the workplace when it is encapsulated within a powder matrix or adsorbed onto a powder surface? Please provide information on any sampling and analytical methods applicable for determining exposure to diacetyl-containing powders based on total, respirable, thoracic, or inhalable size fractions. Are there any methods under development or any laboratory methods used by food flavorists or food chemists that could potentially be applied? Please provide any information available on the precision and accuracy of the sampling method, the range and limits of detection, and the method of validation of sampling and analysis. Please also provide methods for analysis of diacetyl in bulk process materials.

34. If sampling is conducted by in-house staff to evaluate employee exposure to diacetyl and food flavorings containing diacetyl, please indicate the number of hours required to collect the samples and costs for laboratory analysis. If you engage an outside party to perform sampling and analysis, please indicate the costs incurred.

F. Control Measures

35. To what extent have you or other users reduced or eliminated use of diacetyl or food flavorings containing diacetyl? Please explain how you have achieved those reductions. What substitutes are used for diacetyl? What types of flavorings have been most affected by reduction or elimination of diacetyl use? What types of flavorings are most suitable for change and what types are most difficult to produce without diacetyl? What factors have been responsible for changes in diacetyl use (*e.g.*, employee health concerns, consumer demand)? If you have not reduced or eliminated the use of diacetyl, what were your reasons for not substituting at this time? OSHA requests that commenters indicate why substitutes for diacetyl have or have not been used, and describe any technological, economic or other barriers or hindrances to substitution. OSHA also requests measurements of employee exposure to substances used as substitutes for diacetyl, and any measurements of employee exposure to diacetyl after substitution, particularly for substitutes which may convert to diacetyl.

36. Have you installed engineering controls or adopted work practices to reduce exposures to diacetyl and food flavorings containing diacetyl? If so, please indicate the types of controls implemented and the operations, tasks, or processes where they have been applied. Please describe whether and to what extent these controls have reduced employee exposure. Please indicate any operations or processes in your facility for which engineering controls are not available or have not been applied. Please explain what difficulties you have encountered in applying engineering controls in those operations.

37. Does your firm limit access to areas where diacetyl or food flavorings containing diacetyl are present in order to control employee exposures to these substances? Please describe the basis for establishing these areas (*e.g.*, operations, exposure levels), methods used to demarcate and control access to the areas, and any obstacles to implementation.

38. Do you provide respirators or other types of personal protective equipment (*e.g.*, gloves) to employees exposed to diacetyl or food flavorings containing diacetyl? If so, describe your program and identify the type of equipment provided, the basis for selection, and any difficulties encountered in implementing your program.

39. Describe the conditions in which respirators and other personal protective equipment are used, including any criteria (*e.g.*, regulated area, exposure level, type of operation, duration of exposure) you use for triggering their use. Are there any processes or areas where it is not possible to use respirators or other protective equipment? Please explain.

G. Employee Training

40. What information and training do you provide to your employees about occupational exposure to diacetyl and food flavorings containing diacetyl? Please describe your training program, including job categories included in the program, criteria for determining which employees receive information and training, program content, methods of providing information and training, length of training, frequency, and any procedures used to address language or literacy barriers.

41. How do you determine the effectiveness of training? Describe methods used and any factors taken into account in examining the effectiveness of training programs.

H. Medical Surveillance Programs

OSHA is interested in medical surveillance programs that employers use or recommend to identify and monitor employees who exhibit signs, symptoms, or other clinical findings associated with occupational exposure to diacetyl and food flavorings containing diacetyl.

42. Do you have a medical surveillance program to identify or prevent health effects associated with exposure to diacetyl and food flavorings containing diacetyl (this could include a general medical surveillance program that would cover exposure to other chemicals)? Please describe your program. What tests, procedures, examinations, and questions does your program include and at what frequency? Please provide any protocols and standards of care. What are the qualifications and credentials of the health professionals supervising and administering the surveillance program?

43. What criteria (*e.g.*, job categories, duties, exposure levels) do you use or recommend to determine when to provide medical screening or surveillance?

44. What signs, symptoms, test results, or illnesses have been detected or reported that you believe may be related to exposure to diacetyl or food flavorings containing diacetyl? What jobs, tasks, and operations did affected employees perform? What levels of diacetyl were affected employees exposed to (including 8-hour time-weighted averages during an 8-hour work shift and during specific tasks, 15 minute peaks, cumulative exposure, and the duration of exposure, if available)?

45. Have any of your employees been diagnosed with bronchiolitis obliterans? If so, please describe any pulmonary function abnormalities or other clinical signs or symptoms that preceded the diagnosis.

46. If your medical surveillance program includes pulmonary function testing, please describe any cross-sectional findings or longitudinal trends that you have observed. Specifically, what correlations, if any, have you

observed between pulmonary function test results and exposure to diacetyl or food flavorings containing diacetyl (including associations with peak exposures, cumulative exposure, duration of exposure, or particular job classifications, tasks, or operations)? Please describe whether and how findings or trends have varied depending on the form of diacetyl to which employees have been exposed (*e.g.*, powdered vs. liquid formulation).

47. Have you ever removed employees from a job because of adverse health effects attributed to exposure to diacetyl or food flavorings containing diacetyl? If so, please describe the circumstances of the removal, what jobs they were moved into, and potential return. For how long were these employees generally removed? Have any employees ever been permanently removed from a job because of such adverse health effects?

48. Have medical screening and surveillance had any effect on the number and severity of adverse health effects detected or reported?

49. Please describe the costs of medical surveillance for employees exposed to diacetyl and food flavorings containing diacetyl. Where possible, please indicate the number of hours per year the average employee spends on activities related to medical surveillance or screening and how many of those hours are spent traveling to see health care providers. If you employ a health care provider to administer medical surveillance programs, please indicate the number of hours the health care provider spends each year on screening, surveillance and management of employees exposed to diacetyl or food flavorings containing diacetyl. If you do not employ a health care provider to administer medical programs, please indicate the costs per employee for surveillance or screening for adverse health effects associated with diacetyl or food flavorings containing diacetyl. Also, please describe the cost of any equipment or supplies that you have purchased for use in medical programs associated with exposure to diacetyl or food flavorings containing diacetyl.

I. Environmental Impacts

The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*), the Council on Environmental Quality (CEQ) regulations (40 CFR part 1500), and the Department of Labor (DOL) NEPA Compliance Regulations (29 CFR part 11), require that OSHA give appropriate consideration to environmental issues and the impacts of proposed actions that significantly affect the quality of the human environment. OSHA is currently collecting written information and data on possible environmental impacts that could occur outside of the workplace (*e.g.*, exposure to the community through contaminated air/water, contaminated waste sites) if the Agency were to promulgate a standard for occupational exposure to diacetyl and food flavorings containing diacetyl. Such information should include both negative and positive environmental effects that could be expected to result from a revised standard on occupational exposure to diacetyl or food flavorings containing diacetyl. Specifically, OSHA requests comments and information on the following:

50. What is the potential direct or indirect environmental impact (for example, the effect on air and water quality, energy usage, solid waste disposal, and land use) that might result from a reduction in employee exposure to diacetyl or food flavorings containing diacetyl or the use of substitutes for diacetyl or food flavorings containing diacetyl?

51. Are there any situations in which reducing exposures of diacetyl or food flavorings containing diacetyl to employees would be inconsistent with meeting environmental regulations? (Note: In estimates of control costs, OSHA will account for any costs of meeting air quality requirements associated with increased ventilation controls. The issue here is whether there are situations in which ventilation and other controls would be incompatible with air pollution controls.)

J. Economic Impacts

52. What do you estimate would be the expected costs of a standard to control occupational exposure to diacetyl and food flavorings containing diacetyl? What do you estimate would be the costs for enhanced ventilation controls in your establishments? What do you estimate would be the costs of providing exposure assessments, medical surveillance and training? Please explain how you derived your cost estimates.

53. What are the potential economic impacts associated with a standard to control occupational exposure to diacetyl and food flavorings containing diacetyl? Will the expected costs have a severe impact on your firm or your industry? Please explain. Please indicate what industry segment you represent. Do you anticipate any difficulties in providing exposure assessments, medical surveillance, or training? Please explain.

54. Are there foreign sources of food flavorings containing diacetyl? What are those sources?

55. In response to a standard on occupational exposure to diacetyl or food flavorings containing diacetyl, will firms stop manufacturing or using food flavorings containing diacetyl, or will they implement controls to reduce potential exposures? Can you estimate the share of flavoring manufacturers that will eliminate food flavorings containing diacetyl and the share that will continue to manufacture them? What substances are available now, or might be available in the future, as substitutes for diacetyl or food flavorings containing diacetyl? What would be the costs and economic impacts associated with substituting other flavoring ingredients for diacetyl?

K. Impacts on Small Entities

The Regulatory Flexibility Act requires that OSHA assess the impact of proposed and final rules on small entities (5 U.S.C. 601 *et seq.*). OSHA requests that members of the small business community and others familiar with small business concerns address any special circumstances small entities might face in controlling occupational exposure to diacetyl and food flavorings containing diacetyl. OSHA has already determined that this regulatory action will require a preliminary regulatory flexibility analysis, and thus a Small Business Regulatory Enforcement Fairness Act panel (5 U.S.C. 609(b)).

56. How many and what kinds of small entities perform operations using diacetyl or food flavorings containing diacetyl? What percentage of the affected industries do they comprise?

57. How and to what extent would small entities in your industry be affected by the promulgation of a standard that addresses occupational exposure to diacetyl and food flavorings containing diacetyl? Are there special circumstances that make the control of occupational exposure to diacetyl and food flavorings containing diacetyl more difficult or more costly in small entities? Describe those circumstances.

58. The most important goal of the regulatory flexibility analysis is to find and consider alternatives that may serve to meet the goals of OSHA while alleviating burden on affected small entities. Please suggest and discuss any alternatives that might serve to minimize these impacts.

L. Duplication/Overlapping/Conflicting Rules

59. Are there any Federal rules that might duplicate, overlap, or conflict with any standard that OSHA may promulgate on diacetyl or food flavorings containing diacetyl? If so, please identify which ones and explain

how they would duplicate, overlap, or conflict.

60. Are there any Federal programs in areas such as defense or energy that might be impacted by any standard that OSHA may promulgate on diacetyl or food flavorings containing diacetyl? If so, please identify which ones and explain how they would be impacted.

M. Approaches to Regulation

Most OSHA health standards apply when there is occupational exposure to the substance being regulated. Although OSHA is aware of possible occupational exposures to diacetyl that do not involve food flavorings, the known cases of occupational lung disease are associated with employees exposed to food flavorings containing diacetyl. Employee exposures to diacetyl may occur during processing of foods in which diacetyl occurs naturally, such as dairy products, wine, and beer; when using flavored oils or butter for cooking purposes; when making fragrances; and when adding fragrances to products. Should OSHA cover all occupational exposures to diacetyl under a proposed standard, or should the standard focus on certain industries, processes, or applications? Which sectors should OSHA consider covering under a proposed rule?

61. Acetoin is a plausible contributor to flavoring-related lung disease, given its volatility, structural similarity to diacetyl, and presence in all of the work environments in which elevated prevalence of respiratory disease has been noted. In addition to diacetyl, should OSHA cover occupational exposures to acetoin under a proposed standard? Please indicate the basis for your position and include any supporting evidence.

62. Should OSHA exclude chemical mixtures containing diacetyl at concentrations below a certain threshold from coverage under a proposed standard? If so, what threshold (*i.e.*, percent content) should OSHA consider? Please indicate the basis for your position and include any supporting evidence.

63. Should OSHA propose a permissible exposure limit (PEL) for diacetyl or, instead, should the Agency propose process-specific requirements for engineering controls, exposure monitoring, exposure control planning, and respiratory protection (*i.e.*, a non-PEL approach)? Although a PEL approach would be consistent with the majority of the Agency's previous standards that regulate chemical hazards, OSHA typically relies on specified engineering and work practice controls in regulating safety hazards, so such an approach would not be novel. OSHA welcomes comments on the merits of the two approaches as well as any other approaches to addressing occupational exposure to diacetyl and food flavorings containing diacetyl.

64. What provisions should OSHA include in a proposed standard addressing occupational exposure to diacetyl and food flavorings containing diacetyl? OSHA substance-specific health standards typically include provisions for exposure monitoring, regulated areas, methods of compliance, respiratory protection, protective clothing and equipment, medical surveillance, and training, as well as other requirements. Please indicate what provisions would or would not be appropriate for protecting employees from exposure to diacetyl and food flavorings containing diacetyl, and explain the reasons for your position.

65. The California Division of Occupational Safety and Health (Cal/OSHA) has initiated rulemaking proceedings on diacetyl and other food flavorings. In March 2007, Cal/OSHA released a draft regulatory text titled ''Occupational Exposure to Food Flavorings'' (Cal/OSHA, 2007). The draft regulatory text includes requirements for exposure assessment, engineering and work practice controls, respiratory protection, medical surveillance, training and labeling, and recordkeeping, but does not establish a PEL. Are there any provisions in the draft that OSHA should include in a proposed rule on occupational exposure to diacetyl or food flavorings containing diacetyl? Are there any aspects of the draft that you consider inappropriate? Please explain.

66. NIOSH has issued an alert entitled ''Preventing Lung Disease in Workers Who Use or Make Flavorings'' as well as recommendations for minimizing employee exposures to flavorings and flavoring ingredients (NIOSH, 2003). Are there any provisions or recommendations in those documents that OSHA should include in a proposed rule on occupational exposure to diacetyl or food flavorings containing diacetyl? Do you consider any of the provisions or recommendations inappropriate? Please explain.

III. Public Participation

You may submit comments in response to this document (1) Electronically at *http://www.regulations.gov,* (2) by hard copy, or (3) by facsimile (FAX). All comments, attachments, and other materials must identify the Agency name and the docket number for this document (Docket No. OSHA–2008–0046). You may supplement electronic submissions by uploading document files electronically. If, instead, you wish to mail additional materials in reference to an electronic or FAX submission, you must submit three copies to the OSHA Docket Office (see **ADDRESSES** section). The additional materials must clearly identify your electronic or FAX comments by name, date, and docket number so OSHA can attach them to your comments.

Because of security-related problems there may be a significant delay in the receipt of comments by regular mail. For information about security procedures concerning the delivery of materials by express delivery, hand delivery, and messenger or courier service, please contact the OSHA Docket Office at 202–693–2350 (TTY 877–889–5627).

All comments and submissions in response to this **Federal Register**, including personal information, are placed in the public docket without change. Therefore, OSHA cautions against submitting certain personal information such as social security numbers and birthdates. All comments and submissions are listed in the *http://www.regulations.gov* index; however, some information (for example, copyrighted material) is not publicly available to read or download through the Web site. All comments, submissions, and supporting materials are available for inspection and copying at the OSHA Docket Office (see the **ADDRESSES** section of this notice). Information on using *http://www.regulations.gov* to submit comments and access dockets is available at that Web site. Contact the OSHA Docket Office (see **ADDRESSES** section) for information about materials not available through the OSHA Web site and for assistance in using the Web site to locate and download docket submissions.

Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This document, as well as news releases and other relevant documents, are also available at OSHA's Web site at *http://www.osha.gov.*

IV. References

Akpinar-Elci M, Travis WD, Lynch DA, Kreiss K. 2004. Bronchiolitis Obliterans Syndrome in Popcorn Production Plant Workers, Eur Respir J. 2004; 24:298–302.

Bibek R. 2004. Fundamental Food Microbiology, CRC Press, pp. 228 and 608.

Cal/OSHA. 2007. Occupational Exposure to Food Flavorings (Draft Regulatory Text). California Department of Industrial Relations, Division of Occupational Safety and Health.

CDC. 2007. Fixed Obstructive Lung Disease Among Workers in the Flavor-Manufacturing Industry—California, 2004–2007, Centers for Disease Control and Prevention, Morbidity and Mortality Weekly Report. 56(16):389–393.

ConAgra Foods. 2007. News Release: ConAgra Foods Introduces Orville Redenbacher's® and Act II® Microwave Popcorn with a New Great Tasting Butter Flavoring with No Added Diacetyl. ConAgra Foods, Inc.

ERG. 2007. Support for the Development of Economic Profile Data of Diacetyl-Using Industries (Microwave Popcorn and Flavoring). Eastern Research Group, Inc. Interim Final Report: Task Order No. 12, Contract No. GS–10F–0125P.

Egilman D, Mailloux C, Valentin C. 2007. Popcorn-worker Lung Caused by Corporate and Regulatory Negligence: An Avoidable Tragedy, Intern. J. Occupational Environ. Health 13:85–98.

FEMA. 2005. Flavor and Extract Manufacturers Association. Poundage and Technical Effects Update Survey, p. 61.

Hubbs AF, Battelli LA, Goldsmith WT, Porter DW, Frazer D, Friend S, Schwegler-Berry D, Mercer RR, Reynolds JS, Grote A, Castranova V, Kullman G, Fedan JS, Dowdy J, Jones WG. 2002. Necrosis of nasal and airway epithelium in rats inhaling vapors of artificial butter flavoring. Toxicol Appl Pharmacol 185(2):128–35.

Hubbs AF, Goldsmith W, Kashon M, Frazer D. 2008. Respiratory Toxicologic Pathology of Inhaled Diacetyl in Sprague-Dawley Rats, Toxicol. Pathol. 36(2):330–344.

Kanwal R. 2008. Bronchiolitis Obliterans in Workers Exposed to Flavoring Chemicals, Curr. Opin. In Pulmon. 14:141–146.

Kanwal R, Kullman G, Piacitelli C, Boylstein R, Sahakian N, Martin S, Fedan K, Kreiss K. 2006. Evaluation of Flavorings-Related Lung Disease Risk at Six Microwave Popcorn Plants, JOEM 48(2):149–157.

Kreiss K, Gomaa A, Kullman G, Fedan K, Simoes EJ, Enright PL. 2002. Clinical Bronchiolitis Obliterans in Workers at a Microwave-Popcorn Plant, New England J. of Med. 347(5):330–338.

Lockey J, McKay R, Barth E, Dahlsten J, Baughman R. 2002. Bronchiolitis Obliterans In The Food Flavoring Manufacturing Industry. Meeting of the American Thoracic Society.

Lone Star Candle Supply. 2003. Material Safety Data Sheet for Marshmallow Madness Fragrance Oil.

Martyny JW, Van Dyke M, Arbuckle S, Towle M, Rose CS. 2008. Diacetyl Exposure in the Flavoring Industry. Journal of Occupational and Environmental Hygiene 5:679–688.

Materna B. 2007. Summary of eight known cases of confirmed or obstructive lung disease in California food flavor manufacturing workers. January 11, 2007.

Morgan D, Flake GP, Kirby PJ, Palmer SM. 2008. Respiratory Toxicity of Diacetyl in C57BL/6 Mice, Toxicol. Sci. 105(2):429–32.

NIOSH. 1986. Health Hazard Evaluation Report. HETA–85–171–1710: International Bakers Services, Inc., South Bend, Indiana.

NIOSH Alert. 2003a. Preventing Lung Disease in Workers Who Use or Make Flavoring. DHHS Publication Number 2004–110.

NIOSH 2003b. NIOSH Manual of Analytical Methods. Diacetyl: Method 2557 Issue 1:15 March.

NIOSH. 2007a. Health Hazard Evaluation Report. HETA–2007–0033: Gold Coast Ingredients, Inc., Commerce, California. Interim Report.

NIOSH. 2007b. Health Hazard Evaluation Report. HETA 2006–0303–3043: Report on Severe Fixed Obstructive Lung Disease in Workers at a Flavoring Manufacturing Plant. Carmi Flavor and Fragrance Company, Inc., Commerce, CA.

OSHA. 2007a. Diacetyl and Food Flavorings Containing Diacetyl Stakeholder Meeting Notes Stakeholder Meeting, Arlington, Virginia (October 17, 2007), Meeting Summary Report. Available at: *http://www.osha.gov/dsg/guidance/101707-diacetyl-meeting-notes.html.*

OSHA. 2007b. National Emphasis Program—Microwave Popcorn Processing Plants. Directive No. CPL 03–00–005. Available at: *http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=DIRECTIVES&p_id=3649.*

OSHA. 2007c. Respiratory Disease Among Employees in Microwave Popcorn Processing Plants. Safety and Health Information Bulletin SHIB 09–24–07Available at: *http://www.osha.gov/dts/shib/shib092107.html.*

OSHA. 2007d. Hazard Communication Guidance for Diacetyl and Food Flavoring Containing Diacetyl. Available at: *http://www.osha.gov/dsg/guidance/diacetyl-guidance.html.*

Parmet AJ, Von Essen S. 2003. Rapidly Progressive, Fixed Airway Obstructive Disease in Popcorn Workers: A New Occupational Pulmonary Illness? JOEM 44(3):216–218.

Pop Weaver®. 2007. Pop Weaver Introduces the First Microwave Popcorn with Flavoring Containing No Diacetyl. Available at: *http://www.popweaver.com/PopWeaverNoDiacetyl.pdf.*

Rose C, VanDyke M, Ellison M, Towle M, Martyny J. 2007. Respiratory Symptoms and Airflow Limitation in Flavoring Manufacturing Workers. Am J Respir Crit Care Med 175:A17.

Turin L. 2007. Diacetyl Derivatives. World Intellectual Property Organization. Available at: *http://www.wipo.int/pctdb/en/wo.jsp?IA=US2006026827&DISPLAY=STATUS.*

Van Rooy, FGBJ, Rooyackers, JM, Prokop M, Houba R, Smit LAM, Heederik DJJ. 2007. Bronchiolitis Obliterans Syndrome in Chemical Workers Producing Diacetyl for Food Flavorings. Am J Respir Care Med 176:498–504.

Van Rooy FGBJ, Smit L, Houba R, Zaat VAC, Rooyackers J, Heederik DJJ. 2008. A Cross Sectional Study on Lung Function and Respiratory Symptoms Among Chemical Workers Producing Diacetyl for Food Flavoring. Occup Environ Med. Sept. 19, 2008.

V. Authority and Signature

This document was prepared under the direction of Thomas M. Stohler, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor. It is issued pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), 29 CFR part 1911, and Secretary's Order 5–2007 (72 FR 31160).

Signed at Washington, DC, this 14th day of January 2009.

Thomas M. Stohler,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E9–1125 Filed 1–16–09; 8:45 am]

BILLING CODE 4510–26–P

Federal Register

Wednesday,
January 21, 2009

Part VIII

Administrative Committee of the Federal Register

1 CFR Parts 2, 10 and 11

Availability and Official Status of the Compilation of Presidential Documents; Final Rule

ADMINISTRATIVE COMMITTEE OF THE FEDERAL REGISTER

1 CFR Parts 2, 10 and 11

[A.G. Order No. 3036–2009]

Availability and Official Status of the Compilation of Presidential Documents

AGENCY: Administrative Committee of the Federal Register.

ACTION: Final rule.

SUMMARY: This final rule establishes a new official updated daily online-only publication entitled the ''*Daily Compilation of Presidential Documents*.'' The paper edition of the *Weekly Compilation of Presidential Documents* will no longer be issued. The annual edition of the Public Papers of the President will be based on the text of the Daily Compilation of Presidential Documents. The price for subscription to the *Weekly Compilation of Presidential Documents* has also been removed from the regulations, as this publication will no longer exist and the online Daily Compilation is available free of charge on the Internet. This rule also revises the regulatory text to make it more readable and consistent with plain language principles.

DATES: This final rule is effective January 20, 2009.

ADDRESSES: Docket materials are available at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC 20001, 202–741–6030 or the Federal eRulemaking Portal: *http://www.regulations.gov*. If at all possible, please contact the persons listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection of docket materials. The Office of the Federal Register's official hours of business are Monday through Friday, 8:45 a.m. to 5:15 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Amy P. Bunk, Director of Legal Affairs and Policy, Office of the Federal Register, or Allyson Fenton Christou, Attorney-Advisor, Legal Affairs and Policy, Office of the Federal Register at *Fedreg.legal@nara.gov*, or 202–741–6030.

SUPPLEMENTARY INFORMATION:

Background and Purpose

Under the Federal Register Act (44 U.S.C. Chapter 15), the Administrative Committee of the Federal Register (ACFR) is responsible for issuing regulations governing **Federal Register** publications. The Administrative Committee has general authority under 44 U.S.C. 1506 to determine the manner and form for publishing the **Federal Register** and its special editions. The Administrative Committee, with the approval of the Acting Archivist and the Attorney General, is amending its regulations in 1 CFR parts 2, 10, and 11 to discontinue one of the special edition publications, the *Weekly Compilation of Presidential Documents (Weekly Compilation)* and to establish a new updated daily online-only publication called the *Daily Compilation of Presidential Documents* (*Daily Compilation*).

In 1965 President Johnson, concerned that his appointed officials speak with a united voice, recommended that a new publication be developed to contain the statements, messages, and other Presidential materials released by the White House. In response, the ACFR approved, and the Office of the Federal Register commenced publication of the *Weekly Compilation of Presidential Documents* on August 2, 1965. During the Carter Administration the Office established a direct link between the *Weekly Compilation* and the *Public Papers of the Presidents* (*Public Papers*) series: The volumes of *Public Papers* became compilations of the weekly series. Encompassing approximately a six-month time period, each volume of the Public Papers contained the material in the weekly compilations with appropriate emendations and additions, rather than a set of selected papers edited separately.

The *Weekly Compilation* is an official serial publication of Presidential documents. Office of the Federal Register (OFR) editors review all material submitted for publication in the *Weekly Compilation* to assure the accuracy and integrity of the publication. The *Weekly Compilation* contains Presidential statements, memoranda, messages to Congress and federal agencies, speeches and other remarks released by the White House. The *Weekly Compilation* is mailed via United States Post Office bulk rate postage to approximately 155 subscribers the week after the events occurred. This means that by the time the subscribers receive their copy of this publication the events discussed happened at least two weeks before its receipt. These subscribers can obtain much of the same information from other sources, but without the guaranty of accuracy and integrity provided by the OFR editors.

The Government Printing Office Electronic Information Access Enhancement Act of 1993 (GPO Access), 44 U.S.C. 4101, provided additional authority for the Administrative Committee to expand public access to **Federal Register** publications, beginning with the inauguration of online **Federal Register** service on June 8, 1994.

In 1997, the OFR/GPO partnership developed a pilot for an online edition of the *Weekly Compilation*. Like the online *Code of Federal Regulations*, the online edition of the Weekly Compilation includes text-only files and PDF files. The files begin with documents from January 1993 through the present. The *Weekly Compilation of Presidential Documents* became officially recognized in 2000. This rule discontinues the print publication of the *Weekly Compilation of Presidential Documents* and establishes a new official online-only publication, the *Daily Compilation of Presidential Documents*. All prior *Weekly Compilation* editions will remain permanently available through the GPO Web site, and that search and retrieval capability will be integrated with *Daily Compilation* items to ensure ease of access for the public.

Budgetary restraints require cost-cutting measures, including the discontinuation of the softbound print edition of the *Weekly Compilation*. The new *Daily Compilation of Presidential Documents* will contain the same information contained in the *Weekly Compilation:* Presidential statements, memoranda, messages to Congress and federal agencies, speeches, and other remarks released by the White House. OFR editors will continue to review all material submitted for publication in the *Weekly Compilation* to assure the accuracy and integrity of the publication. This new publication will not expand any regulated community or impose any additional regulatory burden. Readers will be able to download and print the *Daily Compilation*. This new publication will be permanently stored online via the GPO. The new daily publication will increase access to Presidential documents and allow for its more frequent updating.

This final rule revises the title of Subpart A from ''Weekly Publication'' to ''Regular Publication'' to allow for the regular, daily online publication of the *Daily Compilation of Presidential Documents*. This rule also changes the title of the Compilation from the ''Weekly Compilation of Presidential Documents'' to the ''Daily Compilation of Presidential Documents'' in section 10.1. The format of the publication is specified in section 10.3, explaining that the *Daily Compilation of Presidential Documents* will be published online through the Government Printing Office's (GPO's) online access system.

The annual publication of the *Public Papers of the Presidents* of the United States will continue to be published in paper. Section 10.11 specifies that the text of the Public Papers will consist of the documents included in the *Daily Compilation of Presidential Documents*. The provision regarding the price of a subscription to the *Weekly Compilation of Presidential Documents* is removed as the *Weekly Compilation* is being replaced by the *Daily Compilation*, which can be accessed on the Internet free of charge. The title of the Compilation is also updated in section 2.5(c). The affected sections are also slightly reorganized to create a structure consistent with plain language requirements.

Customers who need assistance or wish to submit suggestions for improving online **Federal Register** publications are referred to the GPO Access User Support Team. GPO provides information on free public access to the online editions of **Federal Register** publications on the GPO Access service via: *ContactCenter@gpo.gov*; *Phone:* 1–866–512–1800 (toll-free); 202–512–1800 (DC Area); *Fax:* 202–512–2104; GPO's Federal Register World Wide Web site at *http://www.gpoaccess.gov/wcomp/index.html*, or see the National Archives and Records Administration's Federal Register Web site at: *http://www.federalregister.gov/*. Federal depository libraries (for the location of the nearest depository library, call the telephone numbers listed above or access the information online at *http://www.access.gpo.gov/sudocs/libpro.html*).

Regulatory Analysis

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

Administrative Procedure Act

The Administrative Committee has determined that the Administrative Procedure Act's (APA) requirements for notice and comment and a 30-day delay in the effective date are unnecessary under the good cause exception of 5 U.S.C. 553(b)(B) and (d)(3). This rule is not a substantive rule that materially affects the rights or obligations of any person. Moreover, this change would not affect documents with legal effect. Executive Orders will still publish in the **Federal Register** both online and in hard copy. There are no notice and comment requirements for any of the documents published in the *Weekly Compilation of Presidential Documents*.

In addition, this rule merely pertains to the form that the **Federal Register** uses to publish certain presidential documents, not the nature and quantity of the documents to be published. As mentioned earlier in this preamble, the discontinuation of the softbound print edition of the *Weekly Compilation of Presidential Documents* is a result of budgetary restraints, but changing to an online Compilation will not decrease the availability of these documents; indeed, providing an online version will increase availability to the general public. The online Compilation will not expand any regulated community or impose any additional regulatory burden. Indeed, the online publication of the Compilation will increase access to Presidential documents and allow for more frequent updating. The online-only publication will be permanently maintained on the GPO Web site as an official publication of the ACFR. Currently, there are approximately 155 subscribers to the *Weekly Compilation of Presidential Documents*. The vast majority of subscribers to the *Weekly Compilation* are libraries and other public and private institutions with Internet access. There are approximately twelve individual subscribers to the softbound print edition of the *Weekly Compilation*. These individuals and other members of the public can access the *Daily Compilation* online through free Internet access at federal depository libraries and many other public libraries.

Finally, the new form for publishing these presidential documents will result in more timely publication, to a vastly larger audience. Currently, the *Weekly Compilation of Presidential Documents* is mailed via United States Post Office bulk rate postage to approximately 155 subscribers the week after the events occurred. This means that by the time the subscribers receive their copy of this publication the events discussed happened at least 2 weeks before its receipt. Therefore, the conversion to an online *Daily Compilation* actually decreases the amount of time between paper publication and access by the public.

For these reasons, the Committee also believes that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** under 5 U.S.C. 553 (b)(B) and (d)(3).

Executive Order 12866

The final rule has been drafted in accordance with Executive Order 12866, section 1(b), ''Principles of Regulation.'' The ACFR has determined that this final rule is not a significant regulatory action, as defined under section 3(f) of Executive Order 12866. The rule has not been submitted to the Office of Management and Budget under section 6(a)(3)(E) of Executive Order 12866.

Regulatory Flexibility Act

This rule will not have a significant impact on small entities since it imposes no requirements. Members of the public can access **Federal Register** publications through the free GPO Access service over the Internet.

Federalism

This rule has no federalism implications under Executive Order 13132. It does not impose compliance costs on state or local governments or preempt state law.

Congressional Review

This rule is not a major rule as defined by 5 U.S.C. 804(2). The Administrative Committee will submit a rule report, including a copy of this final rule, to each House of the Congress and to the Comptroller General of the United States as required under the congressional review provisions of the Small Business Regulatory Enforcement Fairness Act of 1986.

List of Subjects

1 CFR Part 2

Federal Register publications, Government publications, Organization and functions (Government agencies).

1 CFR Part 10

Government publications, Presidential documents, Public Papers of the Presidents of the United States, Daily Compilation of Presidential Documents.

1 CFR Part 11

Code of Federal Regulations, **Federal Register**, Government publications, Daily Compilation of Presidential Documents.

■ For the reasons discussed in the preamble, the Administrative Committee of the **Federal Register**, with the approval of the Acting Archivist of the United States and the Attorney General, amends parts 2, 10, and 11 of chapter I of title 1 of the Code of Federal Regulations as set forth below:

PART 2—GENERAL INFORMATION

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 44 U.S.C. 1506; sec. 6, E.O. 10530; 19 FR 2709; 3 CFR 1954–1958 Comp., p. 189; 1 U.S.C. 112; 1 U.S.C. 113.

■ 2. Amend § 2.5 by revising paragraph (c) to read as follows:

§ 2.5 Publication of statutes, regulations and related documents.

* * * * *

(c) Based on source materials that are officially related to the acts and documents filed under paragraph (a) of this section, the Office also publishes ''The United States Government Manual,'' the ''Public Papers of the Presidents of the United States,'' the ''Daily Compilation of Presidential Documents,'' the ''**Federal Register** Index,'' and the ''LSA (List of CFR Sections Affected).''

PART 10—PRESIDENTIAL PAPERS

■ 1. The authority citation for part 10 continues to read as follows:

Authority: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709, 3 CFR, 1954–1958 Comp., p. 189.

■ 2. Revise the heading of Subpart A to read as follows:

Subpart A—Regular Publication

■ 3. Revise § 10.1 to read as follows:

§ 10.1 Publication required.

The Director publishes a special edition of the **Federal Register** compiling recent presidential documents, called ''The Daily Compilation of Presidential Documents.''

■ 4. Amend § 10.2 by revising paragraph (a) introductory text to read as follows:

§ 10.2 Scope and sources.

(a) The text of the publication consists of oral statements by the President or of writing subscribed by the President, and selected from transcripts or text issued by the Office of the White House Press Secretary, including—

* * * * *

■ 5. Revise § 10.3 to read as follows:

§ 10.3 Format.

The Daily Compilation of Presidential Documents is published online on the Government Printing Office access system.

■ 6. Revise § 10.11 to read as follows:

§ 10.11 Scope and sources.

The basic text of the Public Papers consists of the documents compiled under subpart A of this part.

PART 11—SUBSCRIPTIONS

■ 1. The authority citation for part 11 continues to read as follows:

Authority: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709, 3 CFR, 1954–1958 Comp., p. 189.

§ 11.6 [Reserved].

■ 2. Remove and reserve § 11.6.

Dated: January 13, 2009.

Adrienne Thomas,

Acting Chairperson, Administrative Committee of the Federal Register.

Dated: January 13, 2009.

Robert C. Tapella,

Member, Administrative Committee of the Federal Register.

Dated: January 13, 2009.

Rosemary Hart,

Member, Administrative Committee of the Federal Register.

Dated: January 13, 2009.

Michael B. Mukasey,

Attorney General.

Dated: January 13, 2009.

Adrienne Thomas,

Acting Archivist of the United States.

[FR Doc. E9–1334 Filed 1–16–09; 8:45 am]

BILLING CODE 1505–02–P

Federal Register

Wednesday,
January 21, 2009

Part IX

The President

Proclamation 8339—National Sanctity of Human Life Day, 2009

Presidential Determination No. 2009–11 of January 15, 2009—Limited Waiver of Certain Sanctions Imposed by, and Delegation of Certain Authorities Pursuant to, the Tom Lantos Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2008

Notice of January 15, 2009—Continuation of the National Emergency Relating to Cuba and of the Emergency Authority Relating to the Regulation of the Anchorage and Movement of Vessels

Notice of January 15, 2009—Continuation of the National Emergency with Respect to Terrorists Who Threaten to Disrupt the Middle East Peace Process

Federal Register
Vol. 74, No. 12
Wednesday, January 21, 2009

Presidential Documents

Title 3—

The President

Proclamation 8339 of January 15, 2009

National Sanctity of Human Life Day, 2009

By the President of the United States of America

A Proclamation

All human life is a gift from our Creator that is sacred, unique, and worthy of protection. On National Sanctity of Human Life Day, our country recognizes that each person, including every person waiting to be born, has a special place and purpose in this world. We also underscore our dedication to heeding this message of conscience by speaking up for the weak and voiceless among us.

The most basic duty of government is to protect the life of the innocent. My Administration has been committed to building a culture of life by vigorously promoting adoption and parental notification laws, opposing Federal funding for abortions overseas, encouraging teen abstinence, and funding crisis pregnancy programs. In 2002, I was honored to sign into law the Born-Alive Infants Protection Act, which extends legal protection to children who survive an abortion attempt. I signed legislation in 2003 to ban the cruel practice of partial-birth abortion, and that law represents our commitment to building a culture of life in America. Also, I was proud to sign the Unborn Victims of Violence Act of 2004, which allows authorities to charge a person who causes death or injury to a child in the womb with a separate offense in addition to any charges relating to the mother.

America is a caring Nation, and our values should guide us as we harness the gifts of science. In our zeal for new treatments and cures, we must never abandon our fundamental morals. We can achieve the great breakthroughs we all seek with reverence for the gift of life.

The sanctity of life is written in the hearts of all men and women. On this day and throughout the year, we aspire to build a society in which every child is welcome in life and protected in law. We also encourage more of our fellow Americans to join our just and noble cause. History tells us that with a cause rooted in our deepest principles and appealing to the best instincts of our citizens, we will prevail.

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 January 18, 2009, as National Sanctity of Human Life Day. I call upon all Americans to recognize this day with appropriate ceremonies and to underscore our commitment to respecting and protecting the life and dignity of every human being.

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

[FR Doc. E9–1361
Filed 1–16–09; 11:15 am]
Billing code 3195–W9–P

Federal Register
Vol. 74, No. 12
Wednesday, January 21, 2009

Presidential Documents

Title 3—

The President

Presidential Determination No. 2009–11 of January 15, 2009

Limited Waiver of Certain Sanctions Imposed by, and Delegation of Certain Authorities Pursuant to, the Tom Lantos Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2008

Memorandum for the Secretary of State [and] the Secretary of the Treasury

By the authority vested in me as President by the Constitution and laws of the United States, including the Tom Lantos Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2008 (Public Law 110–286) (JADE Act) and section 301 of title 3, United States Code, in order to ensure that the United States Government's sanctions against the Burmese leadership and its supporters continue to be implemented effectively, to allow the reconciliation of measures applicable to persons sanctioned under the JADE Act with measures applicable to the same persons sanctioned under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), and to allow for the implementation of additional appropriate sanctions:

(1) I hereby waive, pursuant to section 5(i) of the JADE Act, the provisions of section 5(b) of the JADE Act with respect to those persons described in section 5(a)(1) of the JADE Act who are not included on the Department of the Treasury's List of Specially Designated Nationals and Blocked Persons. Because the imposition of effective and meaningful blocking sanctions requires the identification of those individuals and entities targeted for sanction and the authorization of certain limited exceptions to the prohibitions and restrictions that would otherwise apply, I hereby determine and certify that such a limited waiver is in the national interest of the United States.

(2) I hereby delegate to the Secretary of the Treasury the waiver authority set forth in section 5(i) of the JADE Act, including the authority to invoke or revoke the waiver with respect to any person or persons or any transaction or category of transactions or prohibitions by making the necessary determination and certification regarding the national interest of the United States set forth in that section. I hereby direct the Secretary of the Treasury, after consultation with the Secretary of State and with necessary support from the Intelligence Community, as defined in section 3(4) of the National Security Act of 1947, as amended (50 U.S.C. 401a(4)), to continue to target aggressively the Burmese regime and its lines of support. I further delegate to the Secretary of the Treasury the authority to take such actions as may be necessary to carry out the purposes of section 5(b) of the JADE Act. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government consistent with applicable law. The authorities delegated to the Secretary of the Treasury under this memorandum shall be exercised after consultation with the Secretary of State.

(3) I authorize the Secretary of State, after consultation with the Secretary of the Treasury, to take such actions as may be necessary to make the submissions to the appropriate congressional committees pursuant to section 5(d) of the JADE Act.

I hereby authorize and direct the Secretary of the Treasury to report this determination to the appropriate congressional committees and to publish it in the *Federal Register*.

THE WHITE HOUSE,
Washington, January 15, 2009

[FR Doc. E9–1362
Filed 1–16–09; 11:15 am]
Billing code 4811–33–P

Federal Register
Vol. 74, No. 12
Wednesday, January 21, 2009

Presidential Documents

Title 3—

The President

Notice of January 15, 2009

Continuation of the National Emergency Relating to Cuba and of the Emergency Authority Relating to the Regulation of the Anchorage and Movement of Vessels

On March 1, 1996, by Proclamation 6867, a national emergency was declared to address the disturbance or threatened disturbance of international relations caused by the February 24, 1996, destruction by the Cuban government of two unarmed U.S.-registered civilian aircraft in international airspace north of Cuba. In July 1996 and on subsequent occasions, the Cuban government stated its intent to forcefully defend its sovereignty against any U.S.-registered vessels or aircraft that might enter Cuban territorial waters or airspace while involved in a flotilla or peaceful protest. Since these events, the Cuban government has not demonstrated that it will refrain from the future use of reckless and excessive force against U.S. vessels or aircraft that may engage in memorial activities or peaceful protest north of Cuba. On February 26, 2004, by Proclamation 7757, the scope of the national emergency was expanded in order to deny monetary and material support to the repressive Cuban government, which had taken a series of steps to destabilize relations with the United States, including threatening to abrogate the Migration Accords with the United States and to close the United States Interests Section. Further, Cuba's most senior officials repeatedly asserted that the United States intended to invade Cuba, despite explicit denials from the U.S. Secretaries of State and Defense that such action is planned. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Cuba and the emergency authority relating to the regulation of the anchorage and movement of vessels set out in Proclamation 6867 as amended and expanded by Proclamation 7757.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
January 15, 2009.

[FR Doc. E9–1363
Filed 1–16–09; 11:15 am]
Billing code 3195–W9–P

Federal Register
Vol. 74, No. 12
Wednesday, January 21, 2009

Presidential Documents

Title 3—

The President

Notice of January 15, 2009

Continuation of the National Emergency with Respect to Terrorists Who Threaten to Disrupt the Middle East Peace Process

On January 23, 1995, by Executive Order 12947, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by grave acts of violence committed by foreign terrorists who threaten to disrupt the Middle East peace process. On August 20, 1998, by Executive Order 13099, the President modified the Annex to Executive Order 12947 to identify four additional persons, including Usama bin Laden, who threaten to disrupt the Middle East peace process.

Because these terrorist activities continue to threaten the Middle East peace process and to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, the national emergency declared on January 23, 1995, as expanded on August 20, 1998, and the measures adopted on those dates to deal with that emergency must continue in effect beyond January 23, 2009. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to foreign terrorists who threaten to disrupt the Middle East peace process.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
January 15, 2009.

[FR Doc. E9–1364
Filed 1–16–09; 11:15 am]
Billing code 3195–W9–P

Reader Aids

Federal Register

Vol. 74, No. 12

Wednesday, January 21, 2009

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal_register**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

Reminders. Effective January 1, 2009, the Reminders, including Rules Going Into Effect and Comments Due Next Week, no longer appear in the Reader Aids section of the Federal Register. This information can be found online at **http://www.regulations.gov.**

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, JANUARY

1–200 2
201–392 5
393–608 6
609–768 7
769–854 8
855–1142 9
1143–1582 12
1583–1870 13
1871–2292 14
2293–2756 15
2757–3394 16
3395–3962 21

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

2 3950
10 3950
11 3950

3 CFR

Proclamations:
8333 609
8334 611
8335 1557
8336 1565
8337 1577
8338 2753
8339 3955

Executive Orders:
13241 (amended by 13484) 2285
13484 2285
13485 2287
13486 2289

Administrative Orders:
Notices:
Notice of January 15, 2009 3959
Notice of January 15, 2009 3961
Memorandums:
Memorandum of December 23, 2008 1585
Memorandum of March 19, 2002 (superseded by EO 13485) 2287
Presidential Determinations:
No. 2009-10 of January 1, 2009 1583
No. 2009–11 of January 15, 2009 3957

5 CFR

532 1871
9901 2757

Proposed Rules:
532 1948

6 CFR

Proposed Rules:
5 ..... 2903, 2904, 2906

7 CFR

2 3395
60 2658
65 2658
246 544
305 2770
318 2770
636 2786
652 2800
662 1587
925 3412
944 ..... 2806, 3412
966 855
980 2806
999 2806
1415 3856
1466 2293
1467 2317
1491 2809
1779 2823
1780 393
1980 1872
3575 2823
4279 2823
4280 2823
5001 2823

Proposed Rules:
305 651
319 651
340 2907
625 1954
985 1971
1000 1976
1033 1976
1780 411

8 CFR

1 2824
2 2824
3 2824
100 2824
103 395
204 2837
209 2824
212 ..... 395, 2824
214 ..... 395, 2824
215 ..... 2824, 2837
233 2824
235 ..... 2824, 2837
245 395
274a 2838
299 395
1001 201
1003 201
1274a 2337
1292 201

9 CFR

71 1
83 1
93 1

Proposed Rules:
71 1634
77 1634
78 1634
79 1634
80 1634

10 CFR

72 1143
150 1872
431 1091

Proposed Rules:
430 ..... 1643, 3450

431 ....411, 1992

12 CFR

622 2340
1202 2342
1250 2347
1773 2347

13 CFR

Proposed Rules:
120 1992
121 1153
125 1153
127 1153
134 1153

14 CFR

11 201
25 1143
71 ....769, 1872, 1874, 2350
95 396
97 ....202, 205
121 2351
Proposed Rules:
39 ....664, 1153, 1155, 1158, 1159, 1164, 1646, 1649, 2425, 3462
65 1280
71 ....1651, 1652, 2427, 2909, 3465, 3466, 3468
119 1280
121 ....1280, 3469
135 1280
142 1280

15 CFR

742 2355
744 ....770, 2355
746 2355
806 1590
922 3216
Proposed Rules:
736 413

16 CFR

1 857
3 1804
4 1804
Proposed Rules:
1500 ....2428, 2433, 2435, 2439

17 CFR

210 2158
211 2158
229 2158
230 3138
240 3138
249 2158
Proposed Rules:
38 3475

18 CFR

Proposed Rules:
284 2443

19 CFR

4 2824
12 ....2838, 2844
122 2824
163 2844
207 2847

21 CFR

56 2358
73 207
101 207
314 2849
320 2849
520 1146
558 6
866 6
Proposed Rules:
131 2443
1300 3480
1301 3480
1304 3480
1305 3480
1307 3480

22 CFR

42 2369
215 9

23 CFR

Proposed Rules:
180 3487
511 1993

24 CFR

30 2750
203 2369
1003 1868
3500 2369
4001 617

26 CFR

1 ....340, 3420
31 3421
301 ....340, 2370
602 340
Proposed Rules:
1 ....236, 3508, 3509
31 789
41 2910
301 236

27 CFR

9 ....3422, 3425
478 1875
555 1878

28 CFR

545 1892
550 1892
Proposed Rules:
548 2913

29 CFR

3 2862
5 2862
250 0000
403 3678
408 3678
825 2862
1601 3429
1603 3429
1605 3429
1611 3429
1612 3429
1614 3429
1615 3429
1621 3429
1626 3429
1910 858
1915 858
1917 858
1918 858
1926 858
2550 3822
2560 ....17, 2373
4022 2863
4044 772
Proposed Rules:
1910 3526

30 CFR

6 3430
14 3430
18 3430
48 3430
75 3430
926 217
Proposed Rules:
74 2915
936 868
938 2005

31 CFR

31 3431

32 CFR

160 2864
Proposed Rules:
260 2932

33 CFR

125 2865
155 3364
157 3364
165 2373
Proposed Rules:
160 3534
161 3534
164 3534
165 3534

34 CFR

99 400

37 CFR

Proposed Rules:
201 666

38 CFR

21 3436
Proposed Rules:
3 2016
17 3535

39 CFR

111 2866
3020 ....219, 622, 858

40 CFR

19 626
51 ....2376, 3437
52 ....1146, 1148, 1591, 1899, 1903, 1927, 2376, 2383, 2387, 2392, 3442
81 1148
82 21
180 ....629, 634, 637, 2867
Proposed Rules:
50 2936
51 ....2460, 2936
52 ....667, 2018, 2460, 2945
82 2954
112 2461
257 41

41 CFR

102-42 2395
301-10 ....2396, 2397
Proposed Rules:
102-192 870

42 CFR

414 2873
422 1494
423 ....1494, 2881
424 166
Proposed Rules:
423 1550
493 3264

43 CFR

3500 637

44 CFR

64 ....641, 773
65 775
67 ....401, 778
Proposed Rules:
67 ....238, 241, 244, 245, 246, 247, 789

45 CFR

46 2399
88 2888
89 2888
162 ....3296, 3328

46 CFR

162 3364
401 220
Proposed Rules:
197 414

47 CFR

1 3444
73 ....1593, 2405
79 1594
Proposed Rules:
73 1653
74 61
79 1654

48 CFR

Ch. 1 ....2710, 2746
1 ....2712, 2733
2 ....1937, 2712, 2713
3 2713
4 ....2712, 2724
5 2731
6 2731
7 2733
11 2740
12 ....2712, 2713, 2741
15 ....2724, 2746
17 2724
18 2733
22 ....1937, 2724, 2741, 2745
23 ....2713, 2740
24 2731
25 ....2713, 2745
28 2733
32 2733
33 2733
39 2740
43 2733
50 2733
52 ....1937, 2712, 2713, 2724, 2733, 2740, 2741, 2745
202 2407
203 ....2407, 2408, 2410
204 2411
209 ....2408, 2413, 2414
212 2415
216 2416
218 2407
225 ....2417, 2418

236 2417
237 2421
252 ....2408, 2410, 2411, 2417, 2418, 2421, 2422
542 863
543 864
552 ....863, 864
Proposed Rules:
22 872
52 872

49 CFR

171 ....1770, 2200
172 ....1770, 2200
173 ....1770, 2200
174 1770
175 2200
176 2200
178 2200
179 1770
190 2889
191 2889
192 2889
193 2889
194 2889
195 2889
199 2889
213 1605
356 2895
365 2895
374 2895
580 643
Proposed Rules:
80 3487
261 3487
640 3487
1201 248
1242 248
1301 416
1700 3487

50 CFR

216 ....1456, 1607, 3882
224 1937
300 1607
600 3178
622 ....1148, 1621
640 1148
648 233
679 ....233, 868, 1631, 1946, 2902, 3446, 3449
Proposed Rules:
17 ....419, 2465
32 1838
223 249
224 249
253 2467
300 ....2019, 2032
600 2467
648 ....2478, 2959
660 252
679 ....254, 2984

LIST OF PUBLIC LAWS

This is the first in a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

S.J. Res. 3/P.L. 111–1

Ensuring that the compensation and other emoluments attached to the office of Secretary of the Interior are those which were in effect on January 1, 2005. (Jan. 16, 2009; 123 Stat. 3)

A cumulative List of Public Laws for the second session of the 110th Congress will be published in the **Federal Register** on January 30, 2009.

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.