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# Presidential Documents

**Title 3—**

## The President

**Executive Order 13512 of September 29, 2009**

## Amending Executive Order 13390

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121 *et seq.*), and in order to extend the work of the Coordinator of Federal Support for the Recovery and Rebuilding of the Gulf Coast Region, Executive Order 13390 of November 1, 2005, as amended, is further amended by striking ''September 30, 2009,'' and inserting in lieu thereof ''April 1, 2010.''

THE WHITE HOUSE,
*Washington, September 29, 2009*

[FR Doc. E9–23915
Filed 10–1–09; 8:45 am]
Billing code 3195–W9–P

# Presidential Documents

**Presidential Determination No. 2009–31 of September 29, 2009**

## Presidential Determination On the Delegation of Certifications Under Section 1512 of Public Law 105–261

**Memorandum for the Secretary of Commerce**

By virtue of the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of Title 3, United States Code, I hereby delegate to you the functions of the President under section 1512 of the National Defense Authorization Act for Fiscal Year 1999 (NDAA).

In the performance of your responsibility under this memorandum, you shall consult, as appropriate, the heads of other executive departments and agencies.

You are authorized and directed to publish this determination in the *Federal Register*.

THE WHITE HOUSE,
*Washington, September 29, 2009*

[FR Doc. E9–23917
Filed 10–1–09; 8:45 am]
Billing code 3510–BP–P

# Rules and Regulations

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

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

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Part 354

**[Docket No. APHIS–2009–0048]**

**RIN 0579–AC99**

### User Fees for Agricultural Quarantine and Inspection Services

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule; delay of effective date.

**SUMMARY:** On September 28, 2009, we published an interim rule in the **Federal Register** to adjust the fees charged for certain agricultural quarantine and inspection (AQI) services that are provided in connection with certain commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international airline passengers arriving at ports in the customs territory of the United States. That interim rule was scheduled to become effective on October 1, 2009. We are delaying the effective date of the interim rule until November 1, 2009. This delay will provide entities affected by the changes in AQI user fees additional time to make the necessary preparations to comply with the new fees.

**DATES:** The effective date for the interim rule amending 7 CFR part 354 published at 74 FR 49311–49315 on September 28, 2009, is delayed until November 1, 2009.

**FOR FURTHER INFORMATION CONTACT:** For information concerning program operations, contact Mr. William E. Thomas, Director, Quarantine Policy, Analysis, and Support, PPQ, APHIS, 4700 River Road, Unit 131, Riverdale, MD 20737; (301) 734–5214. For information concerning rate development, contact Mrs. Kris Caraher, User Fee Section, Financial Services Branch, Financial Management Division, MRPBS, APHIS, 4700 River Road Unit 55, Riverdale, MD 20737–1232; (301) 734–0882.

**SUPPLEMENTARY INFORMATION:**

#### Background

In an interim rule published in the **Federal Register** on September 28, 2009 (74 FR 49311–49315, Docket No. APHIS–2009–0048), we amended the user fee regulations in 7 CFR part 354 by adjusting the fees charged for certain agricultural quarantine and inspection (AQI) services that are provided in connection with certain commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international airline passengers arriving at ports in the customs territory of the United States. In the interim rule, we explained that the recent downturn in the U.S. economy has negatively impacted travel volumes, and, as a result, our user fee collections, which fund these services, have diminished. Although the volume of international travel and trade has decreased, inspection and related support services continue to be provided at their existing levels, so expenses have not decreased. As a result, our user fee collections have not been sufficient to enable us to provide those services and maintain a reasonable reserve balance. We therefore found it necessary to increase our AQI user fees in order to provide adequate funds for these purposes.

The interim rule was scheduled to become effective on October 1, 2009. We are delaying the effective date of the interim rule until November 1, 2009. This delay will provide entities affected by the changes in AQI user fees additional time to make the necessary preparations to comply with the new fees.

Accordingly, the effective date for the interim rule amending 7 CFR part 354 published at 74 FR 49311–49315 on September 28, 2009, is delayed until November 1, 2009.

**Authority:** 7 U.S.C. 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 49 U.S.C. 80503; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 30th day of September 2009.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. E9–23930 Filed 9–30–09; 4:15 pm]

BILLING CODE 3410–34–P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 1209

**[Doc. No. AMS–FV–08–0047; FV–08–702–FR]**

**RIN 0581–AC82**

### Amendments to Mushroom Promotion, Research, and Consumer Information Order

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule amends provisions of the Mushroom Promotion, Research, and Consumer Information Order (Order) to reapportion membership of the Mushroom Council (Council) to reflect shifts in United States mushroom production as well as to add language to the powers and duties section of the Order allowing the Council the power to develop and propose good agricultural and handling practices and related activities for mushrooms. Section 10104 of the Food, Conservation and Energy Act of 2008 (2008 Farm Bill) amended sections 1925(b)(2) and (c) of the Mushroom Promotion, Research, and Consumer Information Act of 1990 (Act). Specifically, section 10104 changed the Act's requirements for geographic regions used to appoint producer members of the Council from four to three, and adjusted the pounds required by each region for Council membership, which reallocated Council member representation in two of the three producer geographic regions (Regions 1 and 2). Section 10104 also added language to the powers and duties section of the Act that authorizes the Council to develop and propose good agricultural practices and related activities for mushrooms. A referendum was held among eligible mushroom producers and importers and they voted in favor of the amendments. Therefore, this rule amends changes to the Order based on the amendments to the Act.

**DATES:** October 5, 2009.

**FOR FURTHER INFORMATION CONTACT:** Jeanette Palmer, Marketing Specialist, Research and Promotion Branch (RPB), Fruit and Vegetable Programs (FVP), AMS, USDA, 1400 Independence Avenue, SW., Room 0632, Stop 0244, Washington, DC 20250–0244; telephone: (202) 720–9915 or (888) 720–9917 (toll free); or facsimile: (202) 205–2800; or e-mail: *Jeanette.Palmer@ams.usda.gov*.

**SUPPLEMENTARY INFORMATION:** This rule is issued under the Mushroom Promotion, Research, and Consumer Information Order (Order) [7 CFR part 1209]. The Order is authorized under the Mushroom Promotion, Research, and Consumer Information Act of 1990 (Act) [7 U.S.C. 6101–6112].

A proposed rule was published in the **Federal Register** on April 7, 2009, [74 FR 15677] with a thirty-day comment period which closed on May 7, 2009. Three comments were received by the May 7, 2009, deadline. These comments were discussed in a second proposed rule and referendum order that was published in the **Federal Register** on June 5, 2009, [74 FR 26984].

Pursuant to section 1209.300 of the Order, a referendum was conducted among mushroom producers and importers to determine whether the reapportion of membership on the Council reflecting shifts in United States mushroom production as well as to add language to the powers and duties section of the Order allowing the Council the power to develop and propose good agricultural and handling practices and related activities for mushrooms was favored by persons voting in the referendum.

The representative period for establishing voter eligibility for the referendum was January 1, 2007, through December 31, 2008. Section 1924(b)(3) of the Act requires that the Order be approved by a majority of producers and importers voting in the referendum which majority, on average, annually produces and imports into the United States more than 50 percent of mushrooms annually produced and imported by all those persons voting in the referendum. Only mushroom producers and importers who either produced or imported, on average, over 500,000 pounds of mushrooms annually during the representative period were eligible to vote in the referendum. Mushroom producers and importers who have received an exemption from assessment for the entire representative period were ineligible to vote. The referendum was conducted by mail ballot from July 6, 2009, through July 17, 2009. Eighty-seven percent of those voting in the referendum, representing 94 percent of the volume who voted in the referendum, approved the amendments to the Order.

**Executive Order 12866**

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

**Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule is not intended to have a retroactive effect. Section 1930 of the Act provides that nothing in the Act may be construed to preempt or supersede any other program relating to mushroom promotion, research, consumer information, or industry information organized and operated under the laws of the United States or any State.

Under section 1927 of the Act, a person subject to an Order may file a written petition with the Department stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not in accordance with the law, and requesting a modification of the Order or an exemption from the Order. Any petition filed challenging the Order, any provision of the Order, or any obligation imposed in connection with the Order, shall be filed within two years after the effective date of the Order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, the Department will issue a ruling on the petition. The Act provides that the district court of the United States in any district in which the petitioner resides or carries on business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Department's final ruling.

**Final Regulatory Flexibility Analysis and Paperwork Reduction Act**

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601–612], the Agricultural Marketing Service (AMS) has examined the economic impact of this rule on small entities that would be affected by this rule. 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.

The Small Business Administration defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than $750,000 and small agricultural service firms (importers) as having receipts of no more than $7,000,000. There are approximately 107 producers and 18 importers subject to the Order, and thus, eligible to serve on the Council. The majority of these producers and importers would not be considered small entities as defined by the Small Business Administration. Producers and importers of 500,000 pounds or less on average of mushrooms for the fresh market are exempt from the Order.

The current Order provides for the establishment of a Council consisting of at least four members and not more than nine members. For the purpose of nominating and appointing producers to the Council, the United States was divided into four geographic regions (Regions 1, 2, 3, and 4) with Council member representation allocated for each region based on the geographic distribution of mushroom production. Currently, for importers (referred to as Region 5), one Council member seat was allocated when imports, on average, exceed 35,000,000 pounds of mushrooms annually. The Order also specifies that the Council will review—at least every five years and not more than every three years—the geographic distribution of United States mushroom production volume and import volume, and recommend changes accordingly.

Section 10104 of the 2008 Farm Bill amended sections 1925(b)(2) and (c) of the Mushroom Promotion, Research, and Consumer Information Act of 1990 [7 U.S.C. 6101–6112]. Specifically, section 10104 reapportioned the Act's requirements for geographic regions that represent the geographic distribution of mushroom production in order to appoint producer members of the Council from four to three, and adjusted the pounds required by each region (including importers) for Council membership. This rule changes the current five geographic regions to four as follows: Region 1—all other States including the District of Columbia and the Commonwealth of Puerto Rico except for Pennsylvania and California; Region 2—the State of Pennsylvania; Region 3—the State of California; and Region 4—importers. Finally, section 10104 added language to the powers and duties section of the Act that authorizes the Council to develop and propose good agricultural and handling practices, and related activities for mushrooms.

In 1990, there were 466 mushroom farms in 26 states, as reported by the National Agricultural Statistics Service (NASS). Mushroom farms, like many

other agricultural sectors, have experienced significant consolidation. In 2007, NASS reported 279 mushroom farms in 18 states. Pennsylvania, the largest mushroom producing state, produced 332.5 million pounds in 1990. Last year, NASS reported that Pennsylvania produced 496.6 million pounds accounting for 61 percent of the total volume of sales in the United States. According to the Council, changing economic conditions over the past 18 years, coupled with innovations in production methods, advancements in cold chain management and long-range transportation options have all contributed to mushroom farming operations becoming larger, but fewer in number. Currently, there are 107 entities in 11 states which are subject to the Act, and therefore eligible for nomination to the Council. Several of these entities are owned by companies which have multiple operations in different states. The Act states that no more than one member may be appointed to the Council from nominations submitted by any one producer or importer.

According to NASS, at present 73 percent of all domestic producers subject to the Act are located in the state of Pennsylvania. The value of sales for mushrooms shipped from Pennsylvania grew 16 percent from July 1, 2004 to June 30, 2008. Of the remaining 29 producers subject to the Act, not located in Pennsylvania, 59 percent reside in the state of California, with the remaining 12 producers scattered among 9 states. The value of sales for mushrooms shipped from California increased 8 percent from July 1, 2004 to June 30, 2008, while the value of sales for mushrooms shipped from the rest of the United States (excluding Pennsylvania) declined 3 percent. Pennsylvania and California alone account for 77 percent of all domestic producers subject to the Act and are growing in terms of fresh pounds produced and shipped, and thus are likely to remain viable regions for the foreseeable future. Pennsylvania's designation as one of the three regions in the United States ensures that it receives representation relative to its production. With nearly 60 percent of the remaining producers subject to the Act and growing, California would also benefit from a regional designation. In reviewing the geographical regions, the Department also reviewed the importer seats to ensure that importers are adequately represented based on annual production numbers. Importers have a four year average annual production from January 1, 2004, through December 31, 2007, of 68 million pounds. Therefore, according to the changes made to the Act and the changes to the Order, importer representation on the Council will remain the same.

Section 1925(b)(2) of the Act, Appointments, states that in making appointments of members to the Council, the Secretary shall take into account, to the extent practicable, the geographical distribution of mushroom production throughout the United States, and the comparative volume of mushrooms imported into the United States.

According to the Council, the reduction in the number of regions from four to three for domestic production and the increase in pounds required for seats in each region will more accurately reflect the current status of mushroom production in the United States.

This rule changes the five current geographic regions as follows: Region 1—all other States including the District of Columbia and the Commonwealth of Puerto Rico except for Pennsylvania and California; Region 2—the State of Pennsylvania; Region 3—the State of California; and Region 4—importers.

In accordance with amendments to the Act, this rule increases the threshold for regional representation on the Council from a production average of at least 35 million pounds to at least 50 million pounds annually. Each region that produces on average, at least 50 million pounds of mushrooms annually shall be entitled to one representative on the Council.

This rule also changes the way additional members are appointed to the Council. Pursuant to the amendments to the Acts made by the 2008 Farm Bill, and subject to the nine-member limit of members on the Council, the Secretary shall appoint additional members to the Council from a region that attains additional pounds of production as follows:

(i) If the annual production of a region is greater than 110,000,000 pounds, but less than or equal to 180,000,000 pounds, the region shall be represented by 1 additional member.

(ii) If the annual production of a region is greater than 180,000,000 pounds, but less than or equal to 260,000,000 pounds, the region shall be represented by 2 additional members.

(iii) If the annual production of a region is greater than 260,000,000 pounds, the region shall be represented by 3 additional members.

Should, in the aggregate, regions be entitled to levels of representation that would exceed the nine-member limit on the Council under the Act, the seat or seats assigned would be assigned to that region or those regions with greater on-average production or import volume than the other regions otherwise eligible at that increment level.

Section 1925(c) of the Act was also amended by the 2008 Farm Bill to include language that authorizes the Council to develop and propose to the Secretary programs for good agricultural and good handling practices and related activities for mushrooms. Therefore, this rule amends section 1209.38 of the Order to include the following language: ''to develop and propose to the Secretary programs for good agricultural and good handling practices and related activities for mushrooms.''

The overall impact of the amendments will be favorable for producers and importers because the producers and importers would have more equitable representation on the Council based on United States mushroom production volume and import volume.

In accordance with the Office of Management and Budget (OMB) regulation [5 CFR part 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], there are no new information collection requirements contained in this rule because the number of producer members will remain unchanged at nine producer members. The information collection requirements have been previously approved by the Office of Management and Budget (OMB) under OMB control number 0581–0093.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

**Background**

The Order is authorized under the Mushroom Promotion, Research, and Consumer Information Act of 1990 [7 U.S.C. 6101–6112], and is administered by the Council. Under the Order, the Council administers a nationally coordinated program of research, development, and information designed to strengthen the fresh mushroom's position in the market place and to establish, maintain, and expand markets for fresh mushrooms. The program is financed by an assessment of $0.005 cents per pound on any person who produces or imports over 500,000 pounds of mushrooms for the fresh market annually. Under the Order, handlers collect and remit producer assessments to the Council, and assessments paid by importers are collected and remitted by the United States Customs and Border Protection.

The Order provides for the establishment of a Council consisting of

at least four members and not more than nine members. For the purpose of nominating and appointing producers to the Council, the United States was divided into four geographic regions (Regions 1, 2, 3, and 4) with Council member representation allocated for each region based on the geographic distribution of mushroom production. For importers (referred to as Region 5), one Council member seat was allocated when imports, on average, exceeds 35 million pounds of mushrooms annually.

Section 1209.30(d) of the Order provides that at least every five years, and not more than every three years, the Council shall review changes in the geographic distribution of mushroom production volume throughout the United States and import volume, using the average annual mushroom production and imports over the preceding four years. Based on the review, the Council is required to recommend reapportionment of the regions or modification of the number of members from such regions, or both, to reflect shifts in the geographic distribution of mushroom production volume and importer representation.

Based on the amendments to the Act made by section 10104 of the Farm Bill, and a review of United States mushroom production volume and import volume, this rule changes the current five regions to four as follows: Region 1—all other States including the District of Columbia and the Commonwealth of Puerto Rico except for Pennsylvania and California; Region 2—the State of Pennsylvania; Region 3—the State of California; and Region 4—importers.

The current Order also provides that each producer region that produces, on average, at least 35 million pounds of mushrooms annually is entitled to one member. The current Order also states that importers shall be represented by a single, separate region, and are also entitled to one representative, if on average, at least 35 million pounds of mushrooms are imported annually. Further, the current Order states that each region shall be entitled to representation by an additional Council member for each 50 million pounds of annual production or imports, on average, in excess of the initial 35 million pounds required to qualify the region for representation, until the nine seats on the Council are filled. Section 1209.12 of the Order provides that ''on average'' means a rolling average of production or imports during the last two fiscal years, or such other period as may be determined by the Secretary. For purposes of this rule, and as provided under the Order, ''on average'' reflects a rolling average of production or imports during the last four fiscal years.

Section 1209.30(e)(4)(iii) of the current Order, provides that should regions be entitled to levels of representation that would exceed the nine-member limit on the Council under the Act, the regions shall be entitled to representation on the Council as follows: Each region with 50 million pounds of annual production or imports, on average, in excess of the initial 35 million pounds required to qualify the region for representation shall be assigned one additional representative on the Council, except that if under such assignments all five regions, counting importers as a region, if applicable, would be entitled to additional representatives, that region with the smallest on-average volume, in terms of production or imports, will not be assigned an additional representative. According to section 1209.30(f) of the current Order, in determining the volume of mushrooms produced in the United States or imported into the United States, the Council and the Secretary shall: (1) Only consider mushrooms produced or imported by producers and importers, respectively, as those terms are defined in sections 1209.8 and 1209.15; and (2) used the information received by the Council under section 1209.60, and data published by the Department.

In addition, the current Order provides that if after members are assigned to the regions, less than the entire nine seats on the Council have been assigned to regions, the remaining seats on the Council shall be assigned to each region for each 50 million pound increment of annual production or import volume, on average, in excess of 85 million pounds until all the seats are filled. If for any such 50 million pound increment, more regions are eligible for seats than there are seats available, the seat or seats assigned for such increment shall be assigned to that region or those regions with greater on-average production or import volume than the other regions otherwise eligible at that increment level.

Pursuant to the amendments made to the Act made by the 2008 Farm Bill, this rule increases the threshold for regional representation on the Council from a production average of at least 35 million pounds to at least 50 million pounds annually. Each region that produces on average, at least 50 million pounds of mushrooms annually shall be entitled to one representative on the Council.

In addition, this rule changes language in the Order regarding how additional members are added to the Council. Additional members from each region that attains additional pounds of production would now be appointed to the Council as follows:

(i) If the annual production of a region is greater than 110,000,000 pounds, but less than or equal to 180,000,000 pounds, the region shall be represented by 1 additional member.

(ii) If the annual production of a region is greater than 180,000,000 pounds, but less than or equal to 260,000,000 pounds, the region shall be represented by 2 additional members.

(iii) If the annual production of a region is greater than 260,000,000 pounds, the region shall be represented by 3 additional members.

This amendment to the Order changes the number of regions and Council member representatives as follows: Region 1—all other States including the District of Columbia and the Commonwealth of Puerto Rico except for Pennsylvania and California; Region 2—the State of Pennsylvania; Region 3—the State of California; and Region 4—importers.

Should, in the aggregate, regions be entitled to levels of representation that would exceed the nine-member limit on the Council under the Act, the seat or seats assigned shall be assigned to that region or those regions with greater on-average production or import volume than the other regions otherwise eligible at that increment level.

Section 1925(c) of the Act was also amended by the 2008 Farm Bill to insert language allowing the Council to develop and propose to the Secretary programs for good agricultural and good handling practices and related activities for mushrooms. Therefore, this rule amends section 1209.38 of the Order to include the following line: ''to develop and propose to the Secretary programs for good agricultural and good handling practices and related activities for mushrooms.''

Finally, this rule terminates section 1209.230 of the regulations concerning reallocation of Council members.

The Department published the proposal for public comment in the April 7, 2009, **Federal Register** [74 FR 15677]. Three comments were received by the May 7, 2009, deadline. These comments were discussed in the June 5, 2009, proposed rule published in the **Federal Register** [74 FR 26984] which included a Referendum Order.

**General Findings**

The Department conducted a referendum among eligible producers and importers of mushrooms from July 6, 2009 through July 17, 2009, to determine whether they favor to amend provisions of the Mushroom Promotion,

Research, and Consumer Information Order to reapportion membership of the Mushroom Council to reflect shifts in United States mushroom production as well as to add language to the powers and duties section of the Order allowing the Council the power to develop and propose good agricultural and handling practices and related activities for mushrooms. The representative period for establishing voter eligibility was from January 1, 2007, through December 31, 2008. Mushroom producers and importers who either produced or imported, on average, over 500,000 pounds of mushrooms annually during the representative period were eligible to vote in the referendum. Eighty-seven percent of those voting, representing 94 percent of the volume voted in the referendum favored the amendments to the Order.

It is determined that a majority of those who voted favored the implementation of the Order and that those voters favoring implementation represented a majority of the mushrooms produced and imported by all voters in the referendum. To become effective the Order had to be approved by a majority of producers and importers voting in the referendum, which majority, on average, annually produced and imported into the United States more than 50 percent of the mushrooms annually produced and imported by all those voting in the referendum.

After consideration of all relevant matters presented including the comments received, and referendum results, it is hereby found that this rule is consistent with the provisions of the Mushroom Promotion, Research, and Consumer Information Act of 1990 as amended and therefore should be adopted as a final rule.

## Additional Findings

Pursuant to 5 U.S.C. 553, it is also found that good cause exists for not postponing the effective date of this action until one day after publication in the **Federal Register** because the Council's term of office would begin January 1, 2010, and end December 31, 2012; and this rule will allow the upcoming nominations and appointments to be conducted in a timely manner for the new members to be appointed to the Council so they can begin during the next term of office.

## List of Subjects in 7 CFR Part 1209

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Mushroom promotion, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 1209 of the Code of Federal Regulations is amended as follows:

## PART 1209—MUSHROOM PROMOTION, RESEARCH, AND CONSUMER INFORMATION ORDER

■ 1. The authority citation for 7 CFR part 1209 continues to read as follows:

**Authority:** 7 U.S.C. 6101–6112; 7 U.S.C. 7401.

■ 2. In § 1209.30, paragraphs (a), (b), (c), (d), and (e) are revised to read as follows:

### § 1209.30 Establishment and membership.

(a) There is hereby established a Mushroom Council of not less than four or more than nine members. The Council shall be composed of producers appointed by the Secretary under § 1209.33, except that, as provided in paragraph (c) of this section, importers shall be appointed by the Secretary to the Council under § 1209.33 once imports, on average, reach at least 50,000,000 pounds of mushrooms annually.

(b) For purposes of nominating and appointing producers to the Council, the United States shall be divided into three geographic regions and the number of Council members from each region shall be as follows:

(1) *Region 1:* All other States including the District of Columbia and the Commonwealth of Puerto Rico except for Pennsylvania and California—2 Members.

(2) *Region 2:* The State of Pennsylvania—4 Members.

(3) *Region 3:* The State of California—2 Members.

(c) Importers shall be represented by a single, separate region, referred to as Region 4, consisting of the United States when imports, on average, equal or exceed 50,000,000 pounds of mushrooms annually.

(d) At least every five years, and not more than every three years, the Council shall review changes in the geographic distribution of mushroom production volume throughout the United States and import volume, using the average annual mushroom production and imports over the preceding four years, and, based on such review, shall recommend to the Secretary reapportionment of the regions established in paragraph (b) of this section, or modification of the number of members from such regions, as determined under the rules established in paragraph (e), of this section or both, as necessary to best reflect the geographic distribution of mushroom production volume in the United States and representation of imports, if applicable.

(e) Subject to the nine-member maximum limitation, the following procedure will be used to determine the number of members for each region to serve on the Council under paragraph (d) of this section:

(1) Each region that produces, on average, at least 50,000,000 pounds of mushrooms annually shall be entitled to one representative on the Council.

(2) As provided in paragraph (c) of this section, importers shall be represented by a single, separate region, which shall be entitled to one representative, if such region imports, on average, at least 50,000,000 pounds of mushrooms annually.

(3) If the annual production of a region is greater than 110,000,000 pounds, but less than or equal to 180,000,000 pounds, the region shall be represented by 1 additional member.

(4) If the annual production of a region is greater than 180,000,000 pounds, but less than or equal to 260,000,000 pounds, the region shall be represented by 2 additional members.

(5) If the annual production of a region is greater than 260,000,000 pounds, the region shall be represented by 3 additional members.

(6) Should, in the aggregate, regions be entitled to levels of representation under paragraphs (e)(1), (2), (3), (4) and (5) of this section that would exceed the nine-member limit on the Council under the Act, the seat or seats assigned shall be assigned to that region or those regions with greater on-average production or import volume than the other regions otherwise eligible at that increment level.

* * * * *

■ 3. In § 1209.38, paragraphs (l) and (m) are redesignated as paragraphs (m) and (n) respectively and new paragraph (l) is added to read as follows:

**§ 1209.38 Powers.**

* * * * *

(l) To develop and propose to the Secretary programs for good agricultural and good handling practices and related activities for mushrooms.

* * * * *

**§ 1209.230 [Removed and Reserved]**

■ 4. Section 1209.230 is removed and reserved.

Dated: September 28, 2009.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E9–23777 Filed 10–1–09; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 95

**[Docket No. 30689; Amdt. No. 483]**

## IFR Altitudes; Miscellaneous Amendments

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

**DATES:** *Effective Date:* 0901 UTC, October 22, 2009.

**FOR FURTHER INFORMATION CONTACT:** Harry Hodges, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

### The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

### Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC, on September 25, 2009.

**John M. Allen,**

*Director, Flight Standards Service.*

### Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, October 22, 2009.

■ 1. The authority citation for part 95 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

■ 2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINTS

[Amendment 483 effective date, October 22, 2009]

| From | To | MEA | MAA |
|---|---|---|---|
| **§ 95.4000 High Altitude RNAV Routes** | | | |
| **§ 95.4265 RNAV Route T265 Is Added To Read** | | | |
| Kelsi, IL FIX | Bullz, IL FIX | *4000 | |
| *2300—MOCA | | | |
| Bullz, IL FIX | Veena, WI FIX | *4000 | |
| *2600—MOCA | | | |

| From | To | MEA |
|---|---|---|
| **§ 95.6001 Victor Routes—U.S.** | | |
| **§ 95.6036 VOR Federal Airway V36 Is Amended To Read In Part** | | |
| Buffalo, NY VOR/DME<br>*11000—MCA Burst, NY FIX, NW BND<br>**4000—GNSS MEA | *Burst, NY FIX | **11000 |
| **§ 95.6155 VOR Federal Airway V155 Is Amended To Read In Part** | | |
| Lawrenceville, VA VORTAC | Melia, VA FIX | 2000 |
| **§ 95.6157 VOR Federal Airway V157 Is Amended To Read In Part** | | |
| Alma, GA VORTAC<br>*1800—MOCA<br>*2000—GNSS MEA | Lotts, GA FIX | *10000 |
| Lawrenceville, VA VORTAC | Dalto, VA FIX | 2000 |
| **§ 95.6276 VOR Federal Airway V276 Is Amended To Read In Part** | | |
| Manta, NJ FIX<br>*8000—MRA<br>**2000—MOCA | *Prepi, OA FIX | **3000 |
| **§ 95.6286 VOR Federal Airway V286 Is Amended To Read In Part** | | |
| Brooke, VA VORTAC<br>*5000—MCA Zunar, VA FIX, SE BND<br>**2000—GNSS MEA | *Zunar, VA FIX | **3000 |
| Zunar, VA FIX<br>*2000—GNSS MEA | Faged, VA FIX | *5000 |
| Faged, VA FIX | Gwynn, VA FIX | 2000 |
| **§ 95.6288 VOR Federal Airway V288 Is Amended To Read In Part** | | |
| *Corin, UT FIX<br>*13000—MRA<br>**11400—MOCA<br>**12000—GNSS MEA | Fort Bridger, WY VOR/DME | **16000 |
| **§ 95.6312 VOR Federal Airway V312 Is Amended To Read In Part** | | |
| Coyle, NJ VORTAC<br>*6000—MRA | *Drift, NJ FIX | 2000 |
| *Drift, NJ FIX<br>*6000—MRA<br>**8000—MRA<br>***2000—GNSS MEA | **Prepi, OA FIX | ***4800 |
| **§ 95.6329 VOR Federal Airway V329 Is Amended To Delete** | | |
| Corky, FL FIX<br>*1600—MOCA | Andalusia, AL VOR | *3000 |
| Andalusia, AL VOR<br>*2100—MOCA | Rutel, AL FIX | *3000 |
| Rutel, AL FIX<br>*1900—MOCA | Montgomery, AL VORTAC | *3000 |
| **§ 95.6454 VOR Federal Airway V454 Is Amended To Read In Part** | | |
| Liberty, NC VORTAC<br>*9000—MCA Nokiy, VA FIX, NE BND<br>**3000—GNSS MEA | *Nokiy, VA FIX | **6000 |
| Nokiy, VA FIX<br>*3000—GNSS MEA | Lawrenceville, VA VORTAC | *9000 |
| **§ 95.6481 VOR Federal Airway V481 Is Amended To Read In Part** | | |
| Donel, AK FIX<br>*7800—MCA Big Delta, AK VORTAC, S BND | *Big Delta, AK Vortac.<br>N Bnd<br>S Bnd | <br>7000<br>12000 |

| From | To | Changeover points | |
|---|---|---|---|
| | | Distance | From |
| **§ 95.8003 VOR Federal Airway Changeover Points Airway Segment V–259 Is Amended To Add Changeover Point** | | | |
| Grand Strand, SC VORTAC | Florence, SC VORTAC | 25 | Grand Strand |

[FR Doc. E9–23752 Filed 10–1–09; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2009–0311]**

**RIN 1625–AA00**

## Direct Final Rule; Safety and Security Zones: Pilgrim Nuclear Power Plant, Plymouth, MA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Direct final rule; request for comments.

**SUMMARY:** By this direct final rule, the Coast Guard is amending existing regulations with a set of coordinates which will better reflect the safety and security zone around the Pilgrim Nuclear Power Plant. This action will prohibit entry into, or movement within, the safety and security zones located in Cape Cod Bay and adjacent shore areas. This action is necessary to ensure public safety and prevent sabotage or terrorist acts. The safety and security zones will close certain waters of Cape Cod Bay near the Pilgrim Nuclear Power Plant and land adjacent to those waters.

**DATES:** This rule is effective December 31, 2009, unless an adverse comment, or notice of intent to submit an adverse comment, is either submitted to our online docket via *http://www.regulations.gov* on or before December 1, 2009 or reaches the Docket Management Facility by that date. If an adverse comment, or notice of intent to submit an adverse comment, is received by December 1, 2009, we will withdraw this direct final rule and publish a timely notice of withdrawal in the **Federal Register**.

**ADDRESSES:** You may submit comments identified by docket number USCG–2009–0311 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. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, e-mail or call Chief Eldridge McFadden, U.S. Coast Guard, Sector Boston, Waterways Management Division; telephone 617–223–5160, e-mail *Eldridge.C.McFadden@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

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### I. Public Participation and Request for Comments

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

*A. Submitting Comments*

If you submit a comment, please include the docket number for this rulemaking (USCG–2009–0311), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rule'' and insert ''USCG–2009–0311'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column.If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

*B. Viewing Comments and Documents*

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2009–0311'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. If you do not have access to the internet, you may also 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.

*C. Privacy Act*

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

*D. Public Meeting*

We do not now plan to hold a public meeting. But you may submit a request for one to the docket using one of the methods specified under **ADDRESSES**. In your request, explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register.**

## II. Abbreviations

DHS Department of Homeland Security;
FR **Federal Register;**
§ Section symbol;
U.S.C. United States Code.

## III. Regulatory Information

We are publishing this direct final rule under 33 CFR 1.05–55 because we do not expect an adverse comment. If no adverse comment or notice of intent to submit an adverse comment is received by December 31, 2009, this rule will become effective as stated in the **DATES** section. In that case, approximately 30 days before the effective date, we will publish a document in the **Federal Register** stating that no adverse comment was received and confirming that this rule will become effective as scheduled. However, if we receive an adverse comment or notice of intent to submit an adverse comment, we will publish a document in the **Federal Register** announcing the withdrawal of all or part of this direct final rule. If an adverse comment applies only to part of this rule (*e.g.,* to an amendment, a paragraph, or a section) and it is possible to remove that part without defeating the purpose of this rule, we may adopt, as final, those parts of this rule on which no adverse comment was received. We will withdraw the part of this rule that was the subject of an adverse comment. If we decide to proceed with a rulemaking following receipt of an adverse comment, we will publish a separate notice of proposed rulemaking (NPRM) and provide a new opportunity for comment.

A comment is considered ''adverse'' if the comment explains why this rule or a part of this rule would be inappropriate, including a challenge to its underlying premise or approach, or would be ineffective or unacceptable without a change.

## IV. Background

Safety and security zones were established to safeguard the Pilgrim Nuclear Power Plant in light of terrorist attacks on New York City and Washington, DC on September 11, 2001. The zones were implemented to protect persons at the facility, the public, and surrounding communities from sabotage or other subversive acts, accidents, or other similar events. The Pilgrim Nuclear Power Plant is a possible target of terrorist attack due to the potential catastrophic impact an attack would have on such a plant. Established safety and security zones prohibit entry into or movement within the specified areas. The rulemaking regarding this site, published in the **Federal Register** [67 FR 37689], established security and safety zones having identical boundaries delineated as follows: All waters of Cape Cod Bay and land adjacent to those waters enclosed by a line beginning at position 41°57′5″ N, 070°34′42″ W; then running southeast to position 41°56′40.5″ N, 070°34′4.5″ W; then running southwest to position 41°56′55.5″ N, 070°34′52″ W; then returning to its point of origin. These positions were incorrect (one of the positions is in fact 6 miles inland). This regulation aims to correct the previous regulation.

Buoy markers, which serve as a visual reminder of the safety and security zone surrounding the Nuclear Power Plant, have already been placed at the intended coordinates surrounding the plant. This regulation will amend the existing coordinates, to reflect the originally intended parameters.

No person or vessel may enter or remain in the prescribed safety and security zones at any time without the permission of the Captain of the Port. All persons and vessels in a safety and security zone must obey all directions and orders made by the Captain of the Port, or any other designated on-scene Coast Guard representative. The Captain of the Port may take possession and control of any vessel in a security zone and/or remove any person, vessel, article or thing from a security zone. No person may board, take or place any article or thing on board any vessel, or waterfront facility, in a security zone without permission of the Captain of the Port.

These regulations are issued under authority contained in 50 U.S.C. 191, 33 U.S.C. 1223, 1225 and 1226. Violations of safety or security zone described herein, are punishable by, among others, civil penalties (not to exceed $25,000 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 10 years and a fine of not more than $100,000), in rem liability against the offending vessel, and license sanctions.

## V. Discussion of the Rule

The current safety and security zone regulation is erroneous as it cites incorrect coordinates. This regulation will correct the existing one by adding coordinates which reflect the actual safety and security zones delineated by the buoys already put in place by the Pilgrim Power Plant. The new regulation will change the safety and security zone from:

41°57′5″ N, 070°34′42″ W; then running southeast to position 41°56′40.5″ N, 070°34′4.5″ W; then running southwest to position 41°56′55.5″ N, 070°34′52″ W; then returning to its point of origin to:

41°56′59.3″ N, 070°34′58.5″ W; thence to 41°57′12.2″ N, 070°34′41.9″ W; thence to 41°56′42.3″ N, 070°34′00.1″ W; thence to 41°56′29.5″ N, 070°34′14.5″ W.

## VI. Regulatory Analyses

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

*A. Regulatory Planning and Review*

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. This rule is not a significant regulatory action because it seeks only to update the previous regulation with the correct and intended coordinates. These coordinates have already been marked by buoys, and mariners in the surrounding area already know to avoid this zone.

*B. Small Entities*

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

This rule would affect the following entities, some of which might be small entities: Fishermen, and the owners or operators of vessels intending to transit, fish or anchor in a portion of Cape Cod Bay, Massachusetts. However, as stated above, because mariners have already been maintaining a certain distance from the plant, with the assistance of buoys as visual markers, little to no effect will be realized once the new regulation is implemented.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. Comments submitted in response to this finding will be evaluated under the criteria in the ''Regulatory Information'' section of this preamble.

*C. Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Chief Eldridge McFadden, U.S. Coast Guard, Sector Boston, Waterways Management Division; telephone 617–223–5160, e-mail *Eldridge.C.McFadden@uscg.mil*. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

*D. Collection of Information*

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

*E. Federalism*

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

*F. Unfunded Mandates Reform Act*

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

*G. Taking of Private Property*

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

*H. Civil Justice Reform*

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

*I. Protection of Children*

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

*J. Indian Tribal Governments*

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

*K. Energy Effects*

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

*L. Technical Standards*

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

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

*M. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under section 2.B.2, figure 2–1, paragraph (34)(g) of the Instruction.

This rule involves the correction of safety and security zones which were implemented in a previous regulation. An environmental analysis checklist and a categorical exclusion determination are available in the

docket where indicated under the ''Public Participation and Request for Comments'' section of this preamble.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Revise § 165.115(a) to read as follows:

**§ 165.115 Safety and Security Zones; Pilgrim Nuclear Power Plant, Plymouth, Massachusetts.**

(a) *Location.* All waters of Cape Cod Bay and land adjacent to those waters enclosed by a line beginning at position 41°56′59.3″ N, 070°34′58.5″ W; thence to 1°57′12.2″ N, 070°34′41.9″ W; thence to 41°56′42.3″ N, 070°34′00.1″ W; thence to 41°56′29.5″ N, 070°34′14.5″ W.

* * * * *

Dated: July 29, 2009.

**Nathan E. Knapp,**

*Commander, U.S. Coast Guard, Captain of the Port Boston, Acting.*

[FR Doc. E9–23754 Filed 10–1–09; 8:45 am]

BILLING CODE 4910–15–P

# Proposed Rules

Federal Register
Vol. 74, No. 190
Friday, October 2, 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.

## FEDERAL HOUSING FINANCE BOARD

### 12 CFR Parts 985 and 989

## FEDERAL HOUSING FINANCE AGENCY

### 12 CFR Parts 1273 and 1274

**RIN 2590–AA30**

### Board of Directors of Federal Home Loan Bank System Office of Finance

**AGENCY:** Federal Housing Finance Agency, Federal Housing Finance Board.

**ACTION:** Notice of proposed rulemaking; extension of comment period.

**SUMMARY:** Governed by the Federal Housing Finance Agency's (FHFA) regulations, the Federal Home Loan Bank System's (System) Office of Finance (OF), issues debt (''consolidated obligations'') on which the Federal Home Loan Banks (Banks) are jointly and severally liable and publishes combined financial reports on the Banks. The OF is governed by a board of directors, the composition and functions of which are determined by FHFA's regulations. The FHFA's experience with the System and with the OF's combined financial reports during the recent period of market stress suggests that the OF and the System could benefit from a reconstituted and strengthened board. Consequently, the FHFA published a proposed regulation for comment on August 4, 2009, which was intended to achieve that end. The proposal had a comment period of 60 days, but the FHFA has decided to extend the comment period an additional 30 days.

**DATES:** Comments on the proposed regulation must be received on or before November 4, 2009. For additional information, see **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** You may submit your comments on the proposed regulation, identified by regulatory information number (RIN) 2590–AA30 by any of the following methods:

- *E-mail:* Comments to Alfred M. Pollard, General Counsel may be sent by e-mail at *RegComments@FHFA.gov*. Please include ''RIN 2590–AA30'' in the subject line of the message.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal*, please also send it by *e-mail* to FHFA at *regcomments@fhfa.gov* to ensure timely receipt by the agency.
- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA30, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.
- *Hand Delivery/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA30, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.

**FOR FURTHER INFORMATION CONTACT:** Joseph A. McKenzie, 202–408–2845, Division of Federal Home Loan Bank Regulation, Federal Housing Finance Agency, 1625 Eye Street, NW., Washington, DC 20006; or Neil Crowley, Deputy General Counsel, 202–343–1316, or Thomas E. Joseph, Senior Attorney-Advisor, 202–414–3095 (not toll-free numbers), Office of General Counsel, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is 800–877–8339.

**SUPPLEMENTARY INFORMATION:** On August 4, 2009, the FHFA published for comment in the **Federal Register** a proposed regulation to reconstitute and strengthen the board of directors of the OF. *See* 74 FR 38564 (August 4, 2009). The comment period for the proposed rule was originally to close on October 5, 2009, but the FHFA believes that allowing additional time for comments would benefit the agency. The comment period is, therefore, being extended an additional 30 days until November 4, 2009.

The FHFA invites comments on all aspects of the proposed regulation, and will adopt a final regulation with appropriate changes after taking all comments into consideration. Copies of all comments will be posted on the Internet Web site at *https://www.fhfa.gov*. In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at 202–414–6924.

Dated: September 29, 2009.

**Edward J. DeMarco,**

*Acting Director, Federal Housing Finance Agency.*

[FR Doc. E9–23821 Filed 10–1–09; 8:45 am]

**BILLING CODE 8070–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 25

**[Docket No. NM413 Special Conditions No. 25–09–09–SC]**

### Special Conditions: Boeing Model 747–8/–8F Airplanes, Systems and Data Networks Security—Protection of Airplane Systems and Data Networks From Unauthorized External Access

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

**ACTION:** Notice of proposed special conditions.

**SUMMARY:** This action proposes special conditions for the Boeing Model 747–8/–8F airplane. This airplane will have novel or unusual design features associated with the architecture and connectivity capabilities of the airplane's computer systems and networks, which may allow access to external computer systems and networks. Connectivity to external systems and networks may result in security vulnerabilities to the airplane's systems. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These proposed special conditions contain the additional safety standards that the Administrator

considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** Comments must be received on or before November 2, 2009.

**ADDRESSES:** Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM413, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked Docket No. NM413. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Will Struck, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2764; facsimile (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive as well as a report summarizing each substantive public contact with FAA personnel concerning these proposed special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this notice between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change the proposed special conditions based on comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

## Background

On November 4, 2005, The Boeing Company, P.O. Box 3707, Seattle, WA 98124, applied for an amendment to Type Certificate Number A20WE to include the new Model 747–8 passenger airplane and the new Model 747–8F freighter airplane. The Model 747–8 and the Model 747–8F are derivatives of the 747–400 and the 747–400F, respectively. Both the Model 747–8 and the Model 747–8F are four-engine jet transport airplanes that will have a maximum takeoff weight of 975,000 pounds and new General Electric GEnx –2B67 engines. The Model 747–8 will have 2 flight crews and the capacity to carry 660 passengers. The Model 747–8F will have 2 flight crews and a zero passenger capacity, although Boeing has submitted a petition for exemption to allow the carriage of supernumeraries. The maximum takeoff weight will be 975,000 with up to eight supernumeraries for the 747–8F.

## Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.17, Boeing must show that the Model 747–8 and 747–8F (hereafter referred as 747–8/–8F) meet the applicable provisions of part 25, as amended by Amendments 25–1 through 25–120, except for §§ 25.809(a) and 25.812, which will remain at Amendment 25–115. These regulations will be incorporated into Type Certificate No. A20WE after type certification approval of the 747–8/–8F.

In addition, the certification basis includes other regulations, special conditions and exemptions that are not relevant to these proposed special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the 747–8/–8F because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the 747–8/–8F must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in § 11.19, are issued under § 11.38, and become part of the type certification basis under § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

## Novel or Unusual Design Features

The Boeing Model 747–8/–8F airplane will incorporate the following novel or unusual design features: Digital systems architecture composed of several connected networks. The proposed architecture and network configuration may be used for, or interfaced with, a diverse set of functions, including:

1. Flight-safety related control, communication, and navigation systems (aircraft control domain),
2. Airline business and administrative support (airline information domain),
3. Passenger information and entertainment systems (passenger entertainment domain), and
4. The capability to allow access to or by external network sources.

## Discussion

The proposed Model 747–8/–8F architecture and network configuration may allow increased connectivity to and access from external network sources and airline operations and maintenance networks to the aircraft control domain and airline information domain. The aircraft control domain and airline information domain perform functions required for the safe operation and maintenance of the airplane. Previously these domains had very limited connectivity with external network sources.

The architecture and network configuration may allow the exploitation of network security vulnerabilities resulting in intentional or unintentional destruction, disruption, degradation, or exploitation of data, systems, and networks critical to the safety and maintenance of the airplane.

The existing regulations and guidance material did not anticipate these types of airplane system architectures. Furthermore, 14 CFR regulations and current system safety assessment policy and techniques do not address potential security vulnerabilities, which could be exploited by unauthorized access to airplane networks, data buses, and servers. Therefore, these special conditions and a means of compliance are proposed to ensure that the security (i.e., confidentiality, integrity, and availability) of airplane systems is not compromised by unauthorized wired or wireless electronic connections.

### Applicability

As discussed above, these proposed special conditions are applicable to Boeing Model 747–8/–8F airplanes. Should Boeing apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, these proposed special conditions would apply to that model as well under the provisions of § 21.101.

### Conclusion

This action affects only certain novel or unusual design features of the Boeing Model 747–8/–8F airplane. It is not a rule of general applicability.

### List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these Special Conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

### The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Boeing Model 747–8/–8F airplane.

1. The applicant must ensure electronic system security protection for the aircraft control domain and airline information domain from access by unauthorized sources external to the airplane, including those possibly caused by maintenance activity.

2. The applicant must ensure that electronic system security threats from external sources are identified and assessed, and that effective electronic system security protection strategies are implemented to protect the airplane from all adverse impacts on safety, functionality, and continued airworthiness.

Issued in Renton, Washington, on September 23, 2009.

**Jeffrey E. Duven,**

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

[FR Doc. E9–23753 Filed 10–1–09; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2009–0704; Airspace Docket No. 09–ANM–9]**

## Proposed Amendment to Class E Airspace; Riverton, WY

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to amend Class E airspace at Riverton Regional Airport, Riverton, WY. Additional controlled airspace is necessary to accommodate aircraft using the VHF Omni-Directional Radio Range (VOR), Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at Riverton Regional Airport, Riverton, WY. This will improve the safety of Instrument Flight Rules (IFR) aircraft executing the VOR (RNAV) GPS (SIAP) at Riverton Regional Airport, Riverton, WY.

**DATES:** Comments must be received on or before November 16, 2009.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone (202) 366–9826.

You must identify FAA Docket No. FAA–2009–0704; Airspace Docket No. 09–ANM–9, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

**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 2009–0704 and Airspace Docket No. 09–ANM–9) and be submitted in triplicate to the Docket Management System (*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–2009–0704 and Airspace Docket No. 09–ANM–9''. 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* the **ADDRESSES** section for the 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 Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Area, Operations Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

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 by modifying Class E

airspace at Riverton Regional Airport, Riverton, WY. Additional controlled airspace is necessary to accommodate aircraft using the VOR (RNAV) GPS (SIAP) at Riverton Regional Airport, Riverton, WY. This action would enhance the safety and management of aircraft operations at Riverton Regional Airport, Riverton, WY.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9T, signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this 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 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, would 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 U.S. Code. Subtitle 1, section 106, describes the authority for 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 would modify controlled airspace at Riverton Regional Airport, Riverton, WY.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, 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 14 CFR 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 the FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009 is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**ANM WY E5 Riverton, WY [Modified]**

Riverton Regional Airport, WY
(Lat. 43°03′51″ N., long. 108°27′35″ W.)
Riverton VOR/DME
(Lat. 43°03′57″ N., long. 108°27′20″ W.)

That airspace extending upward from 700 feet above the surface within an 8.7-mile radius of the Riverton Regional Airport and within 4 miles each side of the Riverton VOR/DME 291° radial extending from the 8.7-mile radius to 16.6 miles west of the VOR/DME, and within 3.1 miles each side of the Riverton VOR/DME 123° radial extending from the 8.7-mile radius to 10.5 miles southeast of the VOR/DME; that airspace extending upward from 1,200 feet above the surface within a 21.8-mile radius of the Riverton VOR/DME within 8.7 miles east and 6.1 miles west of the Riverton VOR/DME 016° radial extending from the 21.8-mile radius to 33.1 miles north of the VOR/DME, and within 6.1 miles northeast and 12.7 miles southwest of the Riverton VOR/DME 301° radial extending from the 21.8-mile radius to 32.2 miles northwest of the VOR/DME, on the east within an area bounded by a point beginning at lat. 42°56′30″ N., long. 107°59′45″ W.; to lat. 42°54′53″ N., long. 107°44′31″ W.; to lat. 42°42′35″ N., long. 107°53′00″ W.; to lat. 42°49′00″ N., long. 108°06′00″ W.; thence to the point of beginning.

* * * * *

Issued in Seattle, Washington, on September 23, 2009.

**William Buck,**

*Acting Manager, Operations Support Group, Western Service Center.*

[FR Doc. E9–23751 Filed 10–1–09; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF LABOR

## Employment and Training Administration

## 20 CFR Part 655

## Wage and Hour Division

## 29 CFR Parts 501, 780, and 788

**RIN 1205–AB55**

## Temporary Agricultural Employment of H–2A Aliens in the United States; Extension of Comment Period

**AGENCY:** Employment and Training Administration, Wage and Hour Division, Employment Standards Administration, Labor.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** The Employment and Training Administration and the Employment Standards Administration issued a proposed rule on September 4, 2009, to amend its regulations governing the certification of temporary employment of nonimmigrant workers in temporary or seasonal agricultural (H–2A) employment and the enforcement of the contractual obligations applicable to employers of such nonimmigrant workers. The proposed rule provided a comment period for the regulatory text through October 5, 2009. The agencies have received several requests to extend the comment period and have decided to extend the comment period for an additional 15 days, to October 20, 2009. The comment period for the Paperwork Reduction Act portion remains the same as published, i.e. November 5, 2009.

**DATES:** The comment period for the notice of proposed rulemaking published September 4, 2009 (74 FR 45906) is extended through October 20, 2009. Interested persons are invited to submit written comments on the proposed rule on or before October 20, 2009.

**ADDRESSES:** You may submit comments, identified by Regulatory Information Number (RIN) 1205–AB55, by any one of the following methods:

- *Federal e-Rulemaking Portal www.regulations.gov*. Follow the Web site instructions for submitting comments.
- *Mail:* Please submit all written comments (including disk and CD–ROM submissions) to Thomas Dowd, Administrator, Office of Policy Development and Research, Employment and Training Administration, U.S. Department of

Labor, 200 Constitution Avenue, NW., Room N–5641, Washington, DC 20210.

• *Hand Delivery/Courier:* Please submit all comments to Thomas Dowd, Administrator, Office of Policy Development and Research, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5641, Washington, DC 20210.

Please submit your comments by only one method. The Department will post all comments received on *http://www.regulations.gov* without making any change to the comments, including any personal information provided. The *http://www.regulations.gov* Web site is the Federal e-rulemaking portal and all comments posted there are available and accessible to the public. The Department cautions commenters not to include their personal information such as Social Security Numbers, personal addresses, telephone numbers, and e-mail addresses in their comments as such submitted information will become viewable by the public via the *http://www.regulations.gov* Web site. It is the responsibility of the commenter to safeguard his or her information. Comments submitted through *http://www.regulations.gov* will not include the commenter's e-mail address unless the commenter chooses to include that information as part of his or her comment.

Postal delivery in Washington, DC, may be delayed due to security concerns. Therefore, the Department encourages the public to submit comments via the Web site indicated above.

*Docket:* For access to the docket to read background documents or comments received, go the Federal eRulemaking portal at *http://www.regulations.gov*. The Department will also make all the comments it receives available for public inspection during normal business hours at the ETA Office of Policy Development and Research at the above address. If you need assistance to review the comments, the Department will provide you with appropriate aids such as readers or print magnifiers. The Department will make copies of the rule available, upon request, in large print and as electronic file on computer disk. The Department will consider providing the proposed rule in other formats upon request. To schedule an appointment to review the comments and/or obtain the rule in an alternate format, contact the Office of Policy Development and Research at (202) 693–3700 (VOICE) (this is not a toll-free number) or 1–877–889–5627 (TTY/TDD).

**FOR FURTHER INFORMATION CONTACT:** For further information regarding 20 CFR part 655, contact William L. Carlson, PhD, Office of Foreign Labor Certification, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5641, Washington, DC 20210; Telephone (202) 693–3010 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

For further information regarding 29 CFR parts 501, 780 and 788, contact James Kessler, Farm Labor Branch Chief, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–3510, Washington, DC 20210; Telephone (202) 693–0070 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:** On September 4, 2009, the Employment and Training Administration and the Employment Standards Administration of the Department of Labor issued a Notice of Proposed Rulemaking rule to amend regulations governing the certification of temporary employment of nonimmigrant workers in temporary or seasonal agricultural (H–2A) employment and the enforcement of the contractual obligations applicable to employers of such nonimmigrant workers. 74 FR 45906, Sept. 4, 2009. The proposed rule provided a comment period through October 5, 2009. The agencies have received several requests to extend the comment period and have decided to extend the comment period to October 20, 2009. Given the complexity of the proposed rule and the level of interest, as well as The Department's interest in receiving comments, the comment period is being extended until October 20, 2009.

Signed in Washington, DC, this 29th day of September 2009.

**Jane Oates,**

*Assistant Secretary, Employment and Training Administration.*

**Shelby Hallmark,**

*Acting Assistant Secretary, Employment Standards Administration.*

[FR Doc. E9–23806 Filed 9–30–09; 11:15 am]

BILLING CODE 4510–FP–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R04–OAR–2005–AL–0002–200913; FRL–8959–3]**

## Approval and Promulgation of Implementation Plans: Alabama: Proposed Approval of Revisions to the Visible Emissions Rule and Alternative Proposed Disapproval of Revisions to the Visible Emissions Rule

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

**ACTION:** Proposed rule.

**SUMMARY:** On April 3, 2009, EPA granted a February 25, 2009, petition seeking reconsideration of an October 15, 2008, final action approving a State Implementation Plan (SIP) revision regarding the State of Alabama's visible emissions rules. As part of its reconsideration process, EPA is now proposing to either affirm the previous rulemaking (which approved the revisions) or, alternatively, amend its previous rulemaking (*i.e.*, disapproving the revisions). EPA is seeking public comment on the issues raised in the petition for reconsideration as well as the actions proposed in this notice. EPA is also seeking public comment on the relationship between opacity and particulate matter mass emissions. Following its evaluation of the issues raised in the petition for reconsideration, and any information submitted during the public comment process, EPA will take final action either affirming the previous rulemaking or amending the previous rulemaking and disapproving the revisions to the visible emissions portion of Alabama's SIP.

**DATES:** Comments must be received on or before November 16, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R04–OAR–2005–AL–0002, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: benjamin.lynorae@epa.gov.*
3. *Fax:* 404–562–9019.
4. *Mail:* ''EPA–R04–OAR–2005–AL–0002,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Regulatory Development Section, Air Planning Branch, Air,

Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. ''EPA–R04–OAR–2005–AL–0002.'' EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

*Docket:* EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2005–AL–0002. All documents in the docket are listed on the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that, if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9041. Ms. Benjamin can also be reached via electronic mail at *lynorae.benjamin@epa.gov*. For information regarding the Alabama SIP, contact Mr. Zuri Farngalo at the same address listed above. The telephone number is (404) 562–9152. Mr. Farngalo can also be reached via electronic mail at *farngalo.zuri@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

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## I. What Is the Background for This Action?

On September 11, 2003, the Alabama Department of Environmental Management (ADEM) submitted a request for EPA approval of a SIP submittal (2003 Submittal) containing proposed revisions to the visible emissions portion of the Alabama SIP, found at ADEM Administrative Code Chapter 335–3–4–.01, ''Visible Emissions,'' and pertaining to sources of particulate matter (PM) emissions. In an action published on April 12, 2007 (72 FR 18428), EPA proposed to approve the proposed revisions contingent upon Alabama submitting a revised SIP submittal addressing EPA's concerns regarding impacts of the rule changes on attainment of the National Ambient Air Quality Standards (NAAQS), as set forth in 72 FR 18428–18434. EPA's proposal notice explained that the State would have to provide EPA with a revised SIP submittal consistent with certain changes described by EPA in our April 12, 2007, notice of proposed rulemaking before EPA would approve the revisions.

EPA provided the public with 60 days to submit comments on the April 12, 2007, proposed rule and the specific changes needed to make the Alabama submittal approvable into the Alabama SIP. At the request of a commenter, EPA extended the public comment period by 30 days to July 11, 2007. EPA received four comment letters from industry representatives and one from the State air pollution control agency, all of which were in favor of the rulemaking. EPA received one comment letter, submitted on behalf of four environmental groups, opposed to the approval. In general, comments received that were adverse to the proposed rulemaking expressed concerns related to air quality impacts (particularly on the PM NAAQS), modeling analyses, EPA's technical assessment of the relationship between opacity and PM mass emissions, and application of Section 110(l) of the Clean Air Act (CAA). These comments, and EPA's responses to them, are discussed in more detail in EPA's final action on Alabama's SIP revisions taken on October 15, 2008 (73 FR 60957).

Following the close of the comment period, EPA and ADEM discussed some of the issues raised by the commenters, including comments regarding the potential impact of a revised visible emissions rule on attainment of the $PM_{2.5}$ NAAQS in Alabama. Documents memorializing these conversations are part of the docket for EPA's final action. As a result of these discussions, ADEM decided to submit the necessary revisions proposed by EPA in the April 2007 **Federal Register** notice to support final approval. These revisions, submitted to EPA on August 22, 2008 (2008 Submittal), and the 2003 Submittal amend the requirements for units that are required to operate continuous opacity monitoring systems (COMS) and that are not subject to any opacity limits other than those of the Alabama SIP. ADEM also decided to include an additional limitation on opacity based on public comments on EPA's proposal. This additional provision limits subject sources to a daily opacity average of no more than 22 percent, excluding periods of startup, shutdown, load change and rate change (or other short intermittent periods upon terms approved by ADEM's Director and included in a State-issued

permit).[1] For further information about the technical details regarding the SIP revisions, see EPA's October 15, 2008, final action (73 FR 60957). The 2003 Submittal and the 2008 Submittal are referred to collectively in this notice as the ''2003/2008 Submittals.''

On October 15, 2008, EPA took final action to incorporate into the Alabama SIP, Alabama's revisions to its visible emissions rule (the rule changes included in the 2003/2008 Submittals). 73 FR 60957. This final action was effective on November 14, 2008. By its terms, the Alabama state rule change became effective (and thus applicable to sources) on May 14, 2009.

Following the October 2008 final action, EPA received two petitions for reconsideration submitted on behalf of the Alabama Environmental Council and other parties (Petitioners). The first petition for reconsideration, dated December 12, 2008, raised procedural and substantive concerns with EPA's October 15, 2008, final action, and was denied by EPA via letter on January 15, 2009. The second petition, dated February 25, 2009, raised additional procedural and substantive issues. EPA granted the second petition via letter on April 3, 2009. The main issues raised by the February 25, 2009, petition can be summarized as follows: (1) That EPA ignored Petitioners' December 31, 2008, comments regarding the DC Circuit's vacatur of the 40 CFR part 63 provisions pertaining to startup, shutdown, and malfunction and its impact on the opacity SIP revision; (2) that a new comment period was required because the 2007 proposal was not approvable ''as is''; (3) that EPA's conclusion that greater opacity does not necessarily mean greater PM emissions was irrational; (4) that EPA failed to make an ''appropriate inquiry'' under section 110(l) and 40 CFR 51.112 to protect the NAAQS—there was no equivalency determination, only reliance on uncertainty; (5) that documents received as part of a Freedom of Information Act request indicate that some groups were given more access to the rulemaking than others, thus supporting the reopening of the public comment period; (6) that if the public comment period were reopened, EPA would be presented with information that would compel EPA to disapprove the SIP revisions; and (7) that the petition also incorporated the original petition issues.[2] Both petitions are included in the docket for this action.

In the letter granting the February 2009 petition for reconsideration, EPA committed to conduct this reconsideration through a new rulemaking process. Through this process, which begins with this public notice, EPA is allowing for public comment and will make a determination either affirming its previous action and approving the revisions or amending the previous action and disapproving the revisions.

## II. What Are EPA's Current Proposals?

### *A. Proposal To Affirm the October 15, 2008, Action and Approve the 2003/2008 Submittals*

As was discussed in EPA's October 15, 2008, rulemaking, EPA believes that the primary issue in considering whether these SIP revisions were approvable was determining whether the approval of the revisions was consistent with section 110(l) of the CAA. In particular, determination of consistency with section 110(l) depends upon whether the proposed revisions would interfere with attainment of the NAAQS by increasing emissions of $PM_{2.5}$.[3] Section 110(l) of the CAA provides in part that:

> The Administrator shall not approve a revision of a [SIP] if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 of this title), or any other applicable requirement of [the Act].

In evaluating whether a SIP revision would interfere with attainment or maintenance, as required by section 110(l), EPA generally considers whether the SIP revision will allow for an increase in actual emissions to the air over what is allowed under the existing federally-approved SIP.[4] EPA has concluded that preservation of the status quo air quality during the time new attainment or maintenance demonstrations are being prepared will prevent interference with CAA requirements, including the States' obligations to develop timely demonstrations. EPA does not believe that areas must produce a complete demonstration to make any revisions to the SIP, provided the status quo air quality is preserved.

The 2003/2008 Submittals at issue were the subject of extensive consideration because the question of whether they were expected to result in an increase in emissions of criteria pollutants, particularly $PM_{2.5}$, was a difficult issue to analyze technically. Opacity itself is not a criteria pollutant. Rather, opacity may be defined as the degree to which emissions reduce the transmission of light and obscure the view of an object in the background. (See 40 CFR 60.2.) Opacity requirements are significant environmentally for many reasons, including that they may be used as an indicator of the effectiveness of emission controls for PM emissions. Opacity may also be used to assist with implementation and enforcement of PM emission standards.

EPA's prior approval notice provides extensive discussion of the reasons why EPA concluded in that notice that section 110(l) had been satisfied. 73 FR 60957 (October 15, 2008).[5] In particular, EPA stated as grounds for this conclusion that: ''(1) The revision would not increase the allowable

[1] The director's discretion provisions under Alabama rule 335–3–4–.01(1)(c) and (d) would be unchanged by this SIP revision, so periods of excess emissions allowed in a permit pursuant to those provisions would continue to be allowed, as noted here. EPA notes that, as the director's discretion provisions are not being revised by ADEM or reviewed by EPA at present, nothing in this notice should be considered as endorsing those previously approved provisions.

[2] The original petition raised approximately eight issues summarized as follows: (1) EPA was arbitrary and capricious in failing to reopen the public comment period when ADEM made changes to the rule after the close of the public comment period; (2) EPA was arbitrary and capricious in deviating from rulemaking policy regarding documentation of post-comment period meetings between EPA and ADEM and failing to meet with Petitioners in addition to ADEM; (3) EPA was arbitrary and capricious in proposing to approve a SIP revision before the rule had even been developed at the State level; (4) EPA failed to comply with rulemaking procedures by failing to complete the docket prior to finalizing the rulemaking action; (5) the rule does not represent reasonably available control technology (RACT) which is required because Alabama has $PM_{2.5}$ nonattainment areas; (6) EPA's approval was not consistent with either section 110(l) or 193 due to likely increases in short-term PM emissions; (7) EPA's final action was not consistent with EPA policies on excess emissions and director's discretion; and (8) the final rule does not comply with 40 CFR Part 51 because it is not an ''appropriate'' visible emission limitation.

[3] EPA's view has been that if the SIP revision does not interfere with attainment or maintenance of the $PM_{2.5}$ NAAQS, then it is unlikely to interfere with other applicable requirements. For example, if EPA concludes that actual emissions of $PM_{2.5}$ allowed under the SIP are not increasing as a result of the SIP revision, then no additional control requirements would be required under section 193 (assuming it otherwise applies to this action). Similarly, EPA anticipates that if the opacity standard is consistent with attainment of the NAAQS, then it would be an ''appropriate'' standard for purposes of Part 51, and would not interfere with other applicable requirements such as RACT. EPA solicits comment on these issues and whether there are other applicable requirements that require independent analysis under section 110(l) or other portions of the CAA.

[4] EPA also accepts modeling demonstrations, as when an area is seeking approval of a maintenance plan, and in some cases (for areas designated attainment) EPA has accepted an analysis demonstrating that the SIP revision will not interfere with maintenance or other CAA requirements.

[5] In addition, the Response to Comment document prepared by EPA for the final rule also addressed several issues raised by Petitioners.

average opacity levels; and (2) the relationship between changes in opacity and increases or decreases in ambient $PM_{2.5}$ levels cannot be quantified readily for the sources subject to this SIP revision, and is particularly uncertain for short-term analyses.'' 73 FR 60959.

In light of the issues raised in the February 2009 petition for reconsideration, including Petitioners' arguments regarding the need to complete an equivalency determination under section 110(l), and the concerns about the nature of the relationship between opacity and PM, EPA is reconsidering and soliciting comment on its conclusion that the SIP revisions satisfied the requirements of section 110(l). If EPA concludes, following public comment on this reconsideration notice, that these two grounds remain an appropriate basis for approving the SIP revisions as meeting the requirements of section 110(l), and concludes that Petitioners have not identified other issues that lead to the conclusion that the SIP revisions interfere with any applicable requirement of the CAA, then EPA anticipates that it would affirm its prior approval of the SIP revisions.

Thus, EPA is now accepting comment on our previously articulated basis for approving the 2003/2008 Submittals, on the issues raised in the February 2009 petition for reconsideration, and how the issues raised in the February 2009 petition may impact EPA's previous basis for approving the 2003/2008 Submittals.

*B. Proposal To Amend the October 15, 2008, Action and Disapprove the 2003/2008 Submittals*

In the February 25, 2009, petition for reconsideration, Petitioners lay out their rationale for why EPA should amend the October 2008 rulemaking and disapprove for the 2003/2008 Submittals. As part of the current reconsideration process, EPA is (1) outlining the following rationale, which could form the basis for amending the October rulemaking action; (2) proposing to amend the October rulemaking and disapprove the 2003/2008 Submittals based on the discussion below, and any other issues that may come to light as part of the public comment received through this notice; and (3) taking comment on this proposed alternate disapproval action and rationale.

Rationale for Proposed Disapproval

The most significant issue raised by petitioners in the February 25, 2009, petition is that approval of the 2003/2008 Submittals was not consistent with Section 110(l) because, petitioners explain, the ''bundling of high opacity periods'' would result in increases in PM mass emissions, thus ''interfering'' with attainment and maintenance of the PM NAAQS.

The 2003/2008 Submittals allow for higher maximum opacity levels from the applicable facilities that were not previously authorized. In some cases, these increases may be up to 100 percent opacity. These visible emissions of up to 100 percent opacity for a certain period of time will be considered lawful—a distinct difference between the 2003/2008 SIP proposal and the previous SIP-approved rule. These types of emissions will be allowed from approximately 19 facilities affected by the rule change, including older coal-fired utilities, cement manufacturing facilities, and pulp and paper facilities, among others. Some of the affected facilities are located in or near the Birmingham, Alabama, area, which is currently designated as nonattainment for $PM_{2.5}$. Alabama also has a partial county that is part of the Chattanooga, Tennessee, $PM_{2.5}$ nonattainment area, and one of the affected facilities is located near that area. In addition, the Birmingham area currently has a monitor that has registered design values above the 1997 8-hour ozone standard and is considered in violation of that NAAQS. As a result of the ozone violation, Alabama submitted a SIP revision, which was approved in a July 30, 2009, rulemaking (74 FR 37977) to adopt contingency measures for the Birmingham area.

As was discussed earlier in this notice, both Alabama's previous visible emissions rule and the revised rule allow for opacity of 100 percent for periods of startup, shutdown, load change and rate change (or other short intermittent periods upon terms approved by ADEM's Director and included in a State-issued permit). The previous rule, however, did not otherwise allow for opacity of 100 percent and allowed, instead, for opacity of up to 40 percent for one six-minute period per hour. Thus, in addition to periods of startup, shutdown, load change and rate change (or other short intermittent periods), the revised Alabama rule allows the same maximum time of excess opacity in a single day (up to 144 minutes per day) as the previous SIP-approved rule. The revised rule allows for an increase in the upper limit from 40 percent opacity to 100 percent opacity. Further, the revised rule allows for a daily aggregate of the 24 six-minute periods per day as opposed to 24 hourly periods per day.

The petition for reconsideration outlines several reasons why petitioners believe the 2003/2008 Submittals are not approvable, including (in paraphrase): (1) The 22 percent average daily opacity cap is illegal because it incorporates automatic exemptions, as does the rest of the opacity rule, making it illegal under the DC Circuit's decision in *Sierra Club* v. *EPA,* 551 F.3d 1019 (DC Cir. 2008) (vacating certain provisions in 40 CFR part 63 regarding periods of startup, shutdown, and malfunction); (2) the 22 percent average daily opacity cap provision does not represent RACT; (3) approval of the 22 percent average daily opacity cap provision was illegal because there is no support for the proposition that allowing bundling of high opacity periods would allow no more particulate than the old regulatory scheme which allowed 40 percent opacity once per hour; and (4) the 22 percent average daily opacity cap provision would still allow the bundling of high opacity periods, thereby failing to ensure compliance with three-hour mass emission limitations.

Based on the information received to date, EPA believes that increases or decreases in $PM_{2.5}$ emissions based on short-term increases in opacity cannot be quantified readily for the sources subject to this SIP revision. There are several contributors to the uncertainties associated with relating mass emissions to increases in opacity, including: (1) Differences between combustion technology characteristics and fuel components, (2) differences in control technology types, temperatures at which they operate, and load characteristics, (3) the recognition that both opacity and mass emissions are subject to significant variability over short periods of time and fluctuations such that one may act independently of the other, and (4) differences between the mass of particles that exists at the point of opacity measurement by the COMS (*e.g.,* in the stack) and the direct $PM_{2.5}$ that forms immediately upon exiting the stack (that are related to fuel components more than to control technology).

A significant issue for these SIP revisions is the degree of uncertainty that exists, and how to apply section 110(l) in the event EPA determines there is extreme uncertainty based on currently available data. Alabama has not provided EPA with an affirmative demonstration that the 2003/2008 Submittals will not interfere with attainment and maintenance of the NAAQS, reasonable further progress, or any other applicable requirement of the CAA—particularly for facilities located

in or near PM nonattainment areas. Petitioners argue that in order to preserve the integrity of the SIP revision process, section 110(l) requires more than mere uncertainty, i.e., an inability to predict with confidence, based on current data, the effect of changes on the opacity standard with respect to attainment of the NAAQS. Rather, section 110(l) requires an affirmative conclusion that the revision at issue will not interfere with any NAAQS or applicable requirement. Thus, one possible approach suggested by the petition would be to conclude that the SIP revisions could not be approved until additional data and analysis (*e.g.,* source-specific testing) was submitted that provided a reasonable basis for concluding that the revision would not interfere with applicable requirements. This approach would provide protection for the NAAQS, consistent with the overall goals of the CAA. EPA solicits comment on this approach, particularly if the uncertainty (based on the available record) is too great to provide a basis for concluding that the SIP revisions are likely to interfere with timely attainment of the $PM_{2.5}$ NAAQS, as a basis to amend and disapprove of the 2003/2008 Submittals.

## III. What Additional Information Would EPA Like To Receive?

The relationship between opacity and PM mass emissions is a key component to evaluating the October 2008 rulemaking under Section 110(l). Thus, in addition to soliciting comments on the above proposals, EPA is also seeking comment on the relationship between opacity and the NAAQS (the $PM_{10}$ and $PM_{2.5}$ NAAQS in particular). This information will help EPA gather additional information regarding petitioners' claims and Section 110(l). EPA specifically seeks public comment on the nature of the relationship between opacity and PM mass emissions over both the short and long term and when the opacity and PM mass emissions may have a predictable relationship to one another (*e.g.,* when an opacity level of a certain amount would predict a PM mass emission of another certain amount). The public is encouraged to provide the following types of data and analyses to assist with EPA's reconsideration of its action on the 2003/2008 Submittals. Source-specific data from Alabama facilities affected by the 2003/2008 Submittals would provide particularly pertinent information; however, the following list of data/information would assist EPA in its analysis of the submittals:

- Concurrent measurements from COMS and PM continuous emission monitoring systems, along with fuel analyses, process data, control device descriptions, and operational data;
- Concurrent opacity and PM emissions measurements, along with fuel analyses, process data, control device descriptions, and operational data;
- Information on relationships, empirical or modeled, between opacity and PM emissions (both filterable and condensable), such as statistical analyses that attempt to relate or correlate opacity with PM emissions (both filterable and condensable);
- Data on conditions—such as those associated with fuel, source, combustion, load, control, or particle characteristics—under which relationships exist between opacity and PM emissions;
- Other parameters that can be measured and related to PM emissions;
- Relationships between opacity and particle size, especially for fine PM;
- Benefit and/or cost information on compliance methods that measure PM on a direct, continuous basis and methods that rely on indicators, such as opacity, and/or rely on ongoing but infrequent PM emissions testing; and
- Any data supporting the particular issues raised in the petition for reconsideration.

EPA is now accepting public comment on the various bases identified in the petition for reconsideration, or that otherwise may be articulated, for amending the October rulemaking and disapproving the 2003/2008 Submittals.

## IV. Proposed Actions

This rulemaking is part of EPA's reconsideration process on our October 15, 2008, final action approving Alabama's visible emissions SIP revisions. EPA is seeking public comment on proposals to affirm our prior action, which approved the SIP revisions, or amend and disapprove the revisions to Alabama SIP rule 335–3–4–.01 (''Visible Emissions''), submitted initially in 2003 and significantly revised and re-submitted on August 22, 2008.

The public is encouraged to submit any comments that it would like EPA to specifically respond to as part of this reopening of the public comment period. The October 15, 2008, final action remains in effect at this time. The Docket for this reopening has been populated with all the relevant information and is available electronically and in hardcopy in the Region 4 Office.

## 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, Coordination With Indian Tribal Governments
G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act

### *A. Executive Order 12866, Regulatory Planning and Review*

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

### *B. Paperwork Reduction Act*

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* OMB must approve all ''collections of information'' by EPA. The Act defines ''collection of information'' as a requirement for ''answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *'' 44 U.S.C. 3502(3)(A).

### *C. Regulatory Flexibility Act*

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. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP proposals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply propose approval of requirements that the State is already imposing. Therefore, because the Federal SIP approval or disapproval proposals do not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its

actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 US 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

*D. Unfunded Mandates Reform Act*

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, EPA 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 the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval or disapproval action proposed 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. This Federal action proposes to approve or disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

*E. Executive Order 13132, Federalism*

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely proposes to approve or disapprove a State rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

*F. Executive Order 13175, Coordination With Indian Tribal Governments*

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. This proposed rule 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. Thus, Executive Order 13175 does not apply to this rule.

EPA specifically solicits additional comment on this proposed rule from tribal officials.

*G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks*

*Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

*H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

**List of Subjects in 40 CFR Part 52**

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

Dated: September 10, 2009.

**Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

[FR Doc. E9–23793 Filed 10–1–09; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA–R09–OAR–2008–0693; FRL–8965–2]**

## Approval and Promulgation of Implementation Plans: 1-Hour Ozone Attainment Contingency Measures for the San Joaquin Valley, CA

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

**ACTION:** Proposed rule.

**SUMMARY:** On July 14, 2009, EPA proposed to disapprove the attainment contingency measures in the extreme area plan for attainment of the 1-hour ozone standard in California's San Joaquin Valley. EPA is now proposing to approve these contingency measures and to withdraw its proposed disapproval. This proposed approval is based on technical information provided to EPA by the California Air Resources Board.

**DATES:** Comments must be submitted by November 2, 2009.

**ADDRESSES:** Submit comments, identified by docket number EPA–R09–OAR–2008–0693, by one of the following methods:

1. *Agency Web site: http://www.regulations.gov.* EPA prefers receiving comments through this electronic public docket and comment system. Follow the online instructions to submit comments.
2. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions.
3. *E-mail: wicher.frances@epa.gov.*
4. *Mail or deliver:* Ms. Marty Robin, Office of Air Planning (AIR–2), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

*Instructions:* All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through the agency Web site, eRulemaking portal, or e-mail. The agency Web site and eRulemaking portal are anonymous access systems, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

*Docket:* 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 hard copy location (*e.g.,* copyrighted material), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Frances Wicher, U.S. EPA Region 9, 415–972–3957, Office of Air Planning (AIR–2), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, *wicher.frances@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document, the terms ''we,'' ''us,'' and ''our'' mean U.S. EPA.

### I. Summary of EPA's July 14, 2009 Proposed Action on the SJV 1-Hour Ozone Plan

On July 14, 2009 at 74 FR 33933, EPA proposed to approve in part and disapprove in part State implementation plan (SIP) revisions submitted to EPA by the State of California. California made these submittals to meet the Clean Air Act (CAA) requirements applicable to the San Joaquin Valley, California ozone nonattainment area (SJV area). The SJV area became subject to these requirements following its 2004 reclassification from severe to extreme for the 1-hour ozone national ambient air quality standard (NAAQS). 69 FR 20550 (April 15, 2004). In 1997, we revised the ozone NAAQS by lowering the level to 0.08 ppm and extending the averaging time to eight hours [1] and subsequently revoked the 1-hour ozone standard. The SJV area, however, remains subject to most of these CAA requirements for the 1-hour ozone standard through the anti-backsliding provisions in EPA's rule implementing the 8-hour ozone standard (Phase 1 Rule). *See* 40 CFR 51.905(a).

EPA proposed to approve California's 1-hour ozone SIP submissions for the SJV area as meeting the applicable 1-hour requirements as provided under the CAA and interpreted in the Phase 1 Rule for attainment demonstrations, rate-of-progress (ROP) demonstrations and related contingency measures, and other control requirements. EPA also proposed to disapprove the contingency measures that would take effect if the area failed to attain the 1-hour ozone standard by the applicable attainment date. A complete discussion of EPA's proposed actions is in the July 14, 2009 proposal.

The three SIP submissions that are the subject of our July 14, 2008 proposal are, first, the ''Extreme Ozone Attainment Demonstration Plan'' adopted by the San Joaquin Valley Air Pollution Control District (SJVAPCD) in 2004 and amended in 2005. We refer to the plan and its amendment, collectively, as the ''2004 SIP'' in this proposed rule. The 2004 SIP addresses CAA requirements for extreme 1-hour ozone areas including control measures, ROP and attainment demonstrations, and contingency measures.

The second SIP submission addressed in the July 14 proposal, is ''Clarifications Regarding the 2004 Extreme Ozone Attainment Demonstration Plan'' (2008 Clarifications) adopted by the SJVAPCD in 2008. The 2008 Clarifications provide updates to the 2004 SIP related to reasonably available control technology (RACT) measures adopted by the SJVAPCD, the ROP demonstrations, and contingency measures.

The third SIP submission addressed in the July 14 proposal is the ''2003 State and Federal Strategy for the California State Implementation Plan,'' adopted by the California Air Resources Board (ARB) in October, 2003 (2003 State Strategy). This strategy document, as modified by the ARB resolution adopting it, identifies ARB's regulatory agenda to reduce ozone and particulate matter in California, including specific commitments to reduce emissions in the San Joaquin Valley. The 2004 SIP relies in part on the 2003 State Strategy for the reductions needed to demonstrate attainment and ROP for the 1-hour ozone standard. A complete description of each of these SIP submittals can be found in the July 14, 2009 proposal.

### II. Contingency Measures

#### *A. Requirements for Contingency Measures for the 1-Hour Ozone Standard*

CAA sections 172(c)(9) and 182(c)(9) require that SIPs contain contingency measures that will take effect without further action by the State or EPA if an

[1] *See* 62 FR 38856 (July 18, 1997). In 2008 we lowered the 8-hour ozone standard to 0.075 ppm. *See* 73 FR 16436 (March 27, 2008). The references in this proposed rule to the 8-hour standard are to the 1997 standard as codified at 40 CFR 50.10.

area fails to attain the ozone standard by the applicable date (section 172(c)(9)) or fails to meet a ROP milestone (section 182(c)(9)).

In 1992, EPA issued a General Preamble describing our preliminary views on how we intended to review 1-hour ozone plans submitted to meet these and other CAA requirements. *See* ''General Preamble for Implementation of Title I of the Clean Air Act Amendments of 1990.'' 57 FR 13498 (April 16, 1992). The General Preamble as well as other EPA guidance documents related to 1-hour ozone plans continue to guide our review of the 1-hour ozone requirements that remain applicable following revocation of that standard.

The Act does not specify how many contingency measures are needed or the magnitude of emission reductions that must be provided by these measures. However, EPA provided initial guidance interpreting the contingency measure requirements in the General Preamble at 13510. Our interpretation is based upon the language in sections 172(c)(9) and 182(c)(9) in conjunction with the control measure requirements of sections 172(c), 182(b) and 182(c)(2)(B), the reclassification and failure to attain provisions of section 181(b) and other provisions. In the General Preamble, EPA indicated that States with moderate and above ozone nonattainment areas should include sufficient contingency measures so that, upon implementation of such measures, additional reductions of 3 percent of the emissions in the adjusted base year inventory (or such lesser percentage that will cure the identified failure) would be achieved in the year following the year in which the failure is identified. States may use reductions in either of the two precursors to ozone formation—volatile organic compounds (VOC) or nitrogen oxides ($NO_X$)—to meet the contingency measure requirement. *See* General Preamble at 13520. States may also use a combination of $NO_X$ and VOC reductions to meet the requirement. *See* General Preamble at 13520, footnote 6. Finally, States must show that their contingency measures can be implemented with minimal further action on their part and with no additional rulemaking actions.

In subsequent guidance, EPA stated that contingency measures could be implemented early, *i.e.,* prior to the milestone or attainment date.[2] Under this policy, States are allowed to use excess reductions from already adopted measures to meet the CAA sections 172(c)(9) and 182(c)(9) contingency measures requirement. The key is that the CAA requires extra reductions that are not relied on for ROP or attainment and that will provide a cushion while the plan is being revised to fully address the failure. Nothing in the CAA precludes a State from implementing such measures before they are triggered. This approach has been approved by EPA in numerous SIPs. *See* 62 FR 15844 (April 3, 1997); 62 FR 66279 (December 18, 1997); 66 FR 30811 (June 8, 2001); 66 FR 586 and 66 FR 634 (January 3, 2001). In the only adjudicated challenge to this approach, the court upheld it. *See LEAN* v. *EPA,* 382 F.3d 575 (5th Cir. 2004). 70 FR 71611, 71651.

In 2004, EPA designated and classified most areas of the country under the 1997 8-hour ozone standard. 69 FR 23858 (April 30, 2004). At the same time, we issued the Phase 1 rule. 69 FR 23951 (April 30, 2004). The Phase 1 rule provided that the 1-hour ozone standard would be revoked in most areas of the country (including the SJV area), effective June 15, 2005. *See* 40 CFR 50.9(b); 69 FR at 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 identifying which 1-hour ozone standard requirements remain applicable after revocation of that standard. 40 CFR 51.900(f). In the Phase I rule, EPA initially determined that contingency measures for the 1-hour ozone standard would not be required once the standard was revoked. *See* 70 FR 30592 (May 26, 2005). However, the DC Circuit in *South Coast Air Quality Management District, et al.,* v. *EPA,* 472 F.3d 882 (DC Cir. 2006), rehearing denied 489 F.3d 1245 (2007), vacated the provision of the Phase 1 rule that waived the 1-hour contingency measure requirements. Consequently, areas subject to the anti-backsliding requirements, such as the SJV area, must continue to meet the CAA sections 172(c)(9) and 182(c)(9) requirements. We have proposed to revise 40 CFR 51.900(f), the regulatory definition of ''applicable requirement'' for purposes of the anti-backsliding provisions in 40 CFR 51. 905, in order to remove the vacated provision and to add language consistent with the Court's holding that contingency measures for failure to attain or to make reasonable further progress toward attaining the 1-hour standard continue to apply in such areas. *See* 74 FR 2936 (January 16, 2009).

*B. EPA's July 14, 2009 Proposal on the Attainment Contingency Measures in the SJV 1-Hour Ozone Plan*

One-hour ozone nonattainment areas classified as extreme under CAA section 181(b)(3) must demonstrate attainment ''as expeditiously as practicable'' but not later than the date specified in CAA section 181(a), November 15, 2010. The 2004 SIP contains a demonstration that the SJV area will attain the 1-hour ozone standard by that date. In our July 14, 2009 proposed action on the 2004 SIP, we proposed to approve the attainment demonstration. 74 FR at 33942. The attainment contingency measure requirement calls for a showing that there are fully adopted contingency measures that will achieve emission reductions in excess of the levels needed for attainment and sufficient to provide continued ROP in the year after the attainment date, *i.e.,* 3 percent reductions from the pre-1990 adjusted baseline in 2011 if triggered by a failure to attain. Table 4 in our July 14, 2009 proposal reproduces the ROP demonstrations in the 2004 SIP. 74 FR at 33941. Based on the 2010 adjusted baseline in this ROP demonstration, an additional 3 percent in the year after the attainment year equates to approximately 15.3 tpd of VOC or 20.7 tpd of $NO_X$ with $NO_X$ substitution.

Table 5 in the July 14, 2009 proposal shows that there are no excess reductions from adopted measures in the 2004 SIP's attainment demonstration and that, in addition to the adopted measures that make significant reductions toward attainment, the plan relies on commitments to adopt measures to achieve the additional reductions needed to demonstrate attainment. However, Table 6 in the July 14 proposal shows that there are 10 tpd $NO_X$ and 5 tpd VOC in reductions in 2011 from adopted and creditable on-road mobile source measures that could serve to fulfill a portion of the attainment contingency measure requirement. These amounts collectively provide just a 2.4 percent rate of progress in 2011, short of the suggested 3 percent.

The SJV 1-hour ozone plan did not provide any information on post-2010 emission reductions in any source category other than on-road motor vehicles.

Based on the information available to EPA at the time of the July 14, 2009 proposal, the State had not demonstrated that there were sufficient excess reductions to satisfy the attainment contingency measure requirement. We therefore proposed to disapprove the attainment contingency

[2] *See* Memorandum from G.T. Helms, EPA, to EPA Air Branch Chiefs, Regions I–X, entitled ''Early Implementation of Contingency Measures for Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' August 13, 1993.

measures provision in the SJV 1-hour ozone plan as not meeting the requirements of CAA section 172(c)(9). *See* 74 FR at 33944. We stated in that proposal that the State could remedy this failure by submitting either new contingency measures or a demonstration that existing creditable measures provide, consistent with the guidance cited above, sufficient emission reductions in 2011. *Id.*

*C. Additional Information Submitted by California*

In an August 28, 2009 letter, ARB provided information on the effect on emission levels in the SJV area of fleet turnover in the off-road mobile source category. ARB also provided a demonstration that these emission reductions, combined with the reductions in the on-road mobile source sector, are more than the 3 percent of adjusted base inventory emissions suggested by EPA guidance, and that these reductions are not relied upon to satisfy rate of progress and attainment demonstration requirements. *See* letter, James Goldstene, ARB, to Marty Robins, EPA (Goldstene letter). We have reproduced ARB's demonstration, contained in the attachment to the Goldstene letter, in Table 1 below.

TABLE 1—EMISSION REDUCTIONS AVAILABLE TO SATISFY THE CLEAN AIR ACT CONTINGENCY MEASURE REQUIREMENT FOR "FAILURE TO ATTAIN"

[San Joaquin Valley, Summer Season]

| Line | $NO_X$ | ROG [3] |
|---|---|---|
| A. 1990 Adjusted Baseline Emissions in 2010 (Note 1) | 689 | 509 |
| B. Emission Reductions from California's Existing On-road Motor Vehicle Emission Control Program (2010 to 2011) (Note 2) | 10 | 5 |
| C. Emission Reductions from California's Existing Off-road Equipment Emission Control Program (2010 to 2011) | 5.7 | 3.6 |
| D. Total Mobile Source Emission Reductions (2010–2011) | 16 | 9 |
| E. Mobile Source Emission Reductions as a Percent of the 1990 Adjusted Baseline Emissions in 2010 | 2.3% | 1.7% |
| F. Total Mobile Source Emission Reductions as a Percent of the 1990 Adjusted Baseline Emissions in 2010 | 4.0% | |

**Note 1.** From Table 2 "San Joaquin Valley Rate of Progress" in the 2008 Clarification.
**Note 2.** From Table 3 "Baseline Motor Vehicle Emissions 2000–2010" in the 2008 Clarification.

The reductions in the off-road engine category were taken from baseline emission inventories developed as inputs to the air quality modeling supporting the attainment demonstration in the 2004 SIP. These baseline emission inventories include reductions only from measures adopted prior to September 2002; therefore, the estimate of emission reductions from the off-road engines category reflect only these measures. *See* e-mail, Jeff Lindberg, ARB, to Frances Wicher, EPA, "2011 Off-Road Emission Estimates for the San Joaquin Valley's 1-hour Ozone Plan," September 10, 2009.

By 2002, California already had in place a comprehensive off-road mobile source control program that included both VOC and $NO_X$ emissions standards for lawn and garden equipment, recreational boats, off-road recreational vehicles, and many other off-road engine categories. A list of ARB's adopted off-road measures can be found in Table 15 of the technical support document (TSD) for our July 14, 2009 proposal.[4] California has been granted a waiver or has applied for a waiver under CAA section 209 for these measures [5] and/or the California emission limits are identical or very similar to EPA regulations. EPA had also adopted by September 2002 measures that reduce emissions from new construction and farm equipment and locomotives that apply in California.[6] [7] As described in our July 14, 2009 proposal, emission reductions from both section 209 waiver measures and Federal measures are fully creditable for contingency measures. *See* 74 FR at 33936, 33938.

As shown in Table 1 above, creditable State and Federal on-road and off-road measures provide a combined 4 percent rate of progress in 2011 which is more than the 3 percent ROP suggested in EPA guidance on contingency measures. Therefore, we propose to approve the attainment contingency measures provision in the SJV 1-hour ozone plan as meeting the requirements of CAA section 172(c)(9) and the anti-backsliding requirements of EPA's Phase 1 implementation rule and to withdraw our July 14, 2009 proposed disapproval of this provision.

## III. Summary of Proposed Action

Based on our review of the additional information provided by ARB, we are proposing to approve the contingency measure provisions in the SJV 1-hour ozone plan as meeting the requirements of CAA section 172(c)(9) for contingency measures that must be implemented if an area fails to attain by its attainment date. We are also proposing to withdraw our July 14, 2009 proposed disapproval of these contingency measures.

These proposals to approve and withdraw address only the contingency measures provision for failure to attain in the SJV 1-hour ozone plan. The public comment period for the July 14, 2009 proposal closed on August 31, 2009. 74 FR 40123 (August 11, 2009). EPA is not reopening the comment period on any other aspects of its July 14, 2009 proposed action on the SJV 1-hour ozone plan. Therefore, comments in response to the proposals herein must be limited to issues related to the proposed approval of the attainment contingency measures in the SJV 1-hour ozone plan and the proposed withdrawal of the July 14, 2009 proposed disapproval of these measures.

[3] ARB uses the term "reactive organic gases" (ROG) in its documents. For the purposes of this proposed rule, VOC and ROG are interchangeable.

[4] Because this proposed action supplements our July 14, 2009 proposal, the docket number, EPA–R09–OAR–2008–0693, for both proposed actions is the same.

[5] Under CAA sections 209(a) and (e)(1), States are pre-empted from adopting or enforcing emission standards for both on-road or non-(off-) road new vehicles and new vehicle engines. Under CAA section 209(b) and (e)(2), California must be granted a waiver of this pre-emption upon certain findings by EPA although we may not waive pre-emption for locomotives and for certain new construction or agricultural engines. *See* CAA section 209(e)(1).

[6] Tier 2 and 3 non-road engines standards, 63 FR 56968 (October, 23, 1998).

[7] Locomotive standards, 63 FR 18978 (May 16, 1998).

## IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to either review by the Office of Management and Budget or to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

This action merely proposes to approve a portion of a State-adopted attainment plan for the San Joaquin Valley Air Basin and withdraw a previous proposal and does not impose any additional requirements. Accordingly, the Administrator certifies that this proposed action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this proposed action does not impose any additional enforceable duties, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This proposed action does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the plan is not approved to apply in Indian country located in the State. It will not impose substantial direct costs on Tribal governments or preempt Tribal law.

This proposed action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This proposed action merely proposes to approve a portion of a State-adopted plan and does not alter the relationship or the distribution of power and responsibilities established in the CAA.

Executive Order 12898 establishes a Federal policy for incorporating environmental justice into Federal agency actions by directing agencies to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority and low-income populations. Today's action involves a proposed approval of a State-adopted plan. It will not have disproportionately high and adverse effects on any communities in the area, including minority and low-income communities.

This proposed action also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant. The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Volatile organic compounds.

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

Dated: September 23, 2009.

**Jane Diamond,**

*Acting Regional Administrator, Region IX.*

[FR Doc. E9–23796 Filed 10–1–09; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 55

**[EPA–R02–OAR–2009–0680; FRL–8965–1]**

## Outer Continental Shelf Air Regulations Consistency Update for New Jersey

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to update a portion of the Outer Continental Shelf (OCS) Air Regulations Requirements applying to OCS sources located within 25 miles of states' seaward boundaries which must be promulgated into the regulations and updated periodically to remain consistent with the requirements of the corresponding onshore area (COA), as mandated by section 328(a)(1) of the Clean Air Act (CAA). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources in the State of New Jersey. The intended effect of approving the OCS requirements for the State of New Jersey is to regulate emissions from OCS sources in accordance with the requirements onshore. The requirements discussed below are proposed to be incorporated by reference into the Code of Federal Regulations and are listed in the appendix to the OCS air regulations.

**DATES:** Comments must be received on or before November 2, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R02–OAR–2009–0680, by one of the following methods:

A. *Federal eRulemaking Portal: http://www.regulations.gov:* Follow the on-line instructions for submitting comments;

B. *E-Mail: riva.steven@epa.gov*;

C. *Mail:* Steven Riva, U.S. Environmental Protection Agency, Region 2, Air Programs Branch, 290 Broadway, New York, NY 10007;

D. *Hand Delivery:* U.S. Environmental Protection Agency, Region 2, Attn: Steven Riva, 290 Broadway, New York, NY 10007, 25th Floor. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–R02–OAR–2009–0680. 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 *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 *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.

*Docket:* All documents in the electronic 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the U.S. Environmental Protection Agency, Region 2, 290 Broadway, New York, New York 10007.

**FOR FURTHER INFORMATION CONTACT:**

Steven Riva, Air Programs Branch, U.S. Environmental Protection Agency, Region 2, 290 Broadway, New York, New York 10007; telephone number: (212) 637–4074; e-mail address: *riva.steven@epa.gov.*

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## I. Background Information

### *Why Is EPA Taking This Action?*

On September 4, 1992, EPA promulgated 40 CFR part 55,[1] which established requirements to control air pollution from OCS sources in order to attain and maintain Federal and State ambient air quality standards (AAQS) and to comply with the provisions of part C of title I of the CAA. Part 55 applies to all OCS sources offshore of the states except those located in the Gulf of Mexico west of 87.5 degrees longitude.

Section 328(a) of the CAA requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable rules in effect for onshore sources into part 55. This limits EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's State implementation plan (SIP) guidance or certain requirements of the CAA. Inclusion in the OCS rule does not imply that a rule meets the requirements of the CAA for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

## II. EPA's Evaluation

### *What Criteria Were Used To Evaluate Rules Submitted To Be Incorporated Into 40 CFR part 55?*

EPA reviewed the rules that New Jersey submitted for inclusion in part 55 to ensure that they are rationally related to the attainment or maintenance of Federal or State AAQS or part C of title I of the CAA and that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure they are not arbitrary or capricious. 40 CFR 55.12 (e). In addition, EPA has excluded New Jersey's administrative or procedural rules,[2] and requirements that regulate toxics that are not related to the attainment and maintenance of Federal and State AAQS.

## III. Administrative Requirements

### *A. Executive Order 12866: Regulatory Planning and Review*

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

### *B. Paperwork Reduction Act*

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

### *C. Regulatory Flexibility Act*

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. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant economic impact on a substantial number of small entities. This rule implements requirements specifically and explicitly set forth by the Congress in section 328 of the CAA, without the exercise of any policy discretion by EPA. These OCS rules already apply in the COA, and EPA has no evidence to suggest that these OCS rules have had a significant economic impact on a substantial number of small entities. As required by section 328 of the CAA, this action simply incorporates the existing rules in the COA. Therefore, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities.

### *D. Unfunded Mandates Reform Act*

Under section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, EPA 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, and tribal governments in the aggregate; or to the private sector, of $100 million or more in any one year. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that today's proposed rule contains no Federal mandates that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or to the private sector in any one year. This action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local or tribal governments, or to the private sector, result from this action.

[1] The reader may refer to the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

[2] Each COA, which has been delegated the authority to implement and enforce part 55, will use its administrative and procedural rules as onshore. However, in those instances where EPA has not delegated authority to implement and enforce part 55, as in New Jersey, EPA will use its own administrative and procedural requirements to implement the substantive requirements. See 40 CFR 55.14(c)(4).

*E. Executive Order 13132: Federalism*

*Federalism* (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 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. Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

*F. Executive Order 13175: Coordination With Indian Tribal Governments*

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. This final rule does not have tribal implications, as specified in Executive Order 13175. 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. Thus, Executive Order 13175 does not apply to this rule.

*G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885 (April 23, 1997)), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

*H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This proposed rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use voluntary consensus standards (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable laws or otherwise impractical.

The EPA believes that VCS are inapplicable to this section. Today's action does not require the public to perform activities conducive to the use of VCS.

**List of Subjects in 40 CFR Part 55**

Environmental protection, Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer Continental Shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: September 18, 2009.

**George Pavlou,**

*Acting Regional Administrator, Region 2.*

Title 40, chapter I of the Code of Federal Regulations, is proposed to be amended as follows:

## PART 55—[AMENDED]

1. The authority citation for part 55 continues to read as follows:

**Authority:** Section 328 of the CAA (42 U.S.C. 7401, *et seq.*) as amended by Public Law 101–549.

2. Section 55.14 is amended by revising the sixth sentence in paragraph (e) introductory text and paragraph (e)(15)(i)(A) to read as follows:

**§ 55.14 Requirements that apply to OCS sources located within 25 miles of States' seaward boundaries, by State.**

* * * * *

(e) * * * Copies of rules pertaining to particular states or local areas may be inspected or obtained from the EPA Docket Center—Public Reading Room, EPA West Building, Room 3334 1301 Constitution Avenue, NW., Washington, DC 20004 or the appropriate EPA regional offices: U.S. EPA, Region 1 (Massachusetts) One Congress Street, Boston, MA 02114–2023; U.S. EPA, Region 2 (New Jersey and New York), 290 Broadway, New York, NY 10007–1866; U.S. EPA, Region III (Delaware), 1650 Arch Street, Philadelphia, PA 19103, (215) 814–5000; U.S. EPA, Region 4 (Florida and North Carolina), 61 Forsyth Street, Atlanta, GA 30303; U.S. EPA, Region 9 (California), 75 Hawthorne Street, San Francisco, CA 94105; and U.S. EPA, Region 10 (Alaska), 1200 Sixth Avenue, Seattle, WA 98101. * * *

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(15) * * *

(i) * * *

(A) State of New Jersey Requirements Applicable to OCS Sources, August 13, 2009.

* * * * *

3. Appendix A to Part 55 is amended by revising paragraph (a)(1) under the heading ''New Jersey'' to read as follows:

## Appendix A to Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

* * * * *

**NEW JERSEY**

(a) * * *

(1) The following State of New Jersey requirements are applicable to OCS Sources, as of August 13, 2009. New Jersey State Department of Environmental Protection—New Jersey Administrative Code. The following sections of Title 7:

**CHAPTER 27 SUBCHAPTER 2—CONTROL AND PROHIBITION OF OPEN BURNING (EFFECTIVE 6/20/94)**

N.J.A.C. 7:27–2.1. Definitions
N.J.A.C. 7:27–2.2. Open burning for salvage operations
N.J.A.C. 7:27–2.3. Open burning of refuse
N.J.A.C. 7:27–2.4. General provisions
N.J.A.C. 7:27–2.6. Prescribed burning
N.J.A.C. 7:27–2.7. Emergencies
N.J.A.C. 7:27–2.8. Dangerous material
N.J.A.C. 7:27–2.12. Special permit
N.J.A.C. 7:27–2.13. Fees

**CHAPTER 27 SUBCHAPTER 3—CONTROL AND PROHIBITION OF SMOKE FROM COMBUSTION OF FUEL (EFFECTIVE 2/4/02)**

N.J.A.C. 7:27–3.1. Definitions
N.J.A.C. 7:27–3.2. Smoke emissions from stationary indirect heat exchangers
N.J.A.C. 7:27–3.3. Smoke emissions from marine installations
N.J.A.C. 7:27–3.4. Smoke emissions from the combustion of fuel in mobile sources
N.J.A.C. 7:27–3.5. Smoke emissions from stationary internal combustion engines and stationary turbine engines
N.J.A.C. 7:27–3.6. Stack test
N.J.A.C. 7:27–3.7. Exceptions

**CHAPTER 27 SUBCHAPTER 4—CONTROL AND PROHIBITION OF PARTICLES FROM COMBUSTION OF FUEL (EFFECTIVE 4/20/09)**

N.J.A.C. 7:27–4.1. Definitions
N.J.A.C. 7:27–4.2. Standards for the emission of particles
N.J.A.C. 7:27–4.3. Performance test principle
N.J.A.C. 7:27–4.4. Emissions tests
N.J.A.C. 7:27–4.6. Exceptions

**CHAPTER 27 SUBCHAPTER 5—PROHIBITION OF AIR POLLUTION (EFFECTIVE 10/12/77)**

N.J.A.C. 7:27–5.1. Definitions
N.J.A.C. 7:27–5.2. General provisions

**CHAPTER 27 SUBCHAPTER 6—CONTROL AND PROHIBITION OF PARTICLES FROM MANUFACTURING PROCESSES (EFFECTIVE 6/12/98)**

N.J.A.C. 7:27–6.1. Definitions
N.J.A.C. 7:27–6.2. Standards for the emission of particles
N.J.A.C. 7:27–6.3. Performance test principles
N.J.A.C. 7:27–6.4. Emissions tests
N.J.A.C. 7:27–6.5. Variances
N.J.A.C. 7:27–6.7. Exceptions

**CHAPTER 27 SUBCHAPTER 7—SULFUR (EFFECTIVE 3/1/67)**

N.J.A.C. 7:27–7.1. Definitions
N.J.A.C. 7:27–7.2. Control and prohibition of air pollution from sulfur compounds

**CHAPTER 27 SUBCHAPTER 8—PERMITS AND CERTIFICATES FOR MINOR FACILITIES (AND MAJOR FACILITIES WITHOUT AN OPERATING PERMIT) (EFFECTIVE 4/20/09)**

N.J.A.C. 7:27–8.1. Definitions
N.J.A.C. 7:27–8.2. Applicability
N.J.A.C. 7:27–8.3. General provisions
N.J.A.C. 7:27–8.4. How to apply, register, submit a notice, or renew
N.J.A.C. 7:27–8.5. Air quality impact analysis
N.J.A.C. 7:27–8.6. Service fees
N.J.A.C. 7:27–8.7. Operating certificates
N.J.A.C. 7:27–8.8. General permits
N.J.A.C. 7:27–8.9. Environmental improvement pilot tests
N.J.A.C. 7:27–8.11. Standards for issuing a permit
N.J.A.C. 7:27–8.12. State of the art
N.J.A.C. 7:27–8.13. Conditions of approval
N.J.A.C. 7:27–8.14. Denials
N.J.A.C. 7:27–8.15. Reporting requirements
N.J.A.C. 7:27–8.16. Revocation
N.J.A.C. 7:27–8.17. Changes to existing permits and certificates
N.J.A.C. 7:27–8.18. Permit revisions
N.J.A.C. 7:27–8.19. Compliance plan changes
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N.J.A.C. 7:27–8.21. Amendments
N.J.A.C. 7:27–8.22. Changes to sources permitted under batch plant, pilot plant, dual plant, or laboratory operating permitting procedures
N.J.A.C. 7:27–8.23. Reconstruction
N.J.A.C. 7:27–8.24. Special provisions for construction but not operation
N.J.A.C. 7:27–8.25. Special provisions for pollution control equipment or pollution prevention process modifications
N.J.A.C. 7:27–8.26. Civil or criminal penalties for failure to comply
N.J.A.C. 7:27–8.27. Special facility-wide permit provisions
N.J.A.C. 7:27–8.28. Delay of testing

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N.J.A.C. 7:27–9.1. Definitions
N.J.A.C. 7:27–9.2. Sulfur content standards
N.J.A.C. 7:27–9.3. Exemptions
N.J.A.C. 7:27–9.4. Waiver of air quality modeling
N.J.A.C. 7:27–9.5. Incentive for conversion to coal or other solid fuel

**CHAPTER 27 SUBCHAPTER 10—SULFUR IN SOLID FUELS (EFFECTIVE 04/20/09)**

N.J.A.C. 7:27–10.1. Definitions
N.J.A.C. 7:27–10.2. Sulfur contents standards
N.J.A.C. 7:27–10.3. Expansion, reconstruction or construction of solid fuel burning units
N.J.A.C. 7:27–10.4. Exemptions
N.J.A.C. 7:27–10.5. $SO_2$ emission rate determinations

**CHAPTER 27 SUBCHAPTER 11—INCINERATORS (EFFECTIVE 5/4/98)**

N.J.A.C. 7:27–11.1. Definitions
N.J.A.C. 7:27–11.2. Construction standards
N.J.A.C. 7:27–11.3. Emission standards
N.J.A.C. 7:27–11.4. Permit to construct; certificate to operate
N.J.A.C. 7:27–11.5. Operation
N.J.A.C. 7:27–11.6. Exceptions

**CHAPTER 27 SUBCHAPTER 12—PREVENTION AND CONTROL OF AIR POLLUTION EMERGENCIES (EFFECTIVE 3/19/74)**

N.J.A.C. 7:27–12.1. Definitions
N.J.A.C. 7:27–12.2. Emergency criteria
N.J.A.C. 7:27–12.3. Criteria for emergency termination
N.J.A.C. 7:27–12.4. Standby plans
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N.J.A.C. 7:27–16.7. Surface coating and graphic arts operations
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N.J.A.C. 7:27–16.18. Leak detection and repair
N.J.A.C. 7:27–16.19. Application of cutback and emulsified asphalts
N.J.A.C. 7:27–16.21. Natural gas pipelines
N.J.A.C. 7:27–16.22. Emission information, record keeping and testing
N.J.A.C. 7:27–16.23. Procedures for demonstrating compliance
N.J.A.C. 7:27–16.26. Variances
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N.J.A.C. 7:27–18.2. Facilities subject to this subchapter
N.J.A.C. 7:27–18.3. Standards for issuance of permits
N.J.A.C. 7:27–18.4. Air quality impact analysis
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N.J.A.C. 7:27–19.4. Boilers serving electric generating units
N.J.A.C. 7:27–19.5. Stationary combustion turbines
N.J.A.C. 7:27–19.6. Emissions averaging
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[FR Doc. E9–23797 Filed 10–1–09; 8:45 am]
BILLING CODE 6560–50–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 665

**RIN 0648–AU71**

### Fisheries in the Western Pacific; Fishery Ecosystem Plans

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

**ACTION:** Notice of availability of five new fishery ecosystem plans; request for comments.

**SUMMARY:** NMFS announces the availability for public review and comment of proposed Fishery Ecosystem Plans (FEPs) for American Samoa, Hawaii, Mariana Archipelago, Pacific remote island areas, and western Pacific pelagic fisheries. The FEPs would incorporate and reorganize elements of five existing western Pacific fishery management plans from a species- or fishery-basis, to one that is founded on geography. The FEPs would not change current management measures. The objectives of the FEPs are to be consistent with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) through the incorporation of ecosystem-based goals and principles in fishery management.

**DATES:** Comments on the amendment must be received by December 1, 2009.

**ADDRESSES:** Comments on the FEPs, identified by 0648–AU71, may be sent to either of the following addresses:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal www.regulations.gov; or
- Mail: Mail written comments to William L. Robinson, Regional Administrator, NMFS, Pacific Islands Region (PIR), 1601 Kapiolani Blvd, Suite 1110, Honolulu, HI 96814–4700.

Instructions: All comments received are a part of the public record and will generally be posted to *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the commenter may be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

A Programmatic Environmental Impact Statement (PEIS) was prepared for these FEPs. The PEIS and five FEPs are available from *www.regulations.gov* or the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, 808–522–8220, fax 808–522–8226, *www.wpcouncil.org*.

**FOR FURTHER INFORMATION CONTACT:** Brett Wiedoff, NMFS PIR, 808–944–2272.

**SUPPLEMENTARY INFORMATION:** This **Federal Register** document is available at *www.gpoaccess.gov/fr*.

The Magnuson-Stevens Act authorizes the regional fishery management councils to create fishery management plans. The Council developed five FEPs, consistent with the Magnuson-Stevens Act and the national standards for fishery conservation and management. This notice announces that the FEPs are available for public review and comment for 60 days. NMFS will consider public comments received during the comment period in determining whether to approve, partially approve, or disapprove the FEPs.

To date, fisheries in the western Pacific have been managed through five species- or fishery-specific fishery management plans, specifically for bottomfish and seamount groundfish, crustaceans, precious corals, coral reef ecosystems, and western Pacific pelagic fisheries. The proposed FEPs would cover archipelagos or other broad geographic areas, including American Samoa, Hawaii, the Mariana Islands (Guam and the Northern Mariana Islands), the Pacific remote island areas (PRIA) (Palmyra Atoll, Kingman Reef, Jarvis Island, Baker Island, Howland Island, Johnston Atoll, and Wake Island), and one FEP would manage western Pacific pelagic fisheries. The FEPs would incorporate and reorganize elements of the five existing fishery management plans, and facilitate an ecosystem-based approach to fisheries management by the Council and NMFS.

Public comments on the five new FEPs must be received by December 1, 2009 to be considered by NMFS in the decision to approve, partially approve, or disapprove the new plans. NMFS expects to soon publish an associated proposed rule and request for public comments regarding restructuring the Code of Federal Regulations for western Pacific fisheries.

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

Dated: September 21, 2009.

**Emily H. Menashes,**

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

[FR Doc. E9–23817 Filed 10–1–09; 8:45 am]

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# Notices

Federal Register

Vol. 74, No. 190

Friday, October 2, 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.

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Arkansas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the Arkansas Advisory Committee to the Commission will convene by conference call at 2:30 p.m. and adjourn at approximately 3:30 p.m. on Thursday, October 29, 2009. The purpose of this meeting is to plan activities for future SAC project.

This meeting is available to the public through the following toll-free call-in number: (866) 364–7584, conference call access code number 29889655. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and contact name Farella E. Robinson.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Corrine Sanders of the Central Regional Office and TTY/TDD telephone number, by 4 p.m. on October 23, 2009.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by November 13, 2009. The address is U.S. Commission on Civil Rights, 400 State Avenue, Suite 908, Kansas City, Kansas 66101. Comments may be e-mailed to *frobinson@usccr.gov.* Records generated by this meeting may be inspected and reproduced at the Central Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact the Central Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

**Peter Minarik,**

*Acting Chief, Regional Programs Coordination Unit.*

[FR Doc. E9–23799 Filed 10–1–09; 8:45 am]

BILLING CODE 6335–01–P

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Oklahoma Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the Oklahoma Advisory Committee to the Commission will convene by conference call at 1:30 p.m. and adjourn at approximately 2:30 p.m. on Thursday, October 15, 2009. The purpose of this meeting is to plan activities for a future SAC project.

This meeting is available to the public through the following toll-free call-in number: (866) 364–7584, conference call access code number 30354990. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and contact name Farella E. Robinson.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Corrine Sanders of the Central Regional Office and TTY/TDD telephone number, by 4 p.m. on October 12, 2009.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by November 30, 2009. The address is U.S. Commission on Civil Rights, 400 State Avenue, Suite 908, Kansas City, Kansas 66101. Comments may be e-mailed to *frobinson@usccr.gov*. Records generated by this meeting may be inspected and reproduced at the Central Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov*, or to contact the Central Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

**Peter Minarik,**

*Acting Chief, Regional Programs Coordination Unit.*

[FR Doc. E9–23801 Filed 10–1–09; 8:45 am]

BILLING CODE 6335–01–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–851]**

### Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review

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

**DATES:** *Effective Date:* October 2, 2009.

**SUMMARY:** The Department of Commerce (the Department) is currently conducting a new shipper review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China (PRC) covering the period February 1, 2008, through January 31, 2009. We preliminarily determine that the sale made by Linyi City Kangfa Foodstuff Drinkable Co., Ltd. (Kangfa), and its affiliated supplier Linyi City Kangfa Foodstuff Drinkable Co., Ltd., Pingyi Branch (Pingyi Branch)

(collectively ''Kangfa''), was not made below normal value (NV). If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (CBP) to liquidate entries of merchandise exported by Kangfa during the POR without regard to antidumping duties.

**FOR FURTHER INFORMATION CONTACT:** Fred Baker 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) 482–2924 or (202) 482–0649, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

On February 19, 1999, the Department published in the **Federal Register** an amended final determination and antidumping duty order on certain preserved mushrooms from the PRC. *See Notice of Amendment of Final Determination of Sales at Less than Fair Value and Antidumping Duty Order: Certain Preserved Mushrooms from the People's Republic of China,* 64 FR 8308 (February 19, 1999) (*Order*). On February 26, 2009, we received a timely new shipper review request in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(c), from exporter and producer Kangfa. The Department determined that this request contained certain deficiencies, and requested that Kangfa correct the submission. *See* March 12, 2009, and March 20, 2009, letters from Robert James, Program Manager, to Kangfa. In accordance with the Department's requests, Kangfa corrected the deficiencies in its submission dated March 26, 2009. On April 7, 2009, the Department published a notice in the **Federal Register** initiating a new shipper review for Kangfa. *See Certain Preserved Mushrooms from the People's Republic of China: Notice of Initiation of Antidumping Duty New Shipper Review,* 74 FR 15698 (April 7, 2009) (*Initiation Notice*).

We issued the standard antidumping duty questionnaire, along with the standard importer questionnaire for new shipper reviews, on April 3, 2009, and received responses in May and June 2009. We issued supplemental questionnaires covering sections A, C, and D of the original questionnaire on May 22, 2009, June 19, 2009, July 20, 2009, and August 10, 2009, and received timely responses to those questionnaires.

## Period of Review

The POR covers February 1, 2008, through January 31, 2009.

## Scope of the Order

The products covered by this order are certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The certain preserved mushrooms covered under this order are the species *Agaricus bisporus* and *Agaricus bitorquis.* ''Certain Preserved Mushrooms'' refers to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including, but not limited to, cans or glass jars in a suitable liquid medium, including, but not limited to, water, brine, butter or butter sauce. Certain preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are ''brined'' mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.[1]

Excluded from the scope of this order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including ''refrigerated'' or ''quick blanched mushrooms'' (3) dried mushrooms; (4) frozen mushrooms; and (5) ''marinated,'' ''acidified,'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.

The merchandise subject to this order is classifiable under subheadings: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153 and 0711.51.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of this order is dispositive.

## Bona Fide Analysis

Consistent with the Department's practice, we investigated the *bona fide* nature of the sale made by Kangfa for this new shipper review. In evaluating whether a single sale in a new shipper review is commercially reasonable, and therefore *bona fide,* the Department considers, *inter alia,* such factors as: (1) The timing of the sale; (2) the price and quantity; (3) the expenses arising from the transaction; (4) whether the goods were resold at a profit; and (5) whether the transaction was made on an arm's-length basis. *See Tianjin Tiancheng Pharm. Co., Ltd.* v. *United States,* 366 F. Supp. 2d 1246, 1250 (CIT 2005). Accordingly, the Department considers a number of factors in its *bona fide* analysis, ''all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise.'' *See Hebei New Donghua Amino Acid Co., Ltd.* v. *United States,* 374 F. Supp. 2d 1333, 1342 (CIT 2005) (*citing Fresh Garlic From the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review,* 67 FR 11283 (March 13, 2002) and accompanying Issues and Decision Memorandum).

We preliminarily find the U.S. sale made by Kangfa during the POR was made on a *bona fide* basis. Specifically, we find: (1) The timing of the sale does not indicate the sale might not be *bona fide;* (2) the quantity of the sale was within the range of the quantities of other entries of subject merchandise from the PRC into the United States during the POR, based upon the Department's review of data obtained from CBP; (3) Kangfa and its customer did not incur any extraordinary expenses arising from the transaction; (4) the sale was resold at a profit; and (5) the sale was made between unaffiliated parties at arm's-length. However, we also note that the price of this sale was not within the range of other entries of subject merchandise during the POR. Nevertheless, we have determined that Kangfa's selling price, alone, does not raise any concerns with respect to bona fides. For a complete review of our *bona fides* analysis, *see* Memorandum from Fred Baker, International Trade Compliance Analyst, to The File via Robert James, Program Manager, Office 7, ''*Bona Fide* Sales Analysis of Linyi City Kangfa Foodstuff Drinkable Co., Ltd. (Kangfa), and Linyi City Kangfa Foodstuff Drinkable Co., Ltd., Pingyi Branch (Pingyi Branch) (collectively 'Kangfa') in the Antidumping Duty New Shipper Review of Certain Preserved Mushrooms from the People's Republic of China,'' dated concurrently with this notice.

Based on our review of the record evidence concerning the *bona fide* nature of this sale, as well as Kangfa's eligibility for a separate rate (*see*

[1] On June 19, 2000, the Department affirmed that ''marinated,'' ''acidified,'' or ''pickled'' mushrooms containing less than 0.5 percent acetic acid are within the scope of the antidumping duty order. *See* Recommendation Memorandum-Final Ruling of Request by Tak Fat, *et al.* for Exclusion of Certain Marinated, Acidified Mushrooms from the Scope of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China,'' dated June 19, 2000. On February 9, 2005, the United States Court of Appeals for the Federal Circuit upheld this decision. *See Tak Fat* v. *United States,* 396 F.3d 1378 (Fed. Cir. 2005).

''Separate Rates Determination'' section, below) and the Department's determination that Kangfa was not affiliated with any exporter or producer that had previously shipped subject merchandise to the United States, we preliminarily determine that Kangfa has met the requirements to qualify as a new shipper during the POR. Therefore, for purposes of these preliminary results, we are treating the sale of subject merchandise to the United States as an appropriate transaction for this new shipper review.

**Non-Market Economy Country Status**

In every case conducted by the Department involving the PRC, we have treated the PRC as a non-market economy (NME) country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding have contested such treatment. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

**Separate Rates Determination**

A designation of a country as an NME remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Act. Accordingly, there is a rebuttable presumption that all companies within the PRC are subject to government control, and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in the *Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), (*Sparklers*) as amplified by the *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).

*Absence of De Jure Control*

Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *See Sparklers,* 56 FR at 20589. In this new shipper review, Kangfa submitted a complete response to the separate rates section of the Department's questionnaire. The evidence submitted in the instant review by Kangfa includes government laws and regulations on corporate ownership and control (*i.e.,* the Company Law and the Foreign Trade Law of the People's Republic of China), individual business licenses, and narrative information regarding the company's operations and selection of management. The evidence Kangfa provided supports a preliminary finding of a *de jure* absence of government control over its export activities because: (1) There are no controls on exports of subject merchandise, such as quotas applied to, or licenses required for, exports of the subject merchandise to the United States; and (2) the government of the PRC has passed legislation decentralizing control of companies. *See* Kangfa's March 24, 2009 submission at Appendix 2, and its April 22 submission at 4.

*Absence of De Facto Control*

The absence of *de facto* government control over exports generally is based on whether the respondent: (1) Sets its own export prices independent of the government and other exporters; (2) retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) has the authority to negotiate and sign contracts and other agreements; and (4) has autonomy from the government regarding the selection of management. *See Silicon Carbide,* 59 FR at 22586–87; *Sparklers,* 56 FR at 20589; and *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995).

In its April 22, 2009, submission, Kangfa submitted evidence demonstrating an absence of *de facto* government control over its export activities. Specifically, this evidence indicates: (1) The company sets its own export prices independent of the government and without the approval of a government authority; (2) the company retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) the company has a general manager and a sales manager with the authority to negotiate and bind the company in an agreement; (4) the general manager is selected by the board of directors, and the general manager appoints the manager of each department; and (5) there is no restriction on the company's use of export revenues.

Therefore, in the absence of either *de jure* or *de facto* government control over Kangfa's export activities, we preliminarily find that Kangfa has established *prima facie* that it qualifies for a separate rate under the criteria established by *Silicon Carbide* and *Sparklers.*

**Surrogate Country**

When the Department investigates imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production (FOPs), valued in a surrogate market-economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market-economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise. The sources of the surrogate values we have used in this new shipper review are discussed under the ''Normal Value'' section, below. On May 13, 2009, the Department determined that India, the Philippines, Indonesia, Colombia, Thailand and Peru are countries comparable to the PRC in terms of economic development, and requested comments from interested parties on selecting the appropriate surrogate country for this review. *See* Letter to All Interested Parties, RE: New Shipper Review of Certain Preserved Mushrooms from the People's Republic of China: Linyi City Kangfa Foodstuff Drinkable Co., Ltd., dated May 18, 2009, at Attachment 1. No party submitted surrogate country selection comments.

The Department has examined the export levels [2] of subject merchandise from the above-mentioned countries and found that India and Indonesia are significant producers of comparable merchandise. *See* Memorandum from Fred Baker, International Trade Compliance Analyst, to Richard Weible, Office Director, ''Antidumping Duty New Shipper Review of Certain Preserved Mushrooms from the People's Republic of China: Selection of a

[2] The Department was unable to find world production data for subject merchandise and relied on export data as a substitute for overall production.

Surrogate Country,'' dated concurrently with this notice (Surrogate Country Memorandum) at 4. During the POR India had exports in both of the HTS subheadings identified for subject merchandise, while Indonesia had exports under only one of the HTS subheadings. Accordingly, we find that the Indian export data are more comprehensive and representative of subject merchandise than Indonesian export data. *Id.* at 5.

In selecting the appropriate surrogate country, the Department examines the availability and reliability of data from the countries deemed to be economically comparable and significant producers of subject merchandise. For a description of our practice, *see* Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004). India has been the primary surrogate country in numerous past segments for this proceeding. In those past segments, the Department found India's import statistics to be an available and reliable source for surrogate values. *See* Surrogate Country Memorandum at 4. Therefore, because India: (1) Is a significant producer of comparable merchandise; (2) is at a similar level of economic development as the PRC; (3) has publicly available and reliable data, which the Department has previously relied upon for numerous segments of this proceeding; and, (4) has more comprehensive and more representative data regarding the subject merchandise than the data provided for Indonesia, the Department has selected India as the surrogate country, pursuant to section 773(c)(4) of the Act. *See* Surrogate Country Memorandum at 5.

**Fair Value Comparisons**

To determine whether Kangfa's sale of subject merchandise to the United States was made at a price below NV, we compared its U.S. price to NV, as described in the ''U.S. Price'' and ''Normal Value'' sections of this notice, below.

**U.S. Price**

In its section A response Kangfa stated that it intended to use the invoice date as the date of sale, stating that this was the date that best represented when the terms of sale are fixed. *See* Kangfa's April 22, 2009 section A submission at 14. Later, in its submission of June 3, 2009, Kangfa attempted to show that the terms of sale sometimes change after the contract date. Kangfa's evidence consisted of a contract and invoice for a shipment of non-subject fruit it had made to the German market during the POR which showed that the quantity invoiced to the customer differed from the quantity indicated on the contract. *See* Kangfa's June 3, 2009, submission at 1 and Exhibit 1. However, we note that the quantity and price of its U.S. sale did not change from the contact date to the invoice date, and the change in quantity of non-subject fruit, which respondent relied upon to justify the use of invoice date, was within the tolerance level specified on the contract. Therefore, we do not consider this to be a change to the material terms of sale relevant for purposes of determining date of sale. Thus, we used the contract date as the date of sale because there were no changes to either the price or quantity of Kangfa's U.S. sale after this date, and there is no record evidence that the material terms of sale changed following the contract date for any of Kangfa's other sales during the POR. The contract date is therefore the date that best represents when Kangfa established the material terms of sale. *See* 19 CFR 351.401(i).

In accordance with section 772(a) of the Act, we based U.S. price on the export price (EP) of the sale to the United States by Kangfa because the first sale to an unaffiliated party was made before the date of importation and the use of constructed export price was not otherwise warranted. We calculated EP based on the free-on-board (FOB) price to the first unaffiliated purchaser in the United States. For this EP sale, we deducted foreign inland freight and foreign brokerage and handling from the starting price (or gross unit price), in accordance with section 772(c) of the Act. For Kangfa's U.S. sale, each of these services was provided by an NME vendor. Thus, we based the deduction of these movement charges on surrogate values.

We valued truck freight expenses using a per-unit average rate calculated from data on the following Web site: *http://www.infobanc.com/logistics/logtruck.htm*. The logistics section of this Web site contains inland freight truck rates between many large Indian cities. We used data from this Web site for six months of the POR for which the Web site contained data. *See* Memorandum from Fred Baker, International Trade Compliance Analyst, through Robert James, Program Manager, to the File, ''New Shipper Review of Certain Preserved Mushrooms from the People's Republic of China: Surrogate Values for the Preliminary Results'' (Surrogate Values Memorandum) at Exhibit 6.

We valued brokerage and handling using a simple average of the brokerage and handling costs reported in public submissions filed in three antidumping duty cases. Specifically, we averaged the public brokerage and handling expenses reported by Navneet Publications (India) Ltd. in the 2007–2008 administrative review of certain lined paper products from India, Essar Steel Limited in the 2006–2007 antidumping duty administrative review of hot-rolled carbon steel flat products from India, and Himalaya International Ltd. in the 2005–2006 administrative review of certain preserved mushrooms from India. The Department adjusted the average brokerage and handling rate for inflation. *See* Surrogate Value Memorandum at Exhibit 8.

**Normal Value**

*1. Methodology*

Section 773(c)(1)(B) of the Act provides that the Department shall determine the NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies. *See Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part,* 70 FR 39744 (July 11, 2005), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2003–2004 Administrative Review and Partial Rescission of Review,* 71 FR 2517 (January 17, 2006).

We calculated NV by adding together the value of the FOPs, general expenses, profit, and packing costs. The FOPs for subject merchandise include: (1) Quantities of raw materials employed; (2) hours of labor required; (3) amounts of energy and other utilities consumed; (4) representative capital and selling costs; and (5) packing materials. We used the FOPs that Kangfa reported for materials, energy, labor, and packing, and valued those FOPs by multiplying the amount of the factor consumed in producing subject merchandise by the average unit surrogate value of the factor.

In addition, we added freight costs to the surrogate costs that we calculated for material inputs. We calculated

freight costs by multiplying surrogate freight rates by the shorter of the reported distance from the domestic supplier to the factory that produced the subject merchandise or the distance from the nearest seaport to the factory that produced the subject merchandise, as appropriate. Where there were multiple domestic suppliers of a material input, we calculated a weighted-average distance after limiting each supplier's distance to no more than the distance from the nearest seaport to Kangfa. This adjustment is in accordance with the decision by the Court of Appeals for the Federal Circuit in *Sigma Corp.* v. *United States,* 117 F.3d 1401, 1407–1408 (Fed. Cir. 1997).

We offset Kangfa's material costs for revenue generated from the sale of copper wire scrap and tin scrap. *See* Surrogate Values Memorandum at Exhibit 8.

We also increased the calculated costs of the FOPs for surrogate general expenses and profit. *See* Surrogate Values Memorandum at Exhibit 9.

*2. Selection of Surrogate Values*

In selecting surrogate values, we followed, to the extent practicable, the Department's practice of choosing public values which are non-export averages, representative of a range of prices in effect during the POR, or over a period as close as possible in time to the POR, product-specific, and tax-exclusive. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam,* 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam,* 69 FR 71005 (December 8, 2004). We also considered the quality of the source of surrogate information in selecting surrogate values. *See Manganese Metal From the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 63 FR 12440 (March 13, 1998). Where we could obtain only surrogate values that were not contemporaneous with the POR, we inflated (or deflated) the surrogate values using, where appropriate, the Indian wholesale price index (WPI) as published in *International Financial Statistics* by the International Monetary Fund. *See* Surrogate Values Memorandum at Exhibit 1.

In calculating surrogate values from import statistics, in accordance with the Department's practice, we disregarded statistics for imports from NME countries and countries deemed to maintain broadly available, non-industry-specific subsidies which may benefit all exporters to all export markets (*e.g.,* Indonesia, South Korea, and Thailand). *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From The People's Republic of China,* 67 FR 6482 (February 12, 2002) and accompanying Issues and Decision Memorandum at Comment 1. *See also Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China,* 68 FR 66800, 66808 (November 28, 2003), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China,* 69 FR 20594 (April 16, 2004). Additionally, we excluded from our calculations imports that were labeled as originating from an unspecified country because we could not determine whether they were from an NME country.

We valued production material inputs (mushroom spawn, wheat straw, and manure) using the financial statements of Agro Dutch, an Indian producer of mushrooms and vegetables, as follows. To value the input of mushroom spawn, we used data from Agro Dutch's FY 2004–2005 (April 2004–March 2005) financial statement because Agro Dutch's mushroom spawn value is specific to the species *Agaricus bisporous,* which is the species used to produce subject merchandise. To value the input of wheat straw, we used the wheat straw value from Agro Dutch's FY 2006–2007 (April 2006–March 2007) financial statement because this value is specific to the input. To value the input of manure, we used the manure value from Agro Dutch's FY 2004–2005 financial statement because this value is specific to the input. *See* Surrogate Values Memorandum at Exhibit 2. We adjusted these values for inflation. *See* Surrogate Values Memorandum at Exhibit 1.

We valued processing and canning material inputs (super calcium phosphate, calcium carbonate, salt, citric acid, tin plate, copper wire, and sealing glue) using weighted-average Indian import values derived from the World Trade Atlas online (WTA), for the period February 2008 through January 2009. *See* Surrogate Values Memorandum at Exhibits 2 and 3. In addition, we valued packing material inputs (cartons, labels, hard paper board, and glue) with weighted-average Indian import values derived from the WTA for the period February 2008 through January 2009. *Id.* at Exhibit 5. The Indian import statistics obtained from the WTA were published by the Indian Directorate General of Commercial Intelligence and Statistics, Ministry of Commerce of India, and are contemporaneous with the POR. As the Indian surrogate values were denominated in rupees, in accordance with section 773A(a) of the Act, we converted them to U.S. dollars using the official exchange rate for India recorded on the date of sale of subject merchandise in this case. *See http://www.ia.ita.doc.gov/exchange/index.html.*

To value land rent, the Department used data from the *2001 Punjab State Development Report,* administered by the Planning Commission of the Government of India. Since the value of land rent was not contemporaneous with the POR, the Department adjusted the value for inflation. *See* Surrogate Values Memorandum at Exhibit 2.

We valued electricity using price data for small, medium, and large industries, as published by the Central Electricity Authority of the Government of India in its publication titled *Electricity Tariff & Duty and Average Rates of Electricity Supply in India,* dated July 2006. These electricity rates represent actual country-wide publicly-available information on tax-exclusive electricity rates charged to industries in India. As the rates listed in this source became effective on a variety of different dates, we are not adjusting the average value for inflation. *See Surrogate Value Memorandum* at Exhibit 4.

To value water, the Department used the revised Maharastra Industrial Development Corporation water rates, which are available at *http://www.midcindia.com/water-supply.* The Department found this source to be the best available information since it includes a wide range of industrial water rates. Since the water rates were not contemporaneous with the POR, the Department adjusted the value for inflation. *See* Surrogate Values Memorandum at Exhibit 4.

We valued coal using weighted-average Indian import values derived from the WTA for the period February 2008 through January 2009. *See*

Surrogate Values Memorandum at Exhibit 4.

We valued truck freight expenses for inputs using the same surrogate data we used for valuing domestic inland freight for Kangfa's U.S. sale (*i.e.,* we used data from the Web site *http://www.infobanc.com/logistics/logtruck.htm*, which contains inland freight truck rates between many large Indian cities). *See* Surrogate Values Memorandum at Exhibit 6.

The Department's regulations require the use of a regression-based wage rate. *See* 19 CFR 351.408(c)(3). Therefore, to value labor, the Department used the regression-based wage rate for the PRC published on the Import Administration Web site. *See* the IA Web site: *http://ia.ita.doc.gov/wages/05wages/05wages-041608.html*, and *see Corrected 2007 Calculation of Expected Non-Market Economy Wages,* 73 FR 27795 (May 14, 2008).

To value the surrogate financial ratios for factory overhead (OH), selling, general & administrative (SG&A) expenses, and profit, the Department used the 2006–2007 financial statements of Agro Dutch and Flex Foods Limited (Flex Foods). Agro Dutch is a producer of mushrooms, and Flex Foods is a producer of mushrooms and other vegetable products. Agro Dutch's and Flex Foods' financial ratios for OH and SG&A are comparable to Kangfa's financial ratios because Agro Dutch's and Flex Foods' production experience is comparable to Kangfa's production experience by virtue of each company's production of subject merchandise. Moreover, an average of the financial statements of Agro Dutch and Flex Foods represents a broader spectrum of the Indian mushroom industry than does the financial statement of a single mushroom producer. *See* Surrogate Values Memorandum at Exhibit 9.

**Currency Conversion**

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. These exchange rates can be accessed at the Web site of Import Administration at *http://ia.ita.doc.gov/exchange/index.html.*

**Preliminary Results of Review**

We preliminarily determine that the following dumping margin exists during the period February 1, 2008, through January 31, 2009:

| Manufacturer/exporter | Margin (percent) |
|---|---|
| Linyi City Kangfa Foodstuff Drinkable Co., Ltd. (Kangfa) | 0.00 |

**Public Comment**

In accordance with 19 CFR 351.224(b), the Department will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of publication of these preliminary results. Interested parties may submit written comments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs) within five days after the time limit for filing case briefs. *See* 19 CFR 351.309(c)(1)(ii) and 351.309(d)(1). Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs must be limited to issues raised in the case briefs. Parties who submit arguments are requested to submit with the case or rebuttal briefs: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with a diskette containing the public version of those comments.

Any interested party may request a hearing within 30 days of publication of this notice. *See* 19 CFR 351.310(c). Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration within 30 days of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c). Issues raised in the hearing will be limited to those raised in the briefs.

Unless the deadline is extended pursuant to section 751(a)(2)(B)(iv) of the Act, the Department will issue the final results of this new shipper review, including the results of our analysis of the issues raised by the parties in their comments, within 90 days of publication of these preliminary results.

**Assessment Rates**

Upon issuing the final results of the review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping duties calculated for the examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis.* However, the final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

**Cash Deposit Requirements**

The following cash deposit requirements, when imposed, will be effective upon publication of the final results of this new shipper review for all shipments of subject merchandise exported by Kangfa entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For subject merchandise manufactured and exported by Kangfa, the cash-deposit rate will be that established in the final results of this review; (2) for subject merchandise exported by Kangfa but not manufactured by Kangfa, the cash deposit rate will continue to be the PRC-wide rate (*i.e.,* 198.63 percent); and (3) for subject merchandise manufactured by Kangfa but exported by any other party, the cash deposit rate will be the rate applicable to the exporter. If the cash deposit rate calculated for Kangfa in the final results is zero or *de minimis,* a cash deposit will be not be required for entries of subject merchandise both produced and exported by Kangfa. These cash deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers**

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This new shipper review and notice are in accordance with sections 751(a)(2)(B) and 777(i) of the Act and 19 CFR 351.214(i).

Dated: September 28, 2009.

**John M. Andersen,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. E9–23833 Filed 10–1–09; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–831]**

### Fresh Garlic from the People's Republic of China: Final Results and Final Rescission, In Part, of New Shipper Reviews

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

**SUMMARY:** The Department of Commerce (Department) is conducting the new shipper reviews (NSRs) of the antidumping duty order on fresh garlic from the People's Republic of China (PRC) covering the periods of review (PORs) of November 1, 2007 through April 30, 2008 and November 1, 2007 through June 9, 2008.[1] As discussed below, we determine that sales have been made in the United States at prices below normal value (NV) with respect to two exporters who participated fully and have demonstrated their eligibility for separate rates in the NSR: Chengwu County Yuanxiang Industry & Commerce, Ltd. (Yuanxiang) and Jinxiang Hejia Co., Ltd. (Hejia). In the preliminary results of this review, we found Yuanxiang's and Hejia's POR sales were made on a bona fide basis. *See Fresh Garlic From the People's Republic of China: Preliminary Results of New Shipper Reviews*, 74 FR 20452 (May 4, 2009) (*Preliminary Results*). We are continuing to find Yuanxiang's and Hejia's sales to be *bona fide* for the final results of this review. In addition, we are rescinding the NSRs for four companies: Weifang Chenglong Import & Export Co., Ltd. (Chenglong), Jinxiang Tianheng Trade Co., Ltd. (Tianheng), Jinxiang Zhengyang Import & Export Co., Ltd. (Zhengyang), and Juye Homestead Fruits and Vegetables Co., Ltd. (Juye). We intend to instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on entries of subject merchandise during the POR for which importer–specific assessment rates are above *de minimis*.

**EFFECTIVE DATE:** October 2, 2009.

**FOR FURTHER INFORMATION CONTACT:** Toni Page, Scott Lindsay, or Summer Avery, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1398, (202) 482–0780, or (202) 482–4052, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On May 4, 2009, the Department published in the **Federal Register** the preliminary results of the NSRs of the antidumping duty order on fresh garlic from the PRC. *See Preliminary Results*. Since the *Preliminary Results*, the following events have occurred.

Hejia filed surrogate value (SV) information for its single–clove garlic on May 19, 2009. On May 22, 2009, we extended the deadline for all interested parties to submit publicly available information to value factors of production until June 9, 2009. Chenglong and Tianheng filed SV information on June 9, 2009. On June 19, 2009, Fresh Garlic Producers Association (FGPA) and its individual members (Christopher Ranch L.L.C., the Garlic Company, Valley Garlic, and Vessey and Company, Inc.) (collectively, Petitioners), filed factual information intended to rebut SV information filed by Chenglong and Tianheng.

On May 27, 2009, the Department issued a supplemental questionnaire to Shandong Zhengyang with a due date of June 10, 2009. On June 4, 2009, counsel for Zhengyang notified the Department that it was withdrawing its representation of the company and advised the Department to contact Zhengyang directly. On June 12, 2009, the Department sent a letter to Zhengyang stating that we had not received its supplemental questionnaire response and that we had canceled verification. Zhengyang did not respond to the Department's letter.

On May 27, 2009, the Department sent a supplemental questionnaire to Hejia. The Department received Hejia's timely response on June 2, 2009. On June 2, 2009, the Department was notified by Juye that it was withdrawing from the NSR.

On June 4, 2009, we extended the time limit for the completion of the final results of these reviews. *See Fresh Garlic From the People's Republic of China: Extension of Time Limit for the Final Results of New Shipper Reviews*, 74 FR 26839 (June 4, 2009).

The Department conducted verification of the NSR respondents Chenglong, Hejia, and Yuanxiang from June 22, 2009 through June 30, 2009. On July 30 and 31, 2009, the Department issued its verification reports.

On July 30, 2009, the Department preliminarily found Tianheng's sale to be not *bona fide. See* Memorandum From Barbara E. Tillman, Office Director, Office 6, Re: Bona Fide Nature of the Sale in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China (''PRC''): Amended Intent to Preliminarily Rescind Jinxiang Tianheng Trade Co.'s New Shipper Review, July 30, 2009 (*Amended Memorandum*). We continue to find Tianheng's sale to be not *bona fide* for these final results.

In response to requests filed by Petitioners and the NSR respondents, the Department extended the due date for case briefs until August 17, 2009. The Department received timely filed case briefs from Petitioners, Hejia, Yuanxiang, Chenglong, and Tianheng. On August 21, 2009, the Department advised Hejia and Tianheng that each company's brief contained new factual information and instructed both Hejia and Tianheng to re–file their case briefs. Hejia and Tianheng complied with the Department's request and re–filed their case briefs on August 28, 2009 and September 9, 2009, respectively. In response to requests filed by Petitioners and the NSR respondents, the Department extended the deadline for rebuttal briefs to August 24, 2009, for arguments regarding everything except Hejia–related issues, and to August 28, 2009, for Hejia–specific matters. The Department received timely filed rebuttal briefs from all interested parties on August 24 and 28, 2009.

#### Scope of the Order

The products covered by this Order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay. The scope of this order does not include the following: (a) garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non–fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed. The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0010, 0703.20.0020, 0703.20.0090,

[1] We extended the end of the period of review (POR) from April 30, 2007 to June 9, 2008, to capture entries for three respondents. *See* the ''Expansion of the POR'' section in the *Preliminary Results*.

0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive. In order to be excluded from the Order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non–fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to CBP to that effect.

**Analysis of Comments Received**

Issues raised in the case and rebuttal briefs by parties to this proceeding and to which we have responded are listed in Appendix 1 to this notice and addressed in the Memorandum from John Anderson, Acting Deputy Assistant Secretary for Import Administration Re: Fresh Garlic from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the New Shipper Reviews and Rescission, In Part, of the New Shipper Reviews (*Issues and Decision Memorandum*), September 24, 2009, which is hereby adopted by this notice.[2] Parties can find a complete discussion of the issues raised in these NSRs and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit (CRU), Room 1117 of the main Department building. In addition, a copy of the Issues and Decision Memorandum can be accessed directly on our website at http://ia.ita.doc.gov/. The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

**Final Rescission of Zhengyang's and Juye's New Shipper Reviews**

Subsequent to our *Preliminary Results*, Zhengyang and Juye each ceased participation in its respective new shipper review. Specifically, Zhengyang did not respond to the Department's May 27, 2009 supplemental questionnaire and Juye withdrew from its new shipper review on June 4, 2009. By not fully participating in its new shipper review, each company has failed to establish that it qualified for a separate rate.

To establish whether a company operating in a non–market economy (NME) is sufficiently independent from the Government to be eligible for a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China*, 56 FR 20588 (May 6, 1991), as amplified by the *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994). Under the separate rates criteria, the Department assigns separate rates in NME cases only if the respondent can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities. We note that by failing to fully participate in their new shipper reviews, Zhengyang and Juye did not demonstrate that they are free of government control and, therefore, are not eligible to receive a separate rate, and as part of the NME–entity are not eligible for a new shipper review. As such, the Department rescinds the new shipper reviews of Zhengyang and Juye.

**Bona Fides Analyses For Chenglong, Tianheng, Yuanxiang and Hejia; and Final Rescission of New Shipper Reviews with Respect to Chenglong and Tianheng**

While conducting a review, particularly a review where a company's margin would be based on a single sale, the Department examines price, quantity, and other circumstances associated with the sale under review, and must determine if the sale was based on normal commercial considerations and presents an accurate representation of the company's normal business practices. If the Department determines that the price was not based on normal commercial considerations or is atypical of the respondent's normal business practices, including other sales of comparable merchandise, the sale may be considered non–*bona fide*.

In the *Preliminary Results*, the Department preliminarily found that Chenglong's, Hejia's, and Yuanxiang's single POR sales were made on a bona fide basis. However, as a result of our analyses of information found during the verification of these companies, as well as comments made by interested parties, the Department has determined that Chenglong's POR transaction was not a *bona fide* sale. Finally, the Department continues to find Yuanxiang's and Hejia's sales to be *bona fide* for these final results.

Chenglong: In the *Preliminary Results*, the Department noted that certain information on the record called into question the *bona fides* of Chenglong's sale and that we would continue to examine all aspects of Chenglong's POR sale. *See Preliminary Results* at 20455. After conducting verification of Chenglong and reviewing interested parties' briefs, the Department has determined that Chenglong's sale was not a *bona fide* transaction. *See* the *Chenglong Final Bona Fides Memorandum* for a more detailed discussion of the Department's determination as well as the *Issues and Decision Memorandum* at Comment 2. Accordingly, the Department is rescinding this NSR with respect to Chenglong.

Tianheng: On July 30, 2009, the Department preliminarily found Tianheng's sale to be not *bona fide. See Amended Memorandum.* As noted in the ''Background'' section, both Petitioners and Tianheng submitted briefs and rebuttal briefs regarding the *bona fides* of Tianheng's single sale. Based on our analysis of arguments made by the parties, the Department continues to find Tianheng's sale to be not *bona fide. See Issues and Decision Memorandum* at Comment 3. Therefore, we are rescinding the NSR with respect to Tianheng for these final results.

Yuanxiang: In the *Preliminary Results*, the Department preliminarily concluded that the single sale made by Yuanxiang was a *bona fide* commercial transaction. Petitioners and Yuanxiang have submitted arguments as to whether the Department should rescind Yuanxiang's NSR in these final results. *See* the *Yuanxiang Final Bona Fides Memorandum* for a more detailed discussion of the Department's determination as well as the *Issues and Decision Memorandum* at Comment 4. Based on the totality of the circumstances as discussed in the Issues and Decision Memorandum addressing Yuanxiang's *bona fides* issues, for these final results, the Department continues to find that Yuanxiang's sale was *bona fide. See id.*

Hejia: In the *Preliminary Results*, the Department noted that certain information on the record called into question the *bona fides* of Hejia's POR sale and that we would continue to examine all aspects of Hejia's sale. *See Preliminary Results* at 20455. After conducting verification of Hejia and reviewing interested parties' briefs, the Department has determined that Hejia's

[2] In addition, due to the proprietary nature of much of the information involved in company-specific discussions, the Department has found it necessary to address certain issues in separate memoranda. See Bona Fide Nature of the Sale in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China (PRC): Jinxiang Hejia Co., Ltd (Hejia) (*Hejia Final Bona Fides Memorandum*) and Bona Fide Nature of the Sale in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China (PRC): Weifang Chenglong Import and Export Co. Ltd. (Chenglong) (*Chenglong Final Bona Fides Memorandum*).

sale was a *bona fide* transaction. *See* the *Hejia Final Bona Fides Memorandum* for a more detailed discussion of the Department's determination as well as the *Issues and Decision Memorandum* at Comment 1. Based on the totality of the circumstances as discussed in the *Issues and Decision Memorandum* addressing Hejia's *bona fides* issues, for these final results, the Department continues to find that Hejia's sale was *bona fide. See id*.

**Changes Since the Preliminary Results**

Based on our analysis of information on the record of these reviews, and comments received from the interested parties, we have made changes to the financial ratios used to value overhead expenses, selling expenses, general expenses, and profits for the respondents. In these final results, for Yuanxiang, we are calculating surrogate financial ratios using a simple average of financial data from four Indian processors of tea, coffee, and rice. Using an average of these four companies' data allows us to calculate financial ratios that better reflect the broader experience of the surrogate industry. *See Issues and Decision Memorandum* at Comment 7 and *Final Surrogate Values Memorandum*. Also, based on our findings at verification, the Department is adjusting Yuanxiang's factors regarding packing for these final results. *See Yuanxiang Verification Report* at 3. The Department has also made changes to the valuation of Hejia's single–clove garlic input. The specific changes, which includes business proprietary information, are addressed in the Memorandum from Nicholas Czajkowski, Case Analyst, Re: New Shipper Review of Fresh Garlic from the People's Republic of China: Analysis for the Final Results of Jinxiang Hejia Co., Ltd. (Hejia).

**FINAL RESULTS OF NEW SHIPPER REVIEWS**

As a result of our reviews, we determine that the following margins exist for the periods November 1, 2007 through April 30, 2008 and November 1, 2007 through June 9, 2008:

FRESH GARLIC FROM THE PRC 2007–2008 NEW SHIPPER REVIEWS

| | |
|---|---|
| Exported and Produced by Chengwu County Yuanxiang Industry & Commerce, Ltd. ..... | 115.29 |
| Exported and Produced by Jinxiang Hejia Co., Ltd. ..... | 15.37 |

**Disclosure**

We will disclose the calculations used in our analysis to parties to these proceedings within five days of the date of publication of this notice. *See* 19 CFR 351.224(b).

**Assessment Rates**

Consistent with the final results of the 13th administrative review (AR) and NSRs of Fresh Garlic from the PRC, we will direct CBP to assess importer–specific assessment rates based on the resulting per–unit (*i.e.*, per kilogram) amount on each entry of the subject merchandise during the POR. *See Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the 13th Antidumping Duty Administrative Review and New Shipper Reviews*, 74 FR 29174, 29177 (June 19, 2009) (*13th AR & NSRs of Fresh Garlic from the PRC*). Therefore, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b)(1). The Department will issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this review. For assessment purposes, we calculated importer–specific assessment rates for fresh garlic from the PRC. Specifically, we divided the total dumping margins for each importer by the total quantity of subject merchandise sold to that importer during the POR to calculate a per–unit assessment amount. We will direct CBP to assess importer–specific assessment rates based on the resulting per–unit (*i.e.*, per kilogram) amount on each entry of the subject merchandise during the POR if any importer–specific assessment rate calculated in the final results of this review is above *de minimis*.

**Cash Deposit Requirements**

Consistent with the final results of the *13th AR & NSRs of Fresh Garlic from the PRC,* we will collect a per kilogram cash–deposit amount which will be the per–unit equivalent of the company–specific dumping margin published in the final results of these reviews. The following cash deposit requirements will be effective upon publication of the final results of these reviews for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided by section 751(a)(1) of the Act: (1) for subject merchandise produced and exported by Yuanxiang the cash deposit rate will be the per–unit rate determined in the final results of the new shipper review; (2) for subject merchandise exported by Yuanxiang but not produced by Yuanxiang, the cash deposit rate continues to be the per–unit PRC–wide rate; (3) for subject merchandise produced and exported by Hejia the cash deposit rate will be the per–unit rate determined in the final results of the new shipper review; (4) for subject merchandise exported by Hejia but not produced by Hejia, the cash deposit rate continues to be the per–unit PRC–wide rate; and (5) for subject merchandise produced or exported by Tianheng, Zhengyang, Chenglong, and Juye, the cash deposit rates continues to be the per–unit PRC–wide rate. These requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers**

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 this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

**Administrative Protective Orders**

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

These new shipper reviews and notice are issued and published in accordance with sections 751(a)(2)(B) and 777(i) of the Act and 19 CFR and 351.214.

Dated: September 24, 2009.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Import Administration.*

**Appendix I**

*Comment 1:* Whether Hejia's Sale is Bona Fide
*Comment 2:* Whether Chenglong's Sale is Bona Fide
*Comment 3:* Whether Tianheng's Sale is Bona Fide
*Comment 4:* Whether Yuanxiang's Sale is Bona Fide
*Comment 5:* Surrogate Value of Single–Clove Garlic

*Comment 6:* Calculation of Yield Loss Factor
*Comment 7:* Financial Ratios
*Comment 8:* Whether to Calculate Separate Financial Ratios for Whole Garlic and Peeled Garlic

[FR Doc. E9–23834 Filed 10–1–09; 8:45 am]
BILLING CODE 3510–DS–S

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–855]**

### Non–Frozen Apple Juice Concentrate from the People's Republic of China: Final Results for the Administrative Review

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

**SUMMARY:** The Department is conducting an administrative review of this *Order*, covering the period of review (''POR'') of June 1, 2007, - May 31, 2008. The Department preliminarily found that Itochu Corporation and its wholly–owned subsidiaries, Yitian Juice (Shaanxi) Co., Ltd. and Laiyang Yitian Juice Co., Ltd., (collectively known as ''Itochu'') did not sell the subject merchandise at less than normal value (''NV'') and thus assigned a zero margin for the POR. *See Non–Frozen Apple Juice Concentrate from the People's Republic of China: Preliminary Results for the Administrative Review*, 74 FR 31238 (June 30, 2009) (''*Preliminary Results*''). Based upon our analysis of comments received, the Department made no changes to the margin calculations in the final results. Therefore, we will instruct the U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on entries of subject merchandise during the POR for which the importer–specific assessment rates are above *de minimis*.

**EFFECTIVE DATE:** October 2, 2009.

**FOR FURTHER INFORMATION CONTACT:** Alexis Polovina, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington DC 20230; telephone (202) 482–3927.

**SUPPLEMENTARY INFORMATION:**

### CASE HISTORY

On June 5, 2000, the Department of Commerce (''Department'') published in the **Federal Register** the antidumping duty order on certain non–frozen apple juice concentrate from the People's Republic of China (''PRC''). *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Non–Frozen Apple Juice Concentrate from the People's Republic of China*, 65 FR 35606 (June 5, 2000) (''*Order*''). On June 30, 2009, the Department published in the **Federal Register** the *Preliminary Results* of this administrative review. On July 17, 2009, Itochu filed comments regarding the Department's *Preliminary Results*. On July 22, 2009, The Department subsequently rejected these comments as they contained an untimely submission of new factual information. *See* Memorandum to the File, from Alexis Polovina, Case Analyst, Office 9, through Alex Villanueva, Program Manager, Office 9, regarding ''Administrative Review of Apple Juice Concentrate from the People's Republic of China: Rejection of New Information'' dated July 22, 2009 (''Rejection of New Information''). As the deadline to submit case briefs was July 30, 2009, the Department allowed Itochu to resubmit their case brief. Itochu submitted a revised case brief on July 30, 2009. No other party filed comments and no party requested a public hearing.

### SCOPE OF THE ORDER

The product covered by this order is certain non–frozen apple juice concentrate. Apple juice concentrate is defined as all non–frozen concentrated apple juice with a brix scale of 40 or greater, whether or not containing added sugar or other sweetening matter, and whether or not fortified with vitamins or minerals. Excluded from the scope of this order are: frozen concentrated apple juice; non–frozen concentrated apple juice that has been fermented; and non–frozen apple juice to which spirits have been added.

The merchandise subject to this order is classified in the *Harmonized Tariff Schedule of the United States* (''HTSUS'') at subheadings 2106.90.52.00, and 2009.70.00.20 before January 1, 2002, and 2009.79.00.20 after January 1, 2002. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

### ANALYSIS OF COMMENTS RECEIVED

All issues raised in the comments by Itochu are addressed in the concurrent Issues and Decision Memorandum (''Issues and Decision Memo''), which is hereby adopted by this notice. A list of the issues which Itochu raised and to which we respond in the Issues and Decision Memo is attached to this notice as an Appendix. The Issues and Decision Memo is a public document and is on file in the Central Records Unit (''CRU''), Main Commerce Building, Room 1117, and is accessible on the Web at http://www.trade.gov/ia. The paper copy and the electronic version of the memorandum are identical in content.

### FINAL RESULTS OF THE REVIEW

The Department has determined that the final dumping margin for the POR is:

NON–FROZEN APPLE JUICE CONCENTRATE FROM THE PRC

| Exporter | Weighted–Average Margin (Percent) |
|---|---|
| Itochu Corporation ..... | 0.00 |

### ASSESSMENT RATES

Upon issuance of the final results, the Department will determine, and the CBP shall assess, antidumping duties on all appropriate entries on an ad valorem basis. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer–specific (or customer) duty assessment rates based on the ratio of the total amount of dumping margins calculated for the examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer–specific assessment rate calculated in the final results of this review is above *de minimis, i.e.*, less than 0.50 percent.

### CASH–DEPOSIT REQUIREMENTS

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of subject merchandise from Itochu entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Tariff Act of 1930, as amended (''Act''):(1) For subject merchandise exported by Itochu, no deposit will be required; (2) for companies previously found to be entitled to a separate rate in prior segments of the proceeding, and for which no review has been requested, the cash deposit rate will continue to be the rate established in the most recent review of that company; (3) for all other PRC exporters, the cash deposit rate will be 51.74 percent, the PRC country–wide *ad–valorem* rate; and (4) for non–PRC exporters of subject merchandise from

the PRC to the United States, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non–PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

## REIMBURSEMENT OF DUTIES

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 this POR. Failure to comply with this requirement could result in the Sectary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

## ADMINISTRATIVE PROTECTIVE ORDERS

This notice also serves as a reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation, which is subject to sanction.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i) of the Act, and 351.221(b)(5).

Dated: September 25, 2009.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Import Administration.*

## Appendix—Issues and Decision Memorandum

*Comment 1:* Calculation of the Denominator

*Comment 2:* Rejection of New Information

[FR Doc. E9–23836 Filed 10–1–09; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–918]**

## Steel Wire Garment Hangers From the People's Republic of China: Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order

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

**DATES:** *Effective Date:* October 2, 2009.

**SUMMARY:** On March 19, 2009, the Department of Commerce (''Department'') published a notice of initiation and preliminary results of antidumping duty changed circumstances review with intent to revoke, in part, the antidumping duty order [1] on steel wire garment hangers from the People's Republic of China (''PRC'') in the **Federal Register**. *See Steel Wire Garment Hangers from the People's Republic of China: Initiation and Preliminary Results of Changed Circumstances Review, and Intent to Revoke Order in Part,* 74 FR 11713 (March 19, 2009) (''*Initiation and Preliminary Results*''). The Department is now revoking the *Order,* in part, with regard to the following product: chrome-plated steel wire garment hangers with a diameter of 3.4 mm or greater.

**FOR FURTHER INFORMATION CONTACT:** Blaine Wiltse, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–6345.

### Background [2]

On February 3, 2009, the Department received a request on behalf of M&B Metal Products Company, Inc. (''Petitioner''), for revocation, in part, of the *Order,* pursuant to sections 751(b)(1) and 782(h) of the Tariff Act of 1930, as amended (''Act''), with respect to chrome-plated steel wire garment hangers with a diameter of 3.4 mm or greater. In its submission, Petitioner stated that it no longer had any interest in seeking antidumping relief from imports of such chrome-plated steel wire garment hangers, as defined in the ''Scope of the Amended Order'' section below. Petitioner further stated that domestic producers Shanti Industries Inc. (''Shanti'') and Metro Supply Company (''Metro'') (collectively, ''Supporters'') support the request for a changed circumstances review that it filed on February 3, 2009. Additionally, Petitioner stated in its request that together it and the Supporters account for substantially all of the steel wire garment hangers production in the United States.

On March 19, 2009, the Department published a notice of *Initiation and Preliminary Results* of changed circumstances review with intent to revoke, in part, the *Order* with regard to chrome-plated steel wire garment hangers with a diameter of 3.4 mm or greater. We invited parties to comment on the preliminary results.

On April 1, 2009, the Department received comments from Merrick Engineering, Inc. (''Merrick'') in opposition to the changed circumstances review, challenging Petitioner and Supporters' claim that they represent substantially all production of the domestic like product. The Department received surrebuttal comments from Econoco Corporation on April 8, 2009, and from both Petitioner and Target Corporation on April 13, 2009.

On May 29, 2009, the Department requested domestic production data for the period April 1, 2008, through March 31, 2009, from Merrick and Petitioner. On June 5, 2009, and June 8, 2009, Petitioner and Merrick submitted responses to the Department's request for additional production information, respectively. On July 8, 2009, the Department requested that Petitioner and Merrick each submit their domestic production data, for the period April 1, 2008, through March 31, 2009, in the form of individual monthly production totals. On July 15, 2009, Merrick submitted its monthly production data to the Department. On July 15, 2009, Petitioner submitted monthly production data for itself and the companies Shanti, and Ganchos N.V. (''Ganchos''). On July 17, 2009, Petitioner resubmitted its, Shanti's, and Ganchos' monthly production data and included monthly production data for Metro. On August 19, 2009, Merrick

[1] *See Notice of Antidumping Duty Order: Steel Wire Garment Hangers from the People's Republic of China,* 73 FR 58111 (Oct. 6, 2008) (''*Order*'').

[2] The Department received requests from American Hanger and Fixture Corporation on December 1, 2008, and from Econoco Corporation on December 3, 2008, for a scope ruling on whether its imports of chrome-plated hangers with a diameter of 4.0 mm and 3.4 mm, respectively, are covered by the *Order.* However, because the Department is, herein, revoking the *Order,* in part, as it applies to imports of chrome-plated steel wire garment hangers with a diameter of 3.4 mm or greater, we find that it is unnecessary to individually examine these scope requests as the products in question have been excluded from the scope of the *Order* through the final results of this changed circumstances review.

withdrew its opposition [3] to the partial revocation of the *Order* with respect to chrome-plated steel wire garment hangers with a diameter of 3.4 mm or greater.

On September 3, 2009, the Department requested comments from Petitioner with regard to the effective date for the final results of this changed circumstances review. On September 9, 2009, Petitioner submitted a letter in which it stated that it took no position regarding the effective date for the final results in this changed circumstances review. On September 11, 2009, the Department received comments from Target Corporation requesting that the final results of this changed circumstances review be applied retroactively to all unliquidated entries.

**Scope of the Changed Circumstances Review**

The merchandise covered by this changed circumstances review is steel wire garment hangers from the PRC meeting the following criteria: the steel wire garment hanger must be chrome-plated with a diameter of 3.4 mm or greater. Effective upon publication of these final results of changed circumstances review in the **Federal Register**, the amended scope of the *Order* will read as stated below.

**Scope of the Amended Order**

The merchandise that is subject to the order is steel wire garment hangers, fabricated from carbon steel wire, whether or not galvanized or painted, whether or not coated with latex or epoxy or similar gripping materials, and/or whether or not fashioned with paper covers or capes (with or without printing) and/or nonslip features such as saddles or tubes. These products may also be referred to by a commercial designation, such as shirt, suit, strut, caped, or latex (industrial) hangers. Specifically excluded from the scope of the order are wooden, plastic, and other garment hangers that are not made of steel wire. Also excluded from the scope of the order are chrome-plated steel wire garment hangers with a diameter of 3.4 mm or greater. The products subject to the order are currently classified under HTSUS subheadings 7326.20.0020 and 7323.99.9060.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

**Final Results of Changed Circumstances Review; Partial Revocation of Antidumping Duty Order**

In accordance with section 751(b) of the Act and 19 CFR 351.222(g), the Department continues to find, as it did in the *Initiation and Preliminary Results,* that U.S. producers representing substantially all of the production of the domestic like product pertaining to the part of the *Order* to be revoked have expressed a lack of interest in the part of the revoked *Order.* Specifically, we find that Petitioner and Supporters represent substantially all U.S. production of the like product, have expressed an affirmative statement of no interest concerning chrome-plated steel wire garment hangers with a diameter of 3.4 mm or greater, as described herein, and that this constitutes changed circumstances sufficient to warrant revocation of this *Order* in part. Additionally, although the Department requested domestic production data from Merrick and Petitioner, Merrick subsequently withdrew its opposition to Petitioner's request to revoke the *Order,* in part. Therefore, the Department finds that there is no domestic industry opposition, on the record of this review, to Petitioner's request to revoke the *Order,* in part, with regard to chrome-plated steel wire garment hangers with a diameter of 3.4 mm or greater. Accordingly, the Department is partially revoking the *Order* on steel wire garment hangers from the PRC with respect to chrome-plated steel wire garment hangers with a diameter of 3.4 mm or greater, in accordance with sections 751(b), (d) and 782(h) of the Act, and 19 CFR 351.216(d) and 351.222(g) of the Department's regulations.

In this changed circumstances review we are revoking the *Order,* in part, retroactively, in accordance with our normal practice for this type of changed circumstances review,[4] to March 25, 2008, (the effective date of the *Preliminary Determination* [5] in the original less-than-fair-value-investigation) because entries on or after this date are not yet subject to a final determination of the amount of antidumping duty by the Department. We will instruct the U.S. Customs and Border Protection to liquidate without regard to antidumping duties, as applicable, and to refund any estimated cash deposits collected for all unliquidated entries of chrome-plated steel wire garment hangers with a diameter of 3.4 mm or greater, meeting the specifications indicated above, made on or after March 25, 2008, in accordance with 19 CFR 351.222.

This notice also serves as a reminder to parties subject to administrative protective orders (''APO''s) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This changed circumstances administrative review, partial revocation of the antidumping duty order and notice are in accordance with sections 751(b), (d) and 782(h) of the Act, and 19 CFR 351.216(e) and 351.222(g).

Dated: September 24, 2009.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E9–23798 Filed 10–1–09; 8:45 am]

BILLING CODE 3510–DS–P

[3] *See* Letter from Merrick, Re: Steel Wire Garment Hangers From the People's Republic of China; A–570–918; Notice of Withdrawal by Merrick Engineering, Inc., submitted on August 19, 2009.

[4] *See Stainless Steel Bar From the United Kingdom: Notice of Final Results of Changed Circumstances Review and Revocation of Order, in Part,* 72 FR 65706 (November 23, 2007); *see also Notice of Final Results of Antidumping Duty Changed Circumstances Review and Revocation of Order In Part: Certain Corrosion-Resistant Carbon Steel Flat Products from Germany,* 71 FR 66163 (November 13, 2006).

[5] *See Preliminary Determination of Sales at Less Than Fair Value: Steel Wire Garment Hangers from the People's Republic of China,* 73 FR 15726 (March 25, 2008) (''*Preliminary Determination*'').

## COMMODITY FUTURES TRADING COMMISSION

### Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0031, Procurement Contracts

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice.

**SUMMARY:** The Commodity Futures Trading Commission (''the Commission'') is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for comment in response to the notice. This notice solicits comments on requirements relating to information collected to assist the Commission in soliciting and awarding contracts.

**DATES:** Comments must be submitted on or before December 1, 2009.

**ADDRESSES:** Comments may be mailed to Steven A. Grossman, Office of Financial Management, U.S. Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581.

**FOR FURTHER INFORMATION CONTACT:** Steven A. Grossman, (202) 418–5192; FAX (202) 418–5529; e-mail: *sgrossman@cftc.gov.*

**SUPPLEMENTARY INFORMATION:** Under 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, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the Commission is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the Commission invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality of, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

**Procurement Contracts, OMB Control No. 3038–0031—Extension**

The information collection consists of procurement activities relating to solicitations, amendments to solicitations, requests for quotations, construction contracts, awards of contracts, performance bonds, and payment information for individuals (vendors) or contractors engaged in providing supplies or services.

The Commission estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

| Annual number of respondents | Frequency of response | Total annual responses | Hours per response | Total hours |
|---|---|---|---|---|
| 182 | Annually | 182 | 2 | 364 |

There are no capital costs or operating and maintenance costs associated with this collection.

Dated: September 28, 2009.

**David Stawick,**

*Secretary of the Commission.*

[FR Doc. E9–23815 Filed 10–1–09; 8:45 am]

BILLING CODE P

## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

### Intent To Prepare a Draft Programmatic Environmental Impact Statement for the Puget Sound Nearshore Marine Habitat Restoration Project, WA

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of intent.

**SUMMARY:** Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as amended, the U.S. Army Corps of Engineers (Corps), Seattle District, as lead Federal agency, will prepare a draft Programmatic Environmental Impact Statement (PEIS) evaluating a process based restoration project in the marine nearshore zone of Puget Sound, Washington to address the interruption and degradation of nearshore habitat resulting from the disturbance of habitat forming processes caused by various human influences. This environmental impact statement will be a combined Federal NEPA and Washington State Environmental Policy Act (SEPA) document. The lead agency for SEPA will be the Washington Department of Fish and Wildlife. This is an opportunity for public comment; there will not be a separate SEPA process.

**DATES:** See **SUPPLEMENTARY INFORMATION** section for meeting dates.

**ADDRESSES:** Mrs. Chemine Jackels, Environmental Resources Section, U.S. Army Corps of Engineers, P.O. Box 3755, Seattle, WA 98124–3755.

**FOR FURTHER INFORMATION CONTACT:** Questions regarding the scoping process or preparation of the draft PEIS may be directed to: Chemine Jackels (206) 764–3646.

**SUPPLEMENTARY INFORMATION:**

1. *Proposed Action:* The Corps of Engineers and the Washington Department of Fish and Wildlife propose to evaluate alternative process based habitat restoration actions in the nearshore zone of Puget Sound (defined as that portion of Puget Sound that extends waterward from the upland and backshore areas that directly influence conditions along the marine shoreline to the depth offshore where light penetration falls below a level that supports plant growth and in river deltas to the head of tide) which encompasses Whatcom, Skagit, Island, San Juan, Snohomish, King, Pierce, Thurston, Mason, Kitsap, Jefferson, and Clallam counties, Washington. For preparation of this draft PEIS, the Corps, Seattle District is the lead Federal agency under NEPA (42 U.S.C. 4321 *et seq.*) and the Council on Environmental Quality's implementing guidelines (40 CFR 1500–1508). The Washington Department of Fish and Wildlife is the lead State agency under the Washington SEPA (Chapter 43.21C RCW) and the SEPA guidelines (Chapter 197–11 WAC).

The Corps is authorized to study Puget Sound water uses under Section 209 of the River and Harbor Act of 1962 (Pub. L. 87–874). Corps of Engineers activities in ecosystem restoration will concentrate on restoring and performing scientific analysis of habitat forming processes (*i.e.,* hydrology, sediment transport, nutrient delivery) in the marine nearshore zone of Puget Sound.

The proposed action could potentially restore nearshore ecosystem habitat and processes by reconnecting isolated

habitat elements, increasing shoreform diversity, establishing areas of estuarine habitat, increasing floodplain habitat and connectivity, restoring small lagoons and estuaries, increasing the amount of submerged, emergent, and riparian vegetation, replenishing and protecting beach sediments, and improving tidal exchange. If the proposed action were approved, initial construction could begin in 2014.

2. *Restoration Alternatives:* Three programmatic restoration alternatives are currently being considered and evaluated in the environmental impact statement. The No Action alternative, as required by NEPA and SEPA, would include various agencies and groups continuing to implement small-scale restoration projects within existing frameworks without the implementation of this Corps of Engineers and Washington Department of Fish and Wildlife project. Continued implementation of restoration projects would focus on reconnecting isolated habitat elements, localized shoreline revegetation, restoration of estuary features and other discrete projects as real estate and funding allows. The second alternative is to pursue restoration of Puget Sound nearshore ecosystem processes using physical actions to remove or mitigate barriers to habitat forming processes and/or create habitats that have been lost as a result of those barriers. Under this alternative, plans may be formulated, including strategic restoration, which uses change analysis data comparing current and historic conditions as a means to identify candidate restoration sites based on criteria established by an interdisciplinary team, as well as stakeholders. The third alternative focuses on non-structural means to restore nearshore processes in Puget Sound. This non-structural alternative would include actions such as education, regulation, and changes in land-use policy. These three alternatives are not final and may not be analyzed in the final EIS, as they may change and/or new alternatives may develop during the scoping and NEPA process.

3. *Scoping and Public Involvement:* Public involvement will be sought during the study in accordance with NEPA and SEPA procedures. Public meetings will be held at the beginning of the NEPA process to scope the efforts that will be undertaken to prepare the draft PEIS. The objectives of the public meetings will be to clarify issues of major concern, identify information that might be needed to analyze and evaluate impacts, obtain public input on the range and acceptability of approaches and provide further definition of alternatives. This notice of intent formally commences the joint scoping process under NEPA and SEPA. As part of the scoping process, all affected Federal, state, and local agencies, Native American tribes, and interested private organizations, including environmental interest groups, are invited to comment on the scope of the draft PEIS. Comments are requested concerning project alternatives, mitigation measures, probable significant environmental impacts, and permits or other approvals that may be required. To date, the following impact areas have been identified and will be analyzed in depth in the draft PEIS: (1) Marine mammals, fish, and invertebrates and their habitat, (2) sediment supply, (3) wetlands and estuaries, (4) submerged, emergent, and riparian vegetation, (5) wildlife, (6) land use, (7) public safety, and (8) hydrologic connectivity. The environmental review process will be comprehensive and will integrate and satisfy the requirements of NEPA (Federal), SEPA (Washington State), and other relevant Federal, state, and local environmental laws. The public scoping period will commence on October 26, 2009 in conjunction with the first scoping meeting and will extend throughout the development of the joint NEPA/SEPA PEIS. Four scoping meetings will be held throughout the Puget Sound region from 4 p.m. to 7 p.m. The meeting dates and locations are as follows:

*October 26:* Highline Community College, 2400 S. 240th St., Des Moines, WA 98198.

*October 28:* The chapel at Fort Worden State Park, 200 Battery Way, Port Townsend, WA 98368.

*November 3:* Lacey Community Center, 6729 Pacific Avenue SE., in the Woodland Creek Community Park, Lacey, WA 98503.

*November 10:* Skagit Station, 105 E. Kincaid, Mount Vernon, WA 98273.

All Federal, State, and local agencies, Native American Tribes, other interested private organizations, and the general public are invited to participate. Public comments will be considered in development of the draft PEIS. The formal public comment period will extend until December 10, 2009.

4. *Other Environmental Review, Coordination, and Permit Requirements:* Other environmental review, coordination, and permit requirements include preparation of a Clean Water Act, Section 404(b)(1) evaluation by the Corps, and consultation among the Corps, State of Washington, U.S. Fish and Wildlife Service, and National Oceanic and Atmospheric Administration per Section 7 of the Endangered Species Act. Coordination will be continued with the U.S. Fish and Wildlife Service to meet the requirements of the Fish and Wildlife Coordination Act and initiated with Washington Department of Ecology for Clean Water Act compliance, and with the Washington Department of Archaeology & Historic Preservation for compliance with Section 106 of the National Historic Preservation Act.

5. *Availability of the Draft PEIS:* The draft PEIS is scheduled for release during the summer of 2012 and the final PEIS is scheduled for release during the winter of 2012.

**Anthony O. Wright,**

*Colonel, Corps of Engineers, District Engineer.*

[FR Doc. E9–23765 Filed 10–1–09; 8:45 am]

**BILLING CODE 3720–58–P**

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## DEPARTMENT OF DEFENSE

### Department of the Army

### Notice of Availability of a Novel Fiberglass Technology for Exclusive, Partially Exclusive or Non-Exclusive Licenses

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

**ACTION:** Notice of availability.

**SUMMARY:** The Department of the Army announces the general availability of exclusive, partially exclusive or non-exclusive licenses relative to a novel fiberglass technology (e-glass; s-glass, *etc.*) as described in U.S. Patent Application 11/639,221 filed on 12/15/06; entitled ''Nano-Textured Solid Surfaces and Methods for Producing Same''; Jensen and McKnight. Any license shall comply with 35 U.S.C. 209 and 37 CFR part 404.

**FOR FURTHER INFORMATION CONTACT:** Michael D. Rausa, U.S. Army Research Laboratory, Office of Research and Technology Applications, ATTN: RDRL–DB/Bldg. 434, Aberdeen Proving Ground, MD 21005–5425, Telephone: (410) 278–5028.

**SUPPLEMENTARY INFORMATION:** None.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. E9–23767 Filed 10–1–09; 8:45 am]

**BILLING CODE 3710–08–P**

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## DEPARTMENT OF DEFENSE

### Department of the Army

### Department of Defense Historical Advisory Committee; Meeting

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

**ACTION:** Notice of open meeting.

**SUMMARY:** In accordance with Section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

*Name of Committee:* Department of the Army Historical Advisory Committee.

*Date:* October 22, 2009.

*Time:* 9 a.m. to 4:30 p.m.

*Place:* U.S. Army Center of Military History, Collins Hall, Building 35, 103 Third Avenue, Fort McNair, DC 20319–5058.

*Proposed Agenda:* Review and discussion of the status of historical activities in the United States Army.

**FOR FURTHER INFORMATION CONTACT:** Dr. Richard Stewart, U.S. Army Center of Military History, ATTN: AAMH–ZC, 103 Third Avenue, Fort McNair, DC 20319–5058; telephone number (202) 685–2709.

**SUPPLEMENTARY INFORMATION:** The committee will review the Army's historical activities for FY 2009 and those projected for FY 2010 based upon reports and manuscript received throughout the period. And the committee will formulate recommendations through the Chief of Military History to the Chief of Staff, Army, and the Secretary of the Army for advancing the use of history in the U.S. Army.

The meeting of the advisory committee is open to the public. Because of the restricted meeting space, however, attendance may be limited to those persons who have notified the Advisory Committee Management Office in writing at least five days prior to the meeting of their intention to attend the October 22, 2009, meeting. Notifications should be addressed to the Executive Secretary of the committee, Dr. William Stivers, at the U.S. Army Center of Military History, 103 Third Avenue, Fort Lesley J. McNair, DC 20319–5058.

Any member of the public may file a written statement with the committee before, during, or after the meeting. Such statements may be sent to the Executive Secretary of the committee at the address shown in the paragraph above. To the extent that time permits, the committee chairman may allow public presentations or oral statements at the meeting.

Dated: September 21, 2009.

**Richard W. Stewart,**

*Chief Historian, Center of Military History.*

[FR Doc. E9–23771 Filed 10–1–09; 8:45 am]

**BILLING CODE 3710–08–P**

## DEPARTMENT OF DEFENSE

### Department of the Army

### Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Provisional Patent Application Concerning Novel Use and Method of Rapamycin To Treat Toxic Shock

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

**ACTION:** Notice.

**SUMMARY:** Announcement is made of the availability for licensing of the invention set forth in U.S. Provisional Patent Application Serial No. 61/231,348 entitled ''Novel Use and Method of Rapamycin to Treat Toxic Shock,'' filed August 5, 2009. The United States Government, as represented by the Secretary of the Army, has rights to this invention.

**ADDRESSES:** Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

**FOR FURTHER INFORMATION CONTACT:** For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research and Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

**SUPPLEMENTARY INFORMATION:** The invention relates to the use of Rapamycin as a treatment of toxic shock induced by staphylococcal exotoxins; more specifically, staphylococcal enterotoxins that are potent activators for human T cells and can cause lethal shock.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. E9–23770 Filed 10–1–09; 8:45 am]

**BILLING CODE 3710–08–P**

## DEPARTMENT OF DEFENSE

### Department of the Army

### Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Provisional Patent Application Concerning Monoclonal Antibodies Against Glycoprotein of Ebola Sudan Boniface Virus

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

**ACTION:** Notice.

**SUMMARY:** Announcement is made of the availability for licensing of the invention set forth in U.S. Provisional Patent Application Serial No. 61/239,266 entitled ''Monoclonal Antibodies Against Glycoprotein of Ebola Sudan Boniface Virus,'' filed September 2, 2009. The United States Government, as represented by the Secretary of the Army, has rights to this invention.

**ADDRESSES:** Commander, U.S. Army Medical Research and Material Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

**FOR FURTHER INFORMATION CONTACT:** For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research and Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

**SUPPLEMENTARY INFORMATION:** The invention relates generally to the field of antibodies. More specifically the invention relates to monoclonal antibodies against glycoproteins of the Ebola Sudan Boniface virus and methods of producing and using the same.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. E9–23769 Filed 10–1–09; 8:45 am]

**BILLING CODE 3710–08–P**

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before November 2, 2009.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or send e-mail to *oira_submission@omb.eop.gov.*

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early

opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: September 29, 2009.

**Angela C. Arrington,**

*Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.*

**Federal Student Aid**

*Type of Review:* New.

*Title:* William D. Ford Federal Direct Loan Program (DL) Regulations—Servicemembers Civil Relief Act (SCRA)

*Frequency:* On Occasion.

*Affected Public:* Individuals or household; State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

Responses: 4,500.

Burden Hours: 743.

*Abstract:* The William D. Ford Federal Direct Loan Program proposed regulations revise current regulations in areas of program administration. The proposed regulations assure the Secretary that the integrity of the program is protected from fraud and misuse of program funds. The proposed regulations would provide that upon a loan holder's receipt of a written request from a borrower and a copy of the borrower's military orders, the maximum interest rate that may be charged on Stafford loans made prior to entering active military duty is six percent while on active duty.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 4056. 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 the Internet address *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. E9–23808 Filed 10–1–09; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**SUMMARY:** The Director, 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 December 1, 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 Director, Information Collection Clearance Division, 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: September 29, 2009.

**Angela C. Arrington,**

*Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.*

**Federal Student Aid**

*Type of Review:* New.

*Title:* Part 601 Preferred Lender Arrangements.

*Frequency:* On Occasion.

*Affected Public:* Individuals or household; Not-for-profit institutions.

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 13,674,883.

*Burden Hours:* 3,197,761.

*Abstract:* Part 601—Institution and Lender Requirements Relating to Education Loans is a new section of the proposed regulations governing private education loans offered at covered institutions by lenders also participating in the FFEL program. These proposed regulations assure the Secretary that the integrity of the program is protected from fraud and misuse of program funds and places requirements on institutions and lenders to insure that borrowers receive additional disclosures about Title IV, HEA program assistance prior to obtaining a private education loan. These proposed regulations require covered institutions to provide a variety of new loan disclosures, disclosures on private loans, for institutions to prepare and submit an annual report on the use of private loans, and to establish and adopt a code of conduct for institutions participation in a preferred lender arrangement. The Department, in conjunction with outside entities are submitting the Private Education Loan Applicant Self-Certification form for OMB's approval. While information about the applicant's cost of attendance and estimated financial assistance must be provided to the student, if available,

the student will provide the data to the private loan lender who must collect and maintain the self-certification form prior to disbursement of a Private Education Loan. The Department will not receive the Private Education Loan Applicant Self-Certification form and therefore will not be collecting and maintaining the form or its data.

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 4046. 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. E9–23809 Filed 10–1–09; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before November 2, 2009.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or send e-mail to *oira_submission@omb.eop.gov.*

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: September 29, 2009.

**Angela C. Arrington,**

*Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.*

### Federal Student Aid

*Type of Review:* New.

*Title:* Federal Family Educational Loan Program—Servicemembers Civil Relief Act (SCRA).

*Frequency:* On Occasion.

*Affected Public:* Individuals or household.

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 13,550.

*Burden Hours:* 2,236.

*Abstract:* The Federal Family Educational Loan Program proposed regulations revise current regulations in areas of program administration and assure the Secretary that program integrity is protected from fraud and misuse of program funds. The proposed regulations would provide that upon a loan holder's receipt of a written request from a borrower and a copy of the borrower's military orders, the maximum interest rate that may be charged on Stafford loans made prior to entering active military duty is six percent while on active duty.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4055. 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 the Internet address *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. E9–23810 Filed 10–1–09; 8:45 am]

**BILLING CODE 4000–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–8964–9]**

### Acid Rain Program: Notice of Annual Adjustment Factors for Excess Emissions Penalty

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

**ACTION:** Notice.

**SUMMARY:** The Acid Rain Program under title IV of the Clean Air Act provides for automatic excess emissions penalties in dollars per ton of excess emissions for sources that do not meet their annual Acid Rain emissions limitations. This notice states the dollars per ton excess emissions penalty amounts, which must be adjusted for each compliance year commensurate with changes in the Consumer Price Index (CPI), for compliance years 2009 and 2010.

**FOR FURTHER INFORMATION CONTACT:** Robert L. Miller, Clean Air Markets Division (6204J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460 at (202) 343–9077 or *miller.robertl@epa.gov.*

**SUPPLEMENTARY INFORMATION:** The Acid Rain Program under title IV of the Clean Air Act limits annual sulfur dioxide and nitrogen oxide emissions of fossil fuel-fired utility units. Under the Acid Rain Program, affected sources must hold enough allowances to cover their sulfur dioxide emissions, and certain coal-fired sources must meet an emission limit for nitrogen oxides. Under 40 CFR 77.6, sources that do not meet these requirements must pay a penalty

without demand to the Administrator based on the number of excess tons emitted times $2,000 as adjusted by an annual adjustment factor, which must be published in the Federal Register.

The annual adjustment factor for adjusting the penalty for excess emissions of sulfur dioxide and nitrogen oxides under 40 CFR 77.6(b) for compliance year 2009 is 1.7583. This value is derived using the CPI for 1990 and 2009 (defined respectively at 40 CFR 72.2 as the CPI for August of the year before the specified year for all urban consumers) and results in an automatic penalty of $3,517 per excess ton of sulfur dioxide or nitrogen oxides emitted for 2009.

The annual adjustment factor for adjusting the penalty for such excess emissions under 40 CFR 77.6(b) for compliance year 2010 is 1.7322. This value is derived using the CPI for 1990 and 2010 and results in an automatic penalty of $3,464 per excess ton of sulfur dioxide or nitrogen oxides emitted for 2010.

Dated: September 24, 2009.

**Sam Napolitano,**

*Director, Clean Air Markets Division, Office of Atmospheric Programs, Office of Air and Radiation.*

[FR Doc. E9–23792 Filed 10–1–09; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–8597–8]**

## Environmental Impacts Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/* Weekly receipt of Environmental Impact Statements Filed 09/21/2009 Through 09/28/2009 Pursuant to 40 CFR 1506.9.

*EIS No. 20090332, Draft EIS, AFS, NV,* Middle Kyle Canyon Complex Project, Construction and Operation of a Recreation Complex within the Spring Mountains National Recreation Area, Humboldt-Toiyabe National Forest, Clark County, NV, Comment Period Ends: 11/16/2009, Contact: Hal Peterson, 702–839–5572.

*EIS No. 20090333, Final EIS, COE, MN,* Mississippi River Headwaters Reservoir Operating Plan Evaluation (ROPE), Proposed Revision to the Operating Plan for the Reservoirs, Upper Mississippi River Headwaters, Bemidji to St. Paul, MN, Wait Period Ends: 11/06/2009, Contact: Steven J. Clark, 651–290–5278.

*EIS No. 20090334, Final EIS, FRC, 00,* Hubline/East to West Project, Proposes to Modify its Existing Natural Gas Transmission Pipeline System in MA, CT, RI and NJ, Wait Period Ends: 11/02/2009, Contact: Julia Bovey, 1–866–208–3372.

*EIS No. 20090335, Final EIS, AFS, AZ,* Black River Exchange Project, Proposal to Exchange Federal and Non-Federal Lands, Apache-Sitgreaves National Forests, Apache County, AZ, Wait Period Ends: 11/02/2009, Contact: Chris Kropp, 928–333–4301.

*EIS No. 20090336, Third Final Supplement, FHW, VT,* Southern Connector/Champlain Parkway Project (MEGC–M5000(1)), Construction from Interchange of I–189 to Shelburne Street (US Route &) and Extending westerly and northerly to the City of Center District within the City of Burlington, Chittenden County, VT, Wait Period Ends: 11/02/2009, Contact: Kenneth R. Sikora, Jr., 802–828–4423.

*EIS No. 20090337, Draft EIS, BLM, OR,* Vegetation Treatments Using Herbicides on Bureau of Land Management (BLM) Lands in Oregon, Implementation, OR, Comment Period Ends: 11/30/2009, Contact: Todd Thompson, 503–808–6026.

*EIS No. 20090338, Final EIS, AFS, OR,* Big Summit Allotment Management Plan, Proposes to Reauthorize Cattle Term Grazing Permits, Construct Range Improvements, and Restore Riparian Vegetation on Five Allotments, Lookout Mountain Ranger District, Ochoco National Forest, Crook County, OR, Wait Period Ends: 11/02/2009, Contact: Marcy Anderson, 541–416–6463.

*EIS No. 20090339, Final EIS, AFS, 00,* Ashley National Forest Motorized Travel Plan, To Improve Management of Public Summer Motorized Use by Designating Roads and Motorized Trails and Limiting Dispersed Camping to Areas, Duchesne, Daggett, Uintah Counties, Utah and Sweetwater County, Wyoming, Wait Period Ends: 11/02/2009, Contact: Kris Rutledge, 435–781–5196.

### Amended Notices

*EIS No. 20090250, Draft EIS, IBR, NV,* Walker River Basin Acquisition Program, To Provide Water to Walker Lake an at Risk Natural Desert Terminal Lake, Funding, Walker River Basin, NV, Comment Period Ends: 10/05/2009, Contact: Caryn Huntt DeCarol, 775–884–8352. Revision to FR Notice Published 07/31/2009: Reopening the Comment Period from 09/14/2009 to 10/05/2009.

*EIS No. 20090272, Draft EIS, UAF, 00,* Modification of the Condor 1 and Condor 2 Military Operation Areas, 104th Fighter Wing of the Massachusetts Air National Guard Base (ANG) Proposes to Combine the Condor 1 and Condor 2 MOA, ME and NH, Comment Period Ends: 01/01/2010, Contact: Jay Nash, 703–614–0346. Revision to FR Notice Published 08/07/2009: Correction from 09/21/2009 to 11/09/2010 should be 09/21/2009 to 01/01/2010.

*EIS No. 20090297, Final EIS, EPA, ND,* Mandan, Hidatsa and Arikara Nation's Proposed Clean Fuels Refinery Project, Construction and Operation of a New 13,000 Barrel of Production per day Clean Fuels Refinery and Grow Hay for Buffalo, NPDES Permit, Fort Berthold Indian Reservation, Ward County, ND, Wait Period Ends: 10/28/2009, Contact: Steve Wharton, 303–312–6935. Revision to FR Notice Published 08/28/2009: Extending Comment Period from 09/28/2009 to 10/28/2009.

Dated: September 29, 2009.

**Robert W. Hargrove,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. E9–23824 Filed 10–1–09; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–8597–9]**

## Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7146 or *http://www.epa.gov/compliance/nepa/*. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated July 17, 2009 (74 FR 34754).

### Draft EISs

*EIS No. 20080518, ERP No. D–BLM–K67058–NV,* Bald Mountain Mine Northern Operations Area Project, Proposes to Expand Current Mining Operations at several Existing Pits, Rock Disposal Areas, Heap Leach Pads, Processing Facilities, and Interpit Area, Combining the Bald Mountain Mine Plan of Operations

Boundary and the Mooney Basin Operation Area Boundary, White Pine County, NV.

*Summary:* EPA expressed environmental objections because waste rock from several pits could generate leachate with high concentrations of metals and metalloids, and degrade water quality if the leachate should reach groundwater or surface waters, or if pit lakes would form. Also, EPA expressed concerns about potential impacts to air quality and the lack of suitable soil for reclamation. EPA recommends the additional information on waste rock geochemical characterization, potential impacts to water and air resources, mitigation and monitoring, and closure and reclamation. Rating EO2.

*EIS No. 20090047, ERP No. D–COE–E39076–AL,* Foley Land Cut Portion of the Gulf Intracoastal Waterway, Proposed Construction of Residential, Commercial and Marine Development, Gulf Shores and Orange Beach, Baldwin County, AL.

*Summary:* EPA expressed environmental concerns about water quality and hydrological impacts. Specific BMPs designed to minimize water quality impacts should be included in each permit application as a special condition of the permit. Rating EC2.

*EIS No. 20090123, ERP No. D–FHW–E40824–MS,* Greenville Connector Project, from Relocated US 82 to Proposed I–69 Corridor south of Benoit, City of Greenville. Washington and Bolivar Counties, MS.

*Summary:* EPA expressed concern about wetland and stream impacts, flood storage loss, and noise impacts, and requested additional avoidance, minimization, and/or mitigation measures for these impacts. EPA also recommended commitments to bridge or narrow the ROW width, wherever possible, over major aquatic resources. Rating EC2.

*EIS No. 20090190, ERP No. D–AFS–L65572–OR,* Wallowa-Whitman National Forest Travel Management Plan, Designate Roads Trails and Areas for Motor Vehicle User, Baker, Grant, Umatilla, Union and Wallowa Counties, OR.

*Summary:* EPA expressed environmental concerns about potential impacts to water quality, fisheries, riparian habitat and soils, and recommended increased protective measures for water quality. Rating EC2.

*EIS No. 20090198, ERP No. D–AFS–K65371–CA,* Shasta-Trinity National Forest Motorized Travel Management Project, Proposal to Prohibit Cross-County Motor Vehicle Travel off Designated National Forest Transportation System (NFTS) Roads, Motorized Trails and Areas by the Public Except as Allowed by Permit or other Authorization (excluding snowmobile use), CA.

*Summary*: EPA expressed environmental concerns about the scope of the travel management planning process and potential impacts on water quality and cultural resources. Rating EC2.

**Final EISs**

*EIS No. 20090268, ERP No. F–BLM–L65545–ID,* Three Rivers Stone Quarry Expansion Project, Proposing to Expand the Quarry Operation up to an Additional 73 Acres to Increase Mine Production of Flaystone, Custer County, ID.

*Summary*: EPA continues to have environmental concerns about water quality impacts from potential stormwater ponds being breached and spills. EPA recommends that contingency measures be included to control high flood events and prevent contamination to surface water.

*EIS No. 20090271, ERP No. F–GSA–K40271–CA,* San Ysidro Land Port of Entry (LPOE) Improvement Project, Propose the Configuration and Expansion of the Existing (LPOE), San Ysidro, CA.

*Summary*: EPA continues to have environmental concerns about air quality impacts from increased congestion; project impacts to port access by pedestrians, cyclists, and transit; and environmental justice.

*EIS No. 20090274, ERP No. F–FHW–K40266–CA*, Marin-Sonoma Narrows (MSN) HOV Widening Project, Propose to Relieve Recurrent Congestion along US 101 south of the Route 37 Interchange in the City of Novato (Marin County) and ends north of the Corona Road Overcrossing in the City of Petaluma (Sonoma County), Marin and Sonoma Counties, CA.

*Summary*: EPA does not object to the proposed project, but encourages project sponsors to continue efforts to minimize impacts to wetlands and waters through project design modifications where possible.

*EIS No. 20090275, ERP No. F–FHW–E40814–KY,* I–65 to US 31 W Access Improvement Project, To Meet the Existing and Future Transportation Demand, in northeast Bowling Green, Warren County, KY.

*Summary*: EPA continues to have environmental concern about groundwater and karst topography impacts, and requested additional mitigation to reduce these impacts.

*EIS No. 20090291, ERP No. F–SFW–K64027–NV,* Desert National Wildlife Refuge Complex, Ash Meadows, Desert, Moapa Valley, and Pahranagat National Wildlife Refuges, Comprehensive Conservation Plan, Implementation, Clark, Lincoln, and Nye Counties, NV.

*Summary*: EPA does not object to the proposed project.

*EIS No. 20090292, ERP No. F–USA–K11117–CA*, Camp Parks Real Property Master Plan and Real Property Exchange, Redevelopment of the Cantonment Area, NPDES Permit, US COE Section 4040 Permit, Alamada and Contra Costa Counties, CA.

*Summary*: EPA does not object to the proposed action.

*EIS No. 20090276, ERP No. FS–COE–L90019–WA,* Commencement Bay ''Reauthorization'' of Dredged Material Management Program Disposal Site, Implementation, Central Puget Sound, Tacoma, WA.

*Summary*: EPA's previous issues have been resolved; therefore, EPA does not object to the proposed action.

Dated: September 29, 2009.

**Robert W. Hargrove,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. E9–23823 Filed 10–1–09; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–8964–7]**

## Notice of Availability of Final NPDES General Permits MAG640000 and NHG640000 for Discharges From Potable Water Treatment Facilities in the Commonwealth of Massachusetts (Including Both Commonwealth and Indian Country Lands) and the State of New Hampshire: The Potable Water Treatment Facility General Permit (PWTF GP)

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

**ACTION:** Notice of Availability of Final NPDES General Permits MAG640000 and NHG640000.

**SUMMARY:** The Director of the Office of Ecosystem Protection, EPA-New England, is issuing a notice of availability of the final National

Pollutant Discharge Elimination System (NPDES) general permits for potable water treatment facility (PWTF) discharges to certain waters of the Commonwealth of Massachusetts (included both Commonwealth and Indian country lands) and the State of New Hampshire. These General Permits replace the previous PWTF GP, which expired on November 15, 2005.

The final PWTF GP establishes Notice of Intent (NOI) requirements, effluent limitations, standards, prohibitions, and management practices for facilities with discharges from potable water treatment facilities. Owners and/or operators of these facilities, including those currently authorized to discharge under the expired General Permit, will be required to submit an NOI to be covered by the PWTF GP to both EPA-New England and the appropriate state agency. After EPA and the State have reviewed the NOI, the facility will receive a written notification from EPA of permit coverage and authorization to discharge under the General Permit.

**DATES:** The general permits shall be effective on the date of signature and will expire at midnight, five (5) years from the last day of the month preceding the effective date.

**ADDRESSES:** The required notification information to obtain permit coverage is provided for in the general permits. This information shall be submitted to both EPA and the appropriate State. Notification information may be sent via USPS, e-mail or fax to EPA at EPA–Region 1, Office of Ecosystem Protection (CMU), One Congress Street, Boston, Massachusetts 02114–2023; e-mail address *PWTF.GeneralPermit@EPA.GOV;* or fax number (617) 918–0505. Notification information shall be submitted to the appropriate State agency at the addresses listed in Appendix VI of the general permits.

**FOR FURTHER INFORMATION CONTACT:** Additional information concerning the final PWTF GP may be obtained between the hours of 9 a.m. and 5 p.m. Monday through Friday, excluding holidays, from Damien Houlihan at *Houlihan.Damien@epa.gov* or (617) 918–1586. The general permits may be viewed over the Internet at the EPA Web site *http://www.epa.gov/region1/npdes/pwtfgp.html.* To obtain a paper copy of the general permits, please contact Mr. Houlihan using the contact information provided above. A reasonable fee may be charged for copying requests.

Dated: September 24, 2009.

**Ira Leighton,**

*Acting Regional Administrator, Region 1.*

[FR Doc. E9–23791 Filed 10–1–09; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–ORD–2009–0658; FRL–8965–4]**

## Human Studies Review Board; Notice of Public Meeting

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

**ACTION:** Notice.

**SUMMARY:** The U.S. Environmental Protection Agency's (EPA or Agency) Office of the Science Advisor (OSA) announces a public meeting of the Human Studies Review Board (HSRB) to advise the Agency on EPA's scientific and ethical reviews of research with human subjects.

**DATES:** The public meeting will be held from October 20–21, 2009, from approximately 10 a.m. to approximately 5:30 p.m., through October 20, 2009 from approximately 8:30 a.m. to approximately 12:30 p.m. Eastern Time.

*Location:* Environmental Protection Agency, Conference Center—Lobby Level, One Potomac Yard (South Bldg.), 2777 S. Crystal Drive, Arlington, VA 22202.

*Meeting Access:* Seating at the meeting will be on a first-come basis. To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** at least 10 business days prior to the meeting, to allow EPA as much time as possible to process your request.

*Procedures for Providing Public Input:* Interested members of the public may submit relevant written or oral comments for the HSRB to consider during the advisory process. Additional information concerning submission of relevant written or oral comments is provided in Unit I.D. of this notice.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public who wishes further information should contact Jim Downing, EPA, Office of the Science Advisor, (8105R), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–2468; fax: (202) 564–2070; e-mail addresses: *downing.jim@epa.gov.* General information concerning the EPA HSRB can be found on the EPA Web site at *http://www.epa.gov/osa/hsrb/.*

**ADDRESSES:** Submit your written comments, identified by Docket ID No. EPA–HQ–ORD–2009–0658, by one of the following methods:

*Internet: http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

*E-mail: ord.docket@epa.gov.*

*Mail:* Environmental Protection Agency, EPA Docket Center (EPA/DC), ORD Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

*Hand Delivery:* The EPA/DC Public Reading Room is located in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave., NW., Washington, DC 20460. The hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Time, Monday through Friday, excluding Federal holidays. Please call (202) 566–1744 or e-mail the ORD Docket at *ord.docket@epa.gov* for instructions. Updates to Public Reading Room access are available on the Web site (*http://www.epa.gov/epahome/dockets.htm*).

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–ORD–2009–0658. 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* website 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.

**SUPPLEMENTARY INFORMATION:**

## I. Public Meeting

*A. Does This Action Apply to Me?*

This action is directed to the public in general. This action may, however, be of interest to persons who conduct or assess human studies, especially studies on substances regulated by EPA or to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Access Electronic Copies of This Document and Other Related Information?*

In addition to using regulations.gov, you may access this **Federal Register** document electronically through the EPA Internet under the ''Federal Register'' listings at *http://www.epa.gov/fedrgstr/*.

*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 ORD Docket, EPA/DC, Public Reading Room. The EPA/DC Public Reading Room is located in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave., NW., Washington, DC 20460. The hours of operation are 8:30 a.m. to 4:30 p.m. EST, Monday through Friday, excluding Federal holidays. Please call (202) 566–1744 or e-mail the ORD Docket at *ord.docket@epa.gov* for instructions. Updates to Public Reading Room access are available on the Web site (*http://www.epa.gov/epahome/dockets.htm*).

EPA's position paper(s), charge/questions to the HSRB, and the meeting agenda will be available by early October 2009. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the regulations.gov website and the EPA HSRB Web site at *http://www.epa.gov/osa/hsrb/*. For questions on document availability or if you do not have access to the Internet, consult the person listed under **FOR FURTHER INFORMATION**.

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

You may find the following suggestions helpful for preparing your comments:

a. Explain your views as clearly as possible.

b. Describe any assumptions that you used.

c. Provide copies of any technical information and/or data that you used to support your views.

d. Provide specific examples to illustrate your concerns and suggest alternatives.

e. To ensure proper receipt by EPA, be sure to identify the docket ID number

assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

*D. How May I Participate in This Meeting?*

You may participate in this meeting by following the instructions in this section. To ensure proper receipt by EPA, it is imperative that you identify docket ID number EPA–HQ–ORD–2009–0658 in the subject line on the first page of your request.

*a. Oral comments.* Requests to present oral comments will be accepted up to October 13, 2009. To the extent that time permits, interested persons who have not pre-registered may be permitted by the Chair of the HSRB to present oral comments at the meeting. Each individual or group wishing to make brief oral comments to the HSRB is strongly advised to submit their request (preferably via e-mail) to the person listed under **FOR FURTHER INFORMATION CONTACT** no later than noon, Eastern time, October 13, 2009, in order to be included on the meeting agenda and to provide sufficient time for the HSRB Chair and HSRB Designated Federal Officer (DFO) to review the agenda to provide an appropriate public comment period. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, LCD projector, chalkboard). Oral comments before the HSRB are limited to five minutes per individual or organization. Please note that this limit applies to the cumulative time used by all individuals appearing either as part of, or on behalf of an organization. While it is our intent to hear a full range of oral comments on the science and ethics issues under discussion, it is not our intent to permit organizations to expand these time limitations by having numerous individuals sign up separately to speak on their behalf. If additional time is available, there may be flexibility in time for public comments. Each speaker should bring 25 copies of his or her comments and presentation slides for distribution to the HSRB at the meeting.

*b. Written comments.* Although you may submit written comments at any time, for the HSRB to have the best opportunity to review and consider your comments as it deliberates on its report, you should submit your comments at least five business days prior to the beginning of the meeting. If you submit comments after this date, those comments will be provided to the Board members, but you should recognize that the Board members may not have adequate time to consider those comments prior to making a decision. Thus, if you plan to submit written comments, the Agency strongly encourages you to submit such comments no later than noon, Eastern Time, October 13, 2009. You should submit your comments using the instructions in Unit I.C. of this notice. In addition, the Agency also requests that person(s) submitting comments directly to the docket also provide a copy of their comments to the person listed under **FOR FURTHER INFORMATION CONTACT.** There is no limit on the length of written comments for consideration by the HSRB.

*E. Background*

*a. Topics for discussion.* The HSRB is a Federal advisory committee operating in accordance with the Federal Advisory Committee Act (FACA) 5 U.S.C. App. 2 § 9. The HSRB provides advice, information, and recommendations to EPA on issues related to scientific and ethical aspects of human subjects research. The major objectives of the HSRB are to provide advice and recommendations on: (1) Research proposals and protocols; (2) reports of completed research with human subjects; and (3) how to strengthen EPA's programs for protection of human subjects of research. The HSRB reports to the EPA Administrator through EPA's Science Advisor.

At its meeting on October 20–21, 2009, EPA's Human Studies Review Board will consider scientific and ethical issues surrounding three topics:

1. Two published reports of completed, pre-rule research on the effects of exposure to pesticides containing pyrethrins/pyrethroids. EPA requests the advice of the HSRB on the scientific merit, relevancy, and limitations of these studies, and on their ethical acceptability. EPA intends to incorporate into a future revision of the EPA White Paper, ''A Review of the Relationship between Pyrethrins, Pyrethroid Exposure and Asthma and Allergies,'' a discussion of either or both of these studies if they are deemed to be scientifically sound, relevant and ethically acceptable.

2. A proposal for new research to be conducted by Carroll-Loye Biological Research to evaluate in the laboratory the repellent efficacy to ticks of two registered products containing 20% picaridin. EPA requests the advice of the HSRB concerning whether, if it is revised as suggested in EPA's review and if it is performed as described, this research is likely to generate scientifically reliable data, useful for assessing the efficacy of the tested materials in repelling ticks, and to meet the applicable requirements of 40 CFR part 26, subparts K and L.

3. A new scenario design and associated protocol from the Antimicrobials Exposure Assessment Task Force II (AEATF–II), describing proposed research to monitor at three sites the dermal and inhalation exposure of professional janitorial workers who apply an antimicrobial pesticide formulated as an aerosol spray. EPA requests the advice of the HSRB concerning whether, if it is revised as suggested in EPA's review and if it is performed as described, this research is likely to generate scientifically reliable data, useful for assessing the exposure of those who apply antimicrobial pesticides as aerosols, and to meet the applicable requirements of 40 CFR part 26, subparts K and L.

In addition, the Board will be reviewing its draft June 24–25, 2009, meeting report for subsequent Board approval. Finally, the HSRB may also discuss planning for future HSRB meetings.

*b. Meeting minutes and reports.* Minutes of the meeting, summarizing the matters discussed and recommendations, if any, made by the advisory committee regarding such matters, will be released within 90 calendar days of the meeting. Such minutes will be available at *http://www.epa.gov/osa/hsrb/* and *http://www.regulations.gov*. In addition, information concerning a Board meeting report, if applicable, can be found at *http://www.epa.gov/osa/hsrb/* or from the person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: September 24, 2009.

**Kevin Teichman,**

*EPA Acting Science Advisor.*

[FR Doc. E9–23795 Filed 10–1–09; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection Being Submitted to the Office of Management and Budget for Review and Approval, Comments Requested

September 28, 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(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Persons wishing to comment on this information collection should submit comments on November 2, 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 contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at (202) 395–5167, or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to Judith B. Herman, Federal Communications Commission (FCC). To submit your comments by e–mail send then to: PRA@fcc.gov. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to 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, and (6) when the FCC list appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR.

**FOR FURTHER INFORMATION CONTACT:** Judith B. Herman, 202–418–0214. For additional information about the information collection(s) send an e–mail to *PRA@fcc.gov* or contact Judith B. Herman, 202–418–0214.

**SUPPLEMENTARY INFORMATION:**

OMB Control No: 3060–0233.

Title: Part 36, Separations.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit.

Number of Respondents: 1,997 respondents; 7,562 responses.

Estimated Time Per Response: 5 – 22 hours.

Frequency of Response: On occasion, annual and quarterly reporting requirements and third party disclosure requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for information collection is contained in 47 U.S.C. sections 151, 154(i), and (j), 221(c) and 410(c).

Total Annual Burden: 71,283 hours.

Privacy Act Impact Assessment: N/A

Nature and Extent of Confidentiality: No assurance of confidentiality has been given regarding the information.

Need and Uses: The Commission will submit this information collection to the Office of Management and Budget (OMB) during this 30 day comment period in order to obtain the full three year clearance from them. The Commission is requesting an extension (no change in the reporting and/or third party disclosure requirements) of this information collection. There is a change in the estimated respondents/responses and the annual burden hours. The Commission is reporting a 1,774 adjusted increase in the number of responses and a 12,865 hour increase in the total annual burden hours.

In order to determine which carriers are entitled to universal service support,

all (both rural and non–rural) incumbent local exchange carriers(LECs) must provide the National Exchange Carrier Association (NECA) with the loop cost and loop count data required by 47 CFR 63.611 of the Commission's rules for each of its study areas and, if applicable, for each wire center (that term is defined in 47 CFR Part 54).

Loops are the telephone lines running from the carrier's switching facilities to the customer. The loop cost and loop count information is to be field annually with NECA by July 31st of each year, and may be updated quarterly pursuant to 47 CFR 63.612. Pursuant to section 36.613, the information filed on July 31st of each year will be used to calculate universal service support for each study area and is filed by NECA with the Commission by October 1 of each year. An incumbent LEC is define as a carrier that meets the definition of ''incumbent local exchange carrier'' in 47 CFR 51.5 of the Commission's rules.

Section 63.612(a) also requires non–rural carriers to file loop counts (no loop cost data) on a quarterly basis. The Commission requires that non–rural carriers submit quarterly loop counts in order to ensure that universal service fund (USF) support for non–rural carriers is accurately calculated when competitive eligible telecommunications carriers (ETCs) are present in the incumbent LECs' operating areas. Quarterly loop cost and loop count data filings are voluntary for rural carriers. When a competitive ETC, however, is operating in an incumbent rural carrier's territory, the incumbent rural carrier is required to submit quarterly loop count data. Quarterly filings of loop counts are necessary because if an incumbent rural carrier does not update its loop count data more often than annually, but its competitor does, the competitor's more recent data may include loops captured from the incumbent since the incumbent's last filing. Thus, the incumbent would continue to receive USF support at the same per line support amount that the incumbent LEC receives in the same operating territory. In order to receive such support, the competitive ETC must file loop count data with the USAC on a quarterly basis.

The reporting requirements are necessary to implement the congressional mandate for universal service. The requirements are necessary to verify that rural and non–rural LECs are eligible to receive universal service support. Information filed with NECA pursuant to section 36.611 is used to calculate universal service support payments to eligible carriers. Without this information, NECA and USAC (Universal Service Administration Company) would not be able to calculate such payments to eligible carriers.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E9–23768 Filed 10–1–09; 8:45 am]

**BILLING CODE: 6712–01–S**

## FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

### Notice of Issuance of Statement of Federal Financial Accounting Standard 36, Reporting Comprehensive Long-Term Fiscal Projections for the U.S. Government

**AGENCY:** Federal Accounting Standards Advisory Board.

**ACTION:** Notice.

*Board Action:* Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules of Procedure, as amended in April, 2004, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has issued Statement of Federal Financial Accounting Standard 36, Reporting Comprehensive Long-Term Fiscal Projections for the U.S. Government.

The standard is available on the FASAB home page *http://www.fasab.gov/standards.html*. Copies can be obtained by contacting FASAB at (202) 512–7350.

**FOR FURTHER INFORMATION CONTACT:** Wendy Payne, Executive Director, at (202) 512–7350.

**Authority:** Federal Advisory Committee Act, Public Law 92–463.

Dated: September 29, 2009.

**Charles Jackson,**

*Federal Register Liaison Officer.*

[FR Doc. E9–23816 Filed 10–1–09; 8:45 am]

**BILLING CODE 1610–02–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 October 19, 2009.

**A. Federal Reserve Bank of Minneapolis** (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

*1. Earl E. Geiger*, Bloomington, Minnesota; to acquire voting shares of Heritage Bancshares Group, Inc., Willmar, Minnesota, and thereby indirectly acquire voting shares of Heritage Bank, NA, Spicer, Minnesota, and Heritage Bank, NA, Holstein, Iowa.

Board of Governors of the Federal Reserve System, September 29, 2009.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E9–23804 Filed 10–1–09; 8:45 am]

**BILLING CODE 6210–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Declaration Under the Public Readiness and Emergency Preparedness Act

September 28, 2009.

**AGENCY:** Office of the Secretary (OS), Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** Declaration pursuant to section 319F–3 of the Public Health Service Act (42 U.S.C. 247d–6d) to provide targeted liability protections for pandemic countermeasures based on the Secretary's finding under the Act that the 2009–H1N1 virus strain and the resulting disease, 2009–H1N1 influenza, constitutes a public health emergency.

**DATES:** This notice and the attached declaration are effective as of the date of signature of the declaration.

**FOR FURTHER INFORMATION CONTACT:** Dr. Nicole Lurie, Assistant Secretary for Preparedness and Response, Office of the Secretary, Department of Health and Human Services, 200 Independence Avenue, SW., Washington, DC 20201, Telephone (202) 205–2882 (this is not a toll-free number).

**HHS Secretary's Declaration for the Use of the Public Readiness and Emergency Preparedness Act for the Influenza Antiviral Peramivir**

Whereas, on April 26, 2009, Acting Secretary Charles Johnson determined under section 319 of the Public Health Service Act, (42 U.S.C. 247d) (''the Act''), that a public health emergency exists nationwide involving the Swine influenza A virus (now known as ''2009–H1N1 influenza'') that affects or has significant potential to affect the national security;

Whereas, on July 24, 2009, Secretary Kathleen Sebelius renewed the determination under section 319 of the Public Health Service Act, (42 U.S.C. 247d) (''the Act''), that a public health emergency exists nationwide involving the Swine influenza A virus (now known as ''2009–H1N1 influenza'') that affects or has significant potential to affect the national security;

Whereas, the World Health Organization has established a Pandemic alert phase 6 for the 2009–H1N1 influenza virus currently circulating worldwide;

Whereas there are countermeasures under development to treat, identify, or prevent adverse health consequences or death from exposure to 2009–H1N1 influenza;

Whereas such countermeasures include peramivir;

Whereas such countermeasures may be used and administered in accordance with Federal contracts, cooperative agreements, grants, interagency agreements, clinical trials agreements and memoranda of understanding, and may also be used and administered at the Regional, State, and local level in accordance with the public health and medical response of the Authority Having Jurisdiction;

Whereas, the possibility of governmental program planners obtaining stockpiles from private sector entities except through voluntary means such as commercial sale, donation, or deployment would undermine national preparedness efforts and should be discouraged as provided for in section 319F–3(b)(2)(E) of the Act (42 U.S.C. 247d–6d(b));

Whereas, immunity under section 319F–3(a) of the Act should be available to governmental program planners for distributions of Covered Countermeasures obtained voluntarily, such as by (1) donation; (2) commercial sale; (3) deployment of Covered Countermeasures from Federal stockpiles; or (4) deployment of donated, purchased, or otherwise voluntarily obtained Covered Countermeasures from State, local, or private stockpiles;

Whereas, the extent of immunity under section 319F–3(a) of the Act afforded to a governmental program planner that obtains Covered Countermeasures except through voluntary means is not intended to affect the extent of immunity afforded other covered persons with respect to such Covered Countermeasures;

Whereas, in accordance with section 319F–3(b)(6) of the Act, I have considered the desirability of encouraging the design, development, clinical testing or investigation, manufacturing, labeling, distribution, formulation, packaging, marketing, promotion, sale, purchase, donation, dispensing, prescribing, administration, licensing, and use of such countermeasures with respect to the category of disease and population described in sections II and IV below, and have found it desirable to encourage such activities for the covered countermeasures; and

Whereas, to encourage the design, development, clinical testing or investigation, manufacturing and product formulation, labeling, distribution, packaging, marketing, promotion, sale, purchase, donation, dispensing, prescribing, administration, licensing, and use of medical countermeasures with respect to the category of disease and population described in sections II and IV below, it is advisable, in accordance with section 319F–3(a) and (b) of the Act, to provide immunity from liability for covered persons, as that term is defined at section 319F–3(i)(2) of the Act, and to include as such covered persons such other qualified persons as I have identified in section VI of this declaration;

Therefore, pursuant to section 319F–3(b) of the Act, I have determined that 2009–H1N1 influenza and resulting disease constitutes a public health emergency.

*I. Covered Countermeasures (As Required by Section 319F–3(b)(1) of the Act)*

Covered Countermeasures are defined at section 319F–3(i) of the Act.

At this time, and in accordance with the provisions contained herein, I am recommending the manufacturing, testing, development, and distribution; and, with respect to the category of disease and population described in sections II and IV below, the administration and usage of the pandemic countermeasure peramivir. The immunity specified in section 319F–3(a) of the Act shall only be in effect with respect to: (1) Present or future Federal contracts, cooperative agreements, grants, interagency agreements, clinical trials agreements or memoranda of understanding involving countermeasures that are used and administered in accordance with this declaration, and (2) activities authorized in accordance with the public health and medical response of the Authority Having Jurisdiction to prescribe, administer, deliver, distribute or dispense the Covered Countermeasure following a declaration of an emergency, as defined in section IX below. In accordance with section 319F–3(b)(2)(E) of the Act, for governmental program planners, the immunity specified in section 319F–3(a) of the Act shall be in effect to the extent they obtain Covered Countermeasures through voluntary means of distribution, such as (1) donation; (2) commercial sale; (3) deployment of Covered Countermeasures from Federal stockpiles; or (4) deployment of donated, purchased, or otherwise voluntarily obtained Covered Countermeasures from State, local, or private stockpiles. For all other covered persons, including other program planners, the immunity specified in section 319F–3(a) of the Act shall, in accordance with section 319F–3(b)(2)(E) of the Act, be in effect pursuant to any means of distribution.

This declaration shall subsequently refer to the countermeasures identified above as ''Covered Countermeasures.''

This declaration shall apply to all Covered Countermeasures administered or used during the effective period of the declaration.

*II. Category of Disease (As Required by Section 319F–3(b)(2)(A) of the Act)*

The category of disease, health condition, or threat to health for which I am recommending the administration or use of the Covered Countermeasures is the threat of or actual human influenza that results from the infection of humans with 2009–H1N1 influenza.

*III. Effective Time Period (As Required by Section 319F–3(b)(2)(B) of the Act)*

With respect to Covered Countermeasures administered and used in accordance with present or future Federal contracts, cooperative agreements, grants, interagency agreements, clinical trials agreements or memoranda of understanding involving countermeasures, the effective period of time of this Declaration commenced on April 26, 2009, and extends through June 1, 2010. With respect to Covered Countermeasures administered and used in accordance with the public

health and medical response of the Authority Having Jurisdiction, the effective period of time of this Declaration commences on the date of a declaration of an emergency, and lasts through and includes the final day that the emergency declaration is in effect, including any extensions thereof, or until June 1, 2010, whichever is earlier.

*IV. Population (As Required by Section 319F–3(b)(2)(C) of the Act)*

Section 319F–3(a)(4)(A) of the Act confers immunity to manufacturers and distributors of the Covered Countermeasure, regardless of the defined population.

Section 319F–3(a)(3)(C)(i) of the Act confers immunity to covered persons who may be a program planner or qualified persons with respect to the Covered Countermeasure only if a member of the population specified in the declaration uses the Covered Countermeasure or has the Covered Countermeasure administered to him and is in or connected to the geographic location specified in this declaration, or the program planner or qualified person reasonably could have believed that these conditions were met.

The populations specified in this declaration are all persons who use a Covered Countermeasure or to whom a Covered Countermeasure is administered in accordance with this declaration, including, but not limited to: (1) Any person conducting research and development of Covered Countermeasures directly for the Federal government or pursuant to a contract, grant, or cooperative agreement with the Federal government; (2) any person who receives a Covered Countermeasure from persons authorized in accordance with the public health and medical emergency response of the Authority Having Jurisdiction to prescribe, administer, deliver, distribute, or dispense the Covered Countermeasure, and their officials, agents, employees, contractors, and volunteers following a declaration of an emergency; (3) any person who receives a Covered Countermeasure from a person authorized to prescribe, administer or dispense the countermeasure or who is otherwise authorized under an Emergency Use Authorization; and (4) any person who receives a Covered Countermeasure pursuant to an Investigational New Drug Application (IND) in effect, including in human clinical trials being conducted directly by the Federal Government or pursuant to a contract, grant, or cooperative agreement with the Federal Government.

*V. Geographic Area (As Required by Section 319F–3(b)(2)(D) of the Act)*

Section 319F–3(a) of the Act applies to the administration and use of a Covered Countermeasure without geographic limitation.

*VI. Other Qualified Persons (As Required by Section 319F–3(i)(8)(B) of the Act)*

With regard to the administration or use of a Covered Countermeasure, section 319F–3(i)(8)(A) of the Act defines the term ''qualified person'' as a licensed individual who is authorized to prescribe, administer, or dispense the Covered Countermeasure under the law of the State in which such covered countermeasure was prescribed, administered or dispensed.

Additional persons who are qualified persons pursuant to section 319F–3(i)(8)(B) are the following: (1) Any person authorized in accordance with the public health and medical emergency response of the Authority Having Jurisdiction to prescribe, administer, deliver, distribute or dispense Covered Countermeasures, and their officials, agents, employees, contractors and volunteers, following a declaration of an emergency, and (2) Any person authorized to prescribe, administer, or dispense Covered Countermeasures or who is otherwise authorized under an Emergency Use Authorization.

*VII. Additional Time Periods of Coverage After Expiration of Declaration (As Required by Section 319F–3(b)(3)(B) of the Act)*

I have determined that, upon expiration of the time period specified in section III above, an additional twelve (12) months is a reasonable period to allow for the manufacturer to arrange for disposition and covered persons to take such other actions as are appropriate to limit the administration or use of the Covered Countermeasure, and the liability protection of section 319F–3(a) of the Act shall extend for that period.

*VIII. Compensation Fund*

Section 319F–4 of the Act provides benefits to eligible individuals who sustain a covered injury directly caused by the administration or use of a Covered Countermeasure. The Countermeasure Injury Compensation Program (CICP), within the Health Resources and Services Administration (HRSA), administers this compensation program. Information about the CICP is available at 1–888–275–4772 or *http://www.hrsa.gov/countermeasurescomp/default.htm.*

*IX. Amendments*

This Declaration has not previously been amended. Any future amendment to this Declaration will be published in the **Federal Register**, pursuant to section 319F–3(b)(4) of the Act.

*X. Definitions*

For the purpose of this declaration, including any claim for loss brought in accordance with section 319F–3 of the PHS Act against any covered persons defined in the Act or this declaration, the following definitions will be used:

Administration of a Covered Countermeasure: As used in section 319F–3(a)(2)(B) of the Act includes, but is not limited to, public and private delivery, distribution, and dispensing activities relating to physical administration of the countermeasures to recipients, management and operation of delivery systems, and management and operation of distribution and dispensing locations.

Authority Having Jurisdiction: Means the public agency or its delegate that has legal responsibility and authority for responding to an incident, based on political or geographical (*e.g.,* city, county, tribal, State, or Federal boundary lines) or functional (*e.g.* law enforcement, public health) range or sphere of authority.

*Covered Persons:* As defined at section 319F–3(i)(2) of the Act, include the United States, manufacturers, distributors, program planners, and qualified persons. The terms ''manufacturer,'' ''distributor,'' ''program planner,'' and ''qualified person'' are further defined at sections 319F–3(i)(3), (4), (6), and (8), respectively, of the Act.

*Declaration of Emergency:* A declaration by any authorized local, regional, State, or Federal official of an emergency specific to events that indicate an immediate need to administer and use pandemic countermeasures, with the exception of a Federal declaration in support of an emergency use authorization under section 564 of the FDCA unless such declaration specifies otherwise.

*Pandemic Countermeasures:* Means peramivir, an antiviral from the neuraminidase inhibitor class of influenza antiviral drugs.

Dated: September 25, 2009.

**Kathleen Sebelius,**

*Secretary.*

[FR Doc. E9–23761 Filed 10–1–09; 8:45 am]

BILLING CODE 4150–37–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Submission for OMB Review; Comment Request; Program Review of the Division of Acquired Immunodeficiency Syndrome Policy Implementation Program

**AGENCY:** National Institutes of Health (NIH), Policy, Training, and Quality Assurance Branch (PTQAB), Division of Acquired Immune Deficiency Syndrome (DAIDS), The National Institute of Allergy and Infectious Diseases (NIAID).

**SUMMARY:** Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institute of Allergy and Infectious Diseases (NIAID) Office of Science Policy and Planning, the National Institute of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register**, July 16, 2009 (74 FR 34580), and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

*Proposed Collection: Title:* Program Review of the DAIDS Policy Implementation Program *Type of Information Collection Request:* New. *Need and Use of Information:* The program review of the Division of AIDS (DAIDS) Implementation Program (DPIP), is to be conducted over a three-year period, and it will provide feedback to aid in the understanding of the target population's knowledge, attitudes, and perceptions of the DAIDS Policy Implementation Program (DPIP). The target population is classified as Extramural Researchers (ERs), who are recipients of funding from DAIDS to conduct and review research. This target population is comprised of Site Leaders of Clinical Research Sites (CRSs) and Research Networks and Clinical Site Monitors of the CTUs and CRSs. The researchers are located globally, and may be part of more than one DAIDS funded research study and/or network. The DPIP is built upon four goals of awareness and accessibility, understandability, applicability, and harmonization of the policies and procedures. The review is to determine DPIP's progression to fulfillment of its program goals. The results of the review will provide DAIDS' Policy, Training, and Quality Assurance Branch (PTQAB) with information to guide optimal deployment of clinical research policies and procedures intended to harmonize, standardize and improve DAIDS funded/sponsored research. The program review will help derive an understanding of whether the DPIP program is implemented and functioning as intended to meet its program goals. *Collection/Frequency of Response*: Web-based survey; annually (once a year). Focus Group; one time. *Affected Public:* Extramural Researchers. *Type of Respondents:* Adult professionals.

The annual reporting burden is provided in the following table:

| Type of respondents | Number of respondents | Data collection instrument | Frequency of response | Average time per response | Annual hour burden |
|---|---|---|---|---|---|
| Extramural Researchers | 392 | Survey | 3 | 1.0 | 392 |
| | | Focus Groups | 1 | 2.0 | 261 |
| Totals | 392 | | | | 653 |

There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

*Request for Comments:* Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriated automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**FOR FURTHER INFORMATION CONTACT:** Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Ms. Dione Washington, Policy, Training, and Quality Assurance Branch, National Institute of Allergy and Infectious Diseases, NIH, 6700B Rockledge Drive, MSC 7620 Bethesda, MD 20892–7620 United States of America; or e-mail your request, including your address to: *washingtondi@niaid.nih.gov*.

*Comments Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: September 24, 2009.

**Judith Brooks,**

*Branch Chief, Policy, Training, and Quality Assurance Branch, NIAID, National Institutes of Health.*

[FR Doc. E9–23784 Filed 10–1–09; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Child Health and Human Development Submission for OMB Review; Comment Request; NEXT Generation Health Study; Correction Notice

**SUMMARY:** The National Institutes of Health is publishing this notice again to correct the errant data that appeared in Table 1 and Table 2 of the notice, as previously published in the **Federal Register**, September 24, 2009 (74 FR 48747–48749). The data in Table 1 and Table 2 of this notice are correct.

Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institute of Child Health and Human Development (NICHD), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on July 17, 2009, Volume 74, Number 136, pages 34760–34761 and allowed 60-days for public comment. Two public comments were received. One questioned the value of this study and suggested that the study could not possibly be completed within the stated cost estimates. We have always conducted extremely efficient studies within stated cost estimates. The value of this research is demonstrated by the involvement of multiple government agencies. The second e-mail simply expressed interest in more information. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

*Proposed Collection*

*Title:* NEXT Generation Health Study.

*Type of Information Collection Request:* New.

*Need and Use of Information Collection:* The goal of this research is to obtain data on adolescent health and health behaviors annually for four years beginning in the 2009–2010 school year from a national probability sample of adolescents. This information will enable the improvement of health services and programs for youth. The study will provide needed information about the health of U.S. adolescents.

The study will collect information on adolescent health behaviors and social and environmental contexts for these behaviors annually for four years beginning in the 2009–2010 school year. Self-report of health status, health behaviors, and health attitudes will be collected by in-school and online surveys. Anthropometric data, genetic information, and neighborhood characteristics will be gathered on all participants as well. The study will also incorporate a School Administrator Survey and other data files to obtain related information on school-level health programs and community-level contextual data. A representative subsample of overweight and normal weight adolescents will be identified and additional data on behavioral risk factors and biological markers and risk factors will be gathered on these adolescents.

TABLE 1—ANNUAL BURDEN FOR AFFECTED PUBLIC: SCHOOL-AGE CHILDREN, PARENTS AND SCHOOL ADMINISTRATORS

| Type of respondents | Estimated number of respondents | Estimated number of responses per respondent | Average burden hours per response | Estimated total annual burden hours requested |
|---|---|---|---|---|
| Adolescents | 2,700 | 1 | 0.75 | 2,025 |
| Adolescents with additional assessments | 750 | 1 | 2.5 | 1,875 |
| Parents | 750 | 1 | 0.17 | 128 |
| School Administrators | 80 | 1 | 0.33 | 26 |

The estimated annualized cost to respondents is $3,911 (Table 2). These costs were estimated for the 2009/2010 survey year only, not the entire duration of the project; annualized over the entire duration of the project, these costs would be reduced to $1,761. These estimates were calculated using 2008 Department of Labor figures for wages of principals in high schools (grades 9 and 10) and of average wage and salaried employees, and assuming an annual increase of 3.75%, 50-week contract, and 40-hour week.

TABLE 2—ANNUAL COST TO RESPONDENTS—2009/2010 SURVEY YEAR ONLY

| Type of respondents | Estimated total annual burden hours requested | Estimated annual earnings during survey | Average hourly earnings (with rounding) | Estimated cost during survey year |
|---|---|---|---|---|
| Adolescents | 2,025 | $0.00 | $0.00 | $0.00 |
| Adolescents with additional assessments | 1,875 | 0.00 | 0.00 | 0.00 |
| Parents | 128 | 42,270 | 21.93 | 2,807 |
| School Administrators | 26 | 84,913 | 42.46 | 1,104 |

There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

No direct costs to the respondents themselves or to participating schools are anticipated.

*Request for Comments:* Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**FOR FURTHER INFORMATION CONTACT:** Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. To request more information on the proposed project or

to obtain a copy of the data collection plans and instruments, contact Dr. Ronald Iannotti, Prevention Research Branch, Division of Epidemiology, Statistics, and Prevention Research, Eunice Kennedy Shriver National Institute of Child Health and Human Development, Building 6100, 7B05, 9000 Rockville Pike, Bethesda, Maryland, 20892–7510, or call non-toll free number (301) 435–6951 or E-mail your request, including your address to *ri25j@nih.gov*.

*Comments Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: September 28, 2009.

**Sarah Glavin,**

*Project Clearance Liaison, NICHD, National Institutes of Health.*

[FR Doc. E9–23782 Filed 10–1–09; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifier: CMS–10299]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* State Plan Amendment Template for the Option to Cover Certain Children and Pregnant Women Lawfully residing in U.S.; *Use:* This new option for State Medicaid and Children Health Insurance Programs (CHIP) was provided by section 214 of the Children's Health Insurance Program Reauthorization Act of 2009, Public Law 111–3, which amends section 1902 of the Social Security Act. To select this option, a State Medicaid or CHIP agency will complete a template page and submit it for approval as part of their State Plan. *Form Number:* CMS–10299 (OMB#: 0938–NEW); *Frequency:* Reporting—Once and occasionally; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 51; *Total Annual Responses:* 51; *Total Annual Hours:* 51. (For policy questions regarding this collection contact Bob Tomlinson at 410–786–5907. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by *December 1, 2009:*

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov*. Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: September 25, 2009.

**Michelle Shortt,**

*Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. E9–23811 Filed 10–1–09; 8:45 am]

BILLING CODE 4120–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

**AGENCY:** Substance Abuse and Mental Health Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories currently certified to meet the standards of subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908), on September 30, 1997 (62 FR 51118), and on April 13, 2004 (69 FR 19644).

A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://www.workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mrs. Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, Room 2–1042, One Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

**SUPPLEMENTARY INFORMATION:** The Mandatory Guidelines were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Mandatory Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards that laboratories must meet in order to conduct drug and specimen validity tests on urine specimens for Federal agencies. To become certified, an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that

certification, a laboratory must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A laboratory must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with subpart C of the Mandatory Guidelines dated April 13, 2004 (69 FR 19644), the following laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227. 414–328–7840/800–877–7016. (*Formerly:* Bayshore Clinical Laboratory).

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624. 585–429–2264.

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118. 901–794–5770/888–290–1150.

Aegis Analytical Laboratories, 345 Hill Ave., Nashville, TN 37210. 615–255–2400. (*Formerly:* Aegis Sciences Corporation, Aegis Analytical Laboratories, Inc.)

Baptist Medical Center-Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299. 501–202–2783. (*Formerly:* Forensic Toxicology Laboratory Baptist Medical Center).

Clendo Reference Laboratory, Avenue Santa Cruz #58, Bayamon, Puerto Rico 00959. 787–620–9095.

Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802. 800–445–6917.

Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602. 229–671–2281.

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974. 215–674–9310.

DynaLIFE Dx,* 10150–102 St., Suite 200, Edmonton, Alberta, Canada T5J 5E2. 780–451–3702/800–661–9876. (*Formerly:* Dynacare Kasper Medical Laboratories).

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655. 662–236–2609.

Gamma-Dynacare Medical Laboratories,* A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall Street, London, ONT, Canada N6A 1P4. 519–679–1630.

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053. 504–361–8989/800–433–3823. (*Formerly:* Laboratory Specialists, Inc.)

Kroll Laboratory Specialists, Inc., 450 Southlake Blvd., Richmond, VA 23236. 804–378–9130. (*Formerly:* Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040. 713–856–8288/800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869. 908–526–2400/800–437–4986. *(Formerly:* Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709. 919–572–6900/800–833–3984. (*Formerly:* LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group).

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671. 866–827–8042/800–233–6339. (*Formerly:* LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center).

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219. 913–888–3927/800–873–8845. (*Formerly:* Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.).

Maxxam Analytics,* 6740 Campobello Road, Mississauga, ON. Canada L5N 2L8. 905–817–5700. (*Formerly:* Maxxam Analytics Inc., NOVAMANN (Ontario), Inc.)

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112. 651–636–7466/800–832–3244.

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232. 503–413–5295/800–950–5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417. 612–725–2088.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304. 661–322–4250/800–350–3515.

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504. 888–747–3774. (*Formerly:* University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory).

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311. 800–328–6942. (*Formerly:* Centinela Hospital Airport Toxicology Laboratory).

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204. 509–755–8991/800–541–7891x7.

Phamatech, Inc., 10151 Barnes Canyon Road, San Diego, CA 92121. 858–643–5555.

Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340. 770–452–1590/800–729–6432. (*Formerly:* SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403. 610–631–4600/877–642–2216. (*Formerly:* SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405. 866–370–6699/818–989–2521. (*Formerly:* SmithKline Beecham Clinical Laboratories).

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109. 505–727–6300/800–999–5227.

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601. 574–234–4176 x276.

Southwest Laboratories, 4625 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040. 602–438–8507/800–279–0027.

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101. 405–272–7052.

Sterling Reference Laboratories, 2617 East L Street, Tacoma, Washington 98421. 800–442–0438.

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203. 573–882–1273.

Toxicology Testing Service, Inc., 5426 NW. 79th Ave., Miami, FL 33166. 305–593–2260.

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235. 301–677–7085.

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility

for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 13, 2004 (69 FR 19644). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

**Elaine Parry,**

*Director, Office of Program Services, SAMHSA.*

[FR Doc. E9–23675 Filed 10–1–09; 8:45 am]

**BILLING CODE 4160–20–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Office of AIDS Research Advisory Council.

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.

*Name of Committee:* Office of AIDS Research Advisory Council.

*Date:* November 5, 2009.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* The topic of the meeting will be ''Opportunities for Research Collaborations on HIV-Associated Comorbidities, Coinfections, and Complications.'' An update also will be provided on the OARAC Working Groups for HIV Treatment and Prevention Guidelines.

*Place:* National Institutes of Health, 5635 Fishers Lane, Suite 4000, Rockville, MD 20852.

*Contact Person:* Christina Brackna, Coordinator, Program Planning and Analysis, Office of AIDS Research, Office of the Director, NIH, 5635 Fishers Lane MSC 9310, Suite 4000, Rockville, MD 20852, (301) 402–8655, *cm53v@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.

Information is also available on the Institute's/Center's home page: *http://www.oar.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: September 25, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–23721 Filed 10–1–09; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Conference Grant Review Panel.

*Date:* November 11, 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, (Virtual Meeting).

*Contact Person:* Alan L. Willard, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, Msc 9529, Bethesda, MD 20892–9529, (301) 496–5390, *willarda@ninds.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: September 25, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–23715 Filed 10–1–09; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Cancer Drug Development and Therapeutics, SBIRISTTR.

*Date:* November 2–3, 2009.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.,

*Place:* Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Hungyi Shau, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6186, MSC 7804, Bethesda, MD 20892, 301–435–1720, *shauhung@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Computational Modeling and Sciences for Biomedical and Clinical Applications.

*Date:* November 2, 2009.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.,

*Place:* The Allerton Hotel, 701 North Michigan Avenue, Chicago, IL 60611.

*Contact Person:* Guo Feng Xu, PhD, Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, 301–435–1032, *xuguofen@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Clinical Neurophysiology, Devices, Auditory Devices and Neuroprosthesis Small Business.
*Date:* November 2–3, 2009.
*Time:* 8 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Mayflower Park Hotel, 405 Olive Way, Seattle, WA 98101.
*Contact Person:* Keith Crutcher, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, MSC 7846, Bethesda, MD 20892, 301–435–1278, *crutcherka@csr.nih gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Fellowships: Physiology and Pathobiology of Cardiovascular and Respiratory Systems.
*Date:* November 3, 2009.
*Time:* 8 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* The Ritz-Carlton, Washington, DC, 1150 22nd Street, NW., Washington, DC 20037.
*Contact Person:* Abdelouahab Aitouche, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4222, MSC 7812, Bethesda, MD 20892, 301–435–2365, *aitouchea@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; High End X-Ray.
*Date:* November 3–6, 2009.
*Time:* 8 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
*Contact Person:* Nitsa Rosenzweig, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1102, MSC 7760, Bethesda, MD 20892, (301) 435–1747, *rosenzweign@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; BMIT/CMIP/MEDI/Member Conflict Review.
*Date:* November 3, 2009.
*Time:* 8:30 a.m. to 2 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* The Allerton Hotel Chicago, 701 North Michigan Avenue, Chicago, IL 60611.
*Contact Person:* Weihua Luo, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, (301) 435–1170, *luow@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Fellowships: Physiology and Pathobiology of Musculoskeletal, Oral, and Skin Systems.
*Date:* November 4, 2009.
*Time:* 8 a.m. to 4 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* The Ritz-Carlton, Washington, DC, 1150 22nd Street, NW., Washington, DC 20037.
*Contact Person:* Abdelouahab Aitouche, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4222, MSC 7812, Bethesda, MD 20892, 301–435–2365, *aitouchea@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; RFA–OD–09–008 BRDG–SPAN and RFA–OD–09–009 Catalyst ARRA, Review Panel 15.
*Date:* November 4, 2009.
*Time:* 8 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
*Contact Person:* Antonio Sastre, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5215, MSC 7412, Bethesda, MD 20892, 301–435–2592, *sastrea@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; DNDA Diversity Predoctoral Fellowships Review.
*Date:* November 4, 2009.
*Time:* 8 a.m. to 6 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* The Ritz Carlton, Washington DC, 1150 22nd Street, NW., Washington, DC 20037.
*Contact Person:* Paek-Gyu Lee, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4201, MSC 7812, Bethesda, MD 20892, (301) 435–1277, *leepg@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Non-HIV Anti-Infective Therapeutics.
*Date:* November 4–5, 2009.
*Time:* 8:30 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.
*Contact Person:* Rossana Berti, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3191, MSC 7846, Bethesda, MD 20892, 301–402–6411, *bertiros@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; High End NMR Instrumentation.
*Date:* November 4–6, 2009.
*Time:* 10 a.m. to 1 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
*Contact Person:* James W. Mack, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435–2037, *mackj2@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Fellowship: Neurodevelopment, Synaptic Plasticity and, Neurodegeneration.
*Date:* November 5–6, 2009.
*Time:* 8 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* The Westin St. Francis, 355 Powell Street, San Francisco, CA 94102.
*Contact Person:* Vilen A. Movsesyan, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040M, MSC 7806, Bethesda, MD 20892, 301–402–7278, *movsesyanv@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Fellowships: Brain Disorders and Related Neuroscience.
*Date:* November 5–6, 2009.
*Time:* 8 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Ritz Carlton Hotel, Washington DC, 1150 22nd Street, NW., Washington, DC 20037.
*Contact Person:* Yvonne Bennett, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5199, MSC 7846, Bethesda, MD 20892, 301–435–1121, *bennetty@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Fellowship: Genes, Genomes, and Genetics.
*Date:* November 5, 2009.
*Time:* 8 a.m. to 6 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA 94102.
*Contact Person:* Michael A. Marino, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2216, MSC 7890, Bethesda, MD 20892, (301) 435–0601, *marinomi@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; F05 Fellowship.
*Date:* November 5–6, 2009.
*Time:* 8 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA 94102.
*Contact Person:* Alessandra M. Bini, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, 301–435–1024, *binia@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Healthcare Delivery and Methodologies.
*Date:* November 5–6, 2009.
*Time:* 8:30 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Hotel Monaco Alexandria, 480 King Street, Alexandria, VA 22314.
*Contact Person:* Karin F. Helmers, PhD, Scientific Review Officer Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892, 301–435–1017, *helmersk@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Devices and Detection Systems.
*Date:* November 5–6, 2009.
*Time:* 8:30 a.m. to 4 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Hyatt Arlington, 1325 Wilson Boulevard, Arlington, VA 22209.
*Contact Person:* Marc Rigas, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7849, Bethesda, MD 20892, 301–402–1074, *rigasm@mail.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; F07 Immunology Fellowship AREA.
*Date:* November 5, 2009.
*Time:* 8:30 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Residence Inn, 735 Wisconsin Avenue, Bethesda, MD 20814.
*Contact Person:* Betty Hayden, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, 301–435–1223, *haydenb@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Health Literacy.
*Date:* November 5–6, 2009.
*Time:* 6 p.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Palomar Hotel, 2121 P Street, NW., Washington, DC 20037.
*Contact Person:* Karen Lechter, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3128, MSC 7759, Bethesda, MD 20892, 301–496–0726, *lechterk@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Brain Hormones and Puberty.
*Date:* November 6, 2009.
*Time:* 8 a.m. to 5:30 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:* Syed M. Amir, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6172, MSC 7892, Bethesda, MD 20892, 301–435–1043, *amirs@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Rehabilitation Sciences.
*Date:* November 6, 2009.
*Time:* 8 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.
*Contact Person:* Jo Pelham, BA, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, (301) 435–1786, *pelhamj@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 25, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–23722 Filed 10–1–09; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; MEDI Overflow.
*Date:* October 5, 2009.
*Time:* 11 a.m. to 12 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Four Points by Sheraton Washington DC Downtown, 1201 K Street, NW., Washington, DC 20005.
*Contact Person:* Xiang-Ning Li, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217, MSC 7854, Bethesda, MD 20892, 301–435–1744, *lixiang@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; ARRA Competitive Revisions in Genetics.
*Date:* October 9, 2009.
*Time:* 3 p.m. to 4 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* InterContinental Chicago Hotel, 505 North Michigan Avenue, Chicago, IL 60611.
*Contact Person:* Cheryl M. Corsaro, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, (301) 435–1045, *corsaroc@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93893, National Institutes of Health, HHS)

Dated: September 25, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–23724 Filed 10–1–09; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Advisory Committee on Research on Women's Health.

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.

*Name of Committee:* Advisory Committee on Research on Women's Health.
*Date:* October 14, 2009.
*Time:* 9 a.m. to 12 p.m.
*Agenda:* To provide advice to the ORWH on appropriate research activities with respect to women's health and related studies to be undertaken by the national research institutes; to provide recommendations regarding ORWH activities; to meet the mandates of the office; and for discussion of scientific issues.
*Place:* Westin Michigan Avenue, 909 North Michigan Avenue, Governor's Room, Chicago, IL 60611.
*Contact Person:* Joyce Rudick, Director, Programs & Management, Office of Research on Women's Health, Office of the Director, National Institutes of Health, Building 1, Room 201, Bethesda, MD 20892, 301/402–1770.

Information is also available on the Institute's/Center's home page: *http://www4.od.nih.gov/orwh/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research

Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: September 28, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–23788 Filed 10–1–09; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Nursing Research Special Emphasis Panel; NINR National Research Service Award.

*Date:* October 16, 2009.

*Time:* 1 p.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Contact Person:* Weiqun Li, MD, Scientific Review Administrator, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Blvd., Ste. 710, Bethesda, MD 20892, (301) 594–5966, *wli@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.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: September 28, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–23787 Filed 10–1–09; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Nursing Research Initial Review Group.

*Date:* October 15–16, 2009.

*Time:* 8 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Contact Person:* Weiqun Li, MD, Scientific Review Officer, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Blvd., Ste. 710, Bethesda, MD 20892, (301) 594–5966, *wli@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: September 28, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–23786 Filed 10–1–09; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), 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 Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders B.

*Date:* October 29–30, 2009.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Allerton Hotel Chicago, 601 North Michigan Ave., Chicago, IL 60611.

*Contact Person:* Ernest W Lyons, PhD, Scientific Review Officer, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–4056.

*Name of Committee:* National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders K.

*Date:* November 2–3, 2009.

*Time:* 8 a.m. to 1 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

*Contact Person:* Shanta Rajaram, PhD, Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, Ninds/Nih/Dhhs/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20852, (301) 435–6033, *rajarams@mail.nih.gov.*

*Name of Committee:* National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders A.

*Date:* November 4, 2009.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.

*Contact Person:* Richard D. Crosland, PhD, Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

*Name of Committee:* Neurological Sciences Training Initial Review Group, NST–2 Subcommittee.

*Date:* November 16–17, 2009.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

*Contact Person:* Joann Mcconnell, PhD, Scientific Review Officer, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892, (301) 496–5324, *mcconnej@ninds.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the

Neurosciences, National Institutes of Health, HHS)

Dated: September 28, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–23785 Filed 10–1–09; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Toxicology Program (NTP); Office of Liaison, Policy and Review; Meeting of the NTP Board of Scientific Counselors Technical Reports Review Subcommittee

**AGENCY:** National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH).

**ACTION:** Meeting announcement and request for comments.

**SUMMARY:** Pursuant to Public Law 92–463, notice is hereby given of a meeting of the NTP Board of Scientific Counselors (BSC) Technical Reports Review Subcommittee (TRR Subcommittee). The primary agenda topic is the peer review of the findings and conclusions presented in six draft NTP Technical Reports of rodent toxicology and carcinogenicity studies in conventional rats and mice. The TRR Subcommittee meeting is open to the public with time scheduled for oral public comment. The NTP also invites written comments on the draft reports (see ''Request for Comments'' below). The TRR Subcommittee deliberations on the draft reports will be reported to the NTP BSC at a future meeting.

**DATES:** The TRR Subcommittee meeting will be held on November 19, 2009. All individuals who plan to attend are encouraged to register online by November 12, 2009, at the NTP Web site (*http://ntp.niehs.nih.gov/go/15833*). The draft reports should be posted by COB October 13, 2009. Written comments on the draft reports should be received by November 5, 2009. Persons needing interpreting services in order to attend should contact 301–402–8180 (voice) or 301–435–1908 (TTY). For other accommodations while on the NIEHS campus, contact 919–541–2475 or e-mail *niehsoeeo@niehs.nih.gov.* Requests should be made at least 7 days in advance of the event.

**ADDRESSES:** The TRR Subcommittee meeting will be held in the Rodbell Auditorium, Rall Building at the NIEHS, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709. Public comments and any other correspondence should be submitted to Dr. Barbara Shane, Executive Secretary for the NTP BSC (NTP Office of Liaison, Policy and Review, NIEHS, P.O. Box 12233, MD K2–03, Research Triangle Park, NC 27709; courier address: Room 2138, 530 Davis Drive, Morrisville, NC 27560; telephone: 919–541–4253, fax: 919–541–0295; or e-mail: *shane@niehs.nih.gov*).

**SUPPLEMENTARY INFORMATION:**

#### Background

The primary agenda topic is the peer review of the findings and conclusions of six draft NTP Technical Reports of rodent toxicology and carcinogenicity studies (see ''PRELIMINARY AGENDA'' below).

#### Attendance and Registration

The meeting is scheduled for November 19, 2009, from 8:30 a.m. to adjournment and is open to the public with attendance limited only by the space available. Individuals who plan to attend are encouraged to register online at the NTP Web site (*http://ntp.niehs.nih.gov/go/15833*) by November 12, 2009, to facilitate access to the NIEHS campus. A photo ID is required to access the NIEHS campus. The NTP is making plans to videocast the meeting through the Internet at *http://www.niehs.nih.gov/news/video/live.*

#### Availability of Meeting Materials

A copy of the preliminary agenda, committee roster, and any additional information, when available, will be posted on the NTP Web site (*http://ntp.niehs.nih.gov/go/15833*) or may be requested in hardcopy from the Executive Secretary (see **ADDRESSES** above). The draft reports should be posted on the NTP Web site by October 13, 2009. Following the meeting, summary minutes will be prepared and made available on the NTP Web site.

#### Request for Comments

The NTP invites written comments on the draft reports, which should be received by November 5, 2009, to enable review by the TRR Subcommittee and NTP staff prior to the meeting. Persons submitting written comments should include their name, affiliation, mailing address, phone, e-mail, and sponsoring organization (if any) with the document. Written comments received in response to this notice will be posted on the NTP Web site, and the submitter will be identified by name, affiliation, and/or sponsoring organization.

Public input at this meeting is also invited and time is set aside for the presentation of oral comments on the draft reports. Each organization is allowed one time slot per draft report. At least 7 minutes will be allotted to each speaker, and if time permits, may be extended to 10 minutes at the discretion of the chair. Persons wishing to make an oral presentation are asked to notify Dr. Barbara Shane via online registration at *http://ntp.niehs.nih.gov/go/15833,* phone, or e-mail (see **ADDRESSES** above) by November 12, 2009, and if possible, to send a copy of the statement or talking points at that time. Written statements can supplement and may expand the oral presentation. Registration for oral comments will also be available at the meeting, although time allowed for presentation by on-site registrants may be less than that for pre-registered speakers and will be determined by the number of persons who register on-site.

#### Background Information on the NTP Board of Scientific Counselors

The BSC is a technical advisory body comprised of scientists from the public and private sectors who provide primary scientific oversight to the NTP. Specifically, the BSC advises the NTP on matters of scientific program content, both present and future, and conducts periodic review of the program for the purposes of determining and advising on the scientific merit of its activities and their overall scientific quality. The TRR Subcommittee is a standing subcommittee of the BSC. BSC members are selected from recognized authorities knowledgeable in fields such as toxicology, pharmacology, pathology, biochemistry, epidemiology, risk assessment, carcinogenesis, mutagenesis, molecular biology, behavioral toxicology and neurotoxicology, immunotoxicology, reproductive toxicology or teratology, and biostatistics. Its members are invited to serve overlapping terms of up to four years. BSC and TRR Subcommittee meetings are held annually or biannually.

Dated: September 23, 2009.

**John R. Bucher,**

*Associate Director, National Toxicology Program.*

#### Preliminary Agenda

#### NTP Board of Scientific Counselors

#### Technical Reports Review Subcommittee Meeting

**November 19, 2009**

**National Institute of Environmental Health Sciences**

**Rodbell Auditorium, Rall Building**

**111 T.W. Alexander Drive, Research Triangle Park, NC**

**Technical Reports (TR) Scheduled for Review**

- TR 564 1–Bromopropane (CASRN 106–94–5)
  - Previously used as an intermediate in the production of pesticides, quaternary ammonium compounds, flavors, and fragrances. Introduced as a less toxic replacement for methylene chloride in emissive applications such as vapor and immersion degreasing operations and critical cleaning of electronics and metals. Used as a relatively nonflammable, nontoxic, fast-drying, and inexpensive solvent for adhesive resins, and as a replacement for ozone-depleting refrigerants.
- TR 565 Milk Thistle Extract (CASRN 84604–20–6)
  - Milk thistle extracts are used as herbal medicines to treat a variety of diseases (*e.g.,* liver disease) and as a food additive.
- TR 566 Diethylamine (CASRN 109–89–7)
  - Used mainly as a chemical intermediate to produce the corrosion inhibitor, *N,N*-diethylethanolamine, and to lesser extent to produce pesticides, insect repellants, pharmaceuticals, and rubber processing chemicals.
- TR 567 Ginseng (CASRN 50647–08–0)
  - Ginseng is a perennial aromatic herb widely used in herbal remedies for enhancing stamina and endurance for mental and physical performance.
- TR 563 Pulegone (CASRN 89–82–7)
  - Several essential oils that contain pulegone are used for flavoring foods, drinks, and dental products, as fragrance agents, and in herbal medicines.
- TR 536 Bis(2-chloroethoxy) methane (CASRN 111–91–1)
  - Used as a solvent and as the starting agent in the production of fungicides and polysulfide polymers.

[FR Doc. E9–23781 Filed 10–1–09; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2009–N–0664]**

### Oncologic Drugs Advisory Committee; Cancellation

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The meeting of the Oncologic Drugs Advisory Committee scheduled for October 6, 2009, is cancelled. This meeting was announced in the **Federal Register** of August 25, 2009 (74 FR 42907). The October 6, 2009, Oncologic Drugs Advisory Committee meeting was to discuss ApoPharma, Inc.'s new drug application (NDA) 021–825 for proposed trade name FERRIPROX (deferiprone) film-coated tablets. This meeting has been cancelled to allow time for FDA to review and resolve several outstanding issues. The agency intends to continue evaluating NDA 021–825 and, as needed, may schedule an advisory committee meeting in the future.

**FOR FURTHER INFORMATION CONTACT:** Nicole Vesely, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–6793, FAX: 301–827–6776, e-mail: *nicole.vesely@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512542. Please call the Information Line for up-to-date information on this meeting.

Dated: September 28, 2009.

**David Horowitz,**

*Assistant Commissioner for Policy.*

[FR Doc. E9–23764 Filed 10–1–09; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Special Conflict.

*Date:* October 15, 2009.

*Time:* 1 p.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

*Contact Person:* Russell T. Dowell, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, MSC 7814, Bethesda, MD 20892. (301) 435–1850. *dowellr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Psychopathology and Adult Disorders.

*Date:* October 29, 2009.

*Time:* 8 a.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Parc 55 Hotel, 55 Cyril Magnin Street, Market at Fifth, San Francisco, CA 94102.

*Contact Person:* Biao Tian, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3089B, MSC 7848, Bethesda, MD 20892. (301) 402–4411. *tianbi@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Technological Innovations for Interdisciplinary Research.

*Date:* October 29, 2009.

*Time:* 3 p.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Parc 55 Hotel, 55 Cyril Magnin Street, Market at Fifth, San Francisco, CA 94102.

*Contact Person:* Biao Tian, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3089B, MSC 7848, Bethesda, MD 20892. (301) 402–4411. *tianbi@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Science Education, Communication and Childhood Disorders.

*Date:* October 30, 2009.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Parc 55 Hotel, 55 Cyril Magnin Street, Market at Fifth, San Francisco, CA 94102.

*Contact Person:* Biao Tian, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge

Drive, Room 3089B, MSC 7848, Bethesda, MD 20892. (301) 402–4411. *tianbi@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 25, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–23719 Filed 10–1–09; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Meeting of the AHRQ National Advisory Council for Healthcare Research and Quality Subcommittee on Patient Safety and Medical Liability Reform Demonstrations

**AGENCY:** Agency for Healthcare Research and Quality (AHRQ), HHS.

**ACTION:** Notice of public meeting.

**SUMMARY:** This notice announces a meeting of the National Advisory Council for Healthcare Research and Quality Subcommittee on Patient Safety and Medical Liability Reform Demonstrations.

**DATES:** The meeting will be held in October; specific information will be available on the AHRQ Web site at *http://www.AHRQ.gov.*

**ADDRESSES:** To be determined; in Washington, DC Metro area; specific information will be available at *http://www.AHRQ.gov.*

**FOR FURTHER INFORMATION CONTACT:** Christine Williams, Director for Strategic Partnerships, Agency for Healthcare Research and Quality, 540 Gaither Road, Rockville, Maryland 20850, (301) 427–1850.

*For press-related information, please contact:* Karen Migdail at (301) 427–1855.

*If sign language interpretation or other reasonable accommodation for a disability is needed, please contact:* Mr. Michael Chew, Director, Office of Equal Employment Opportunity Program, Program Support Center, (301) 443–1144 (no later than October 15, 2009).

**SUPPLEMENTARY INFORMATION:**

**I. Purpose**

The National Advisory Council for Healthcare Research and Quality was established in accordance with Section 921 (now Section 931) of the Public Health Service Act, 42 U.S.C. 299c. In accordance with its statutory mandate, the Council is to advise the Secretary of the Department of Health and Human Services and the Director, Agency for Healthcare Research and Quality (AHRQ), on matters related to actions of AHRQ to enhance the quality, and improve the outcomes, of health care services; improve access to such services through scientific research; and promote improvements in clinical practice and in the organization, financing, and delivery of health care services.

The Council is composed of members of the public, appointed by the Secretary, and Federal ex-officio members. AHRQ's National Advisory Council on Healthcare Research and Quality (NAC) will establish a Subcommittee on Patient Safety and Medical Liability Reform Demonstrations.

The Subcommittee will be created to provide advice to the NAC for consideration and transmission to AHRQ as AHRQ undertakes the development of a new demonstration initiative that will help States and health care systems to test models that put patient safety first and work to reduce preventable injuries, foster better communication between doctors and their patients, ensure that patients are compensated in a fair and timely manner for medical injuries, while reducing the incidence of frivolous lawsuits; and reduce liability premiums.

As directed by President Obama, the Secretary of the Department of Health and Human Services (HHS) will launch a competitive three-pronged initiative that will include support for demonstration grants to States and health systems, planning grants to States and health systems, and a rapid and comprehensive review of current efforts, targeting patient safety and medical liability. Prior to finalizing the Funding Opportunity Announcement for this new initiative, the chairman of AHRQ's National Advisory Council will convene a subcommittee with diverse representation from expert and stakeholder groups to provide advice for this initiative. The date, time, location and agenda for the subcommittee meeting, which will be open to the public, will be available on the AHRQ Web site no later than two weeks in advance of such meeting. Members of the public will have the opportunity to submit comments to the subcommittee in person or in writing, and can participate in the meeting in person or via Web casting. The subcommittee will not review individual grants nor participate in award decisions.

A roster of the Subcommittee members will be available at *http://www.AHRQ.gov.*

A more specific proposed agenda will be available before the meeting at *http://www.AHRQ.gov.*

The final agenda, including the time for public comment during the meeting, will be available on the AHRQ Web site at *http://www.AHRQ.gov.* Public comments may also be submitted in writing by e-mail, fax, mail, or hand delivery. E-mails are preferred. Please submit comments to: *Medicalliabilitydemos@AHRQ.hhs.gov.* A comment submitted by e-mail should indicate that it is in response to ''Medical Liability Reform Demonstrations Subcommittee.'' The deadline for written comments will be posted on the AHRQ Web site. Meeting minutes will be available within 21 business days after the meeting.

Dated: September 24, 2009.

**Carolyn M. Clancy,**

*Director.*

[FR Doc. E9–23594 Filed 10–1–09; 8:45 am]

**BILLING CODE 4160–90–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Indian Health Service

### Privacy Act of 1974; Report of an Altered System of Records; Medical Staff Credentials and Privileges Records

**ACTION:** Notice; correction.

**SUMMARY:** The Indian Health Service published a document in the **Federal Register** (FR) on September 9, 2009. The document contained three errors.

**FOR FURTHER INFORMATION CONTACT:** Ms. Betty Gould, Regulations Officer, 801 Thompson Avenue, TMP, Suite 450, Rockville, MD 20852, Telephone (301) 443–7899. (This is not a toll-free number.)

**Correction**

In the **Federal Register** of September 9, 2009 in FR Doc. E9–21422, on page 46437, in the third column, tenth line, change IRS to IHS; on page 46438, in the first column, second line, change HH to HHS; and on page 46439, in the first column, 25th line *Records Source Categories*, change IRS to IHS.

Dated: September 29, 2009.

**Yvette Roubideaux,**

*Director, Indian Health Service.*

[FR Doc. E9–23837 Filed 10–1–09; 8:45 am]

**BILLING CODE 4165–16–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Agency Information Collection Activities: Guarantee of Payment

**AGENCY:** U.S. Customs and Border Protection (CBP), Department of Homeland Security.

**ACTION:** 60-Day Notice and request for comments; Revision of an existing collection of information: 1651–0127.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Guarantee of Payment (Form I–510). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

**DATES:** Written comments should be received on or before December 1, 2009, to be assured of consideration.

**ADDRESSES:** Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229–1177.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229–1177, at 202–325–0265.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

*Title:* Guarantee of Payment.

*OMB Number:* 1651–00127.

*Form Number:* Form I–510.

*Abstract:* The Form I–510 is executed upon the arrival of an alien crewman within the purview of section 253 of the Immigration and Nationality Act. The information is used by CBP to help ensure that expenses of caring for an alien crewman are reimbursed by the carrier.

*Current Actions:* CBP is proposing to extend this collection of information with no change to the burden hours.

*Type of Review:* Extension (without change).

*Affected Public:* Businesses.

*Estimated Number of Respondents:* 100.

*Estimated Number of Annual Responses per Respondent:* 1.

*Estimated Total Annual Responses:* 100.

*Estimated Time per Response:* 5 minutes.

*Estimated Total Annual Burden Hours:* 8.

Dated: September 29, 2009.

**Tracey Denning,**

*Agency Clearance Officer, Customs and Border Protection.*

[FR Doc. E9–23827 Filed 10–1–09; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5288–N–12]**

### Notice of Proposed Information Collection for Public Comment Enterprise Income Verification (EIV) System—Debts Owed to Public Housing Agencies & Terminations

**AGENCY:** Office of the Assistance Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice of proposed information collection.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* December 1, 2009.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and sent to: Lillian L. Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4178, Washington, DC 20410–5000; telephone 202.402.8048 (this is not a toll-free number) or e-mail Ms. Deitzer at *Lillian.L.Deitzer@hud.gov* for a copy of the proposed forms or other available information.

**FOR FURTHER INFORMATION CONTACT:** Dacia Rogers, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410; telephone 202 402–3374, for copies of other available documents (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The Department will submit the proposed information collection to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This notice also lists the following information:

*Title of Proposal:* Debts Owed to PHAs & Terminations.

*OMB Control Number:* 2577–XXXX (Pending).

*Description of the Need for the Information and Proposed Use:* In accordance with new regulatory requirements at 24 CFR 5.233,

published in the **Federal Register** on January 27, 2009 at 74 FR 4832, processing entities that administer the Public Housing, Section 8 Housing Choice Voucher, Moderate Rehabilitation programs are required to use HUD's Enterprise Income Verification (EIV) system to verify employment and income information of program participants and to reduce administrative and subsidy payment errors. The EIV system is a system of records owned by HUD, as published in the **Federal Register** on July 20, 2005 at 70 FR 41780 and updated on August 8, 2006 at 71 FR 45066.

The Department seeks to identify families who no longer participate in a HUD rental assistance program due to adverse termination of tenancy and/or assistance, and owe a debt to a Public Housing Agency (PHA). In accordance with 24 CFR 982.552 and 960.203, the PHA may deny admission to a program if the family is not suitable for tenancy for such reasons (but not limited to): unacceptable past performance in meeting financial obligations, history of criminal activity, eviction from Federally assisted housing in the last five years, family has committed fraud, bribery, or any other corrupt or criminal act in connection with a Federal housing program, or if a family currently owes rent or other amounts to the PHA or to another PHA in connection with a Federally assisted housing program under the U.S. Housing Act of 1937.

Within the scope of this new collection of information, HUD seeks to collect from all PHAs, the following information:

1. Amount of debt owed by a former tenant to a PHA;
2. If applicable, indication of executed repayment agreement;
3. If applicable, indication of bankruptcy filing;
4. If applicable, the reason for any adverse termination of the family from a Federally assisted housing program.

This information will be collected electronically from PHAs via HUD's EIV system. This information will be used by HUD to create a national repository of families that owe a debt to a PHA and/or have been terminated from a Federally assisted housing program. This national repository will be available within the EIV system for all PHAs to access during the time of application for rental assistance. PHAs will be able to access this information to determine a family's suitability for rental assistance, and avoid providing limited Federal housing assistance to families who have previously been unable to comply with HUD program requirements. If this information is not collected, the Department is at risk of paying limited Federal dollars on behalf of families who may not be eligible to receive rental housing assistance. Furthermore, if this information is not collected, the public will perceive that there are no consequences for a family's failure to comply with HUD program requirements.

*Agency Form Numbers:* N/A.

*Members of Affected Public:* State or Local Government; Public Housing Agencies (PHAs), Individuals or Households.

*Estimation of the Total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* 4,094 respondents; 356,270 average number of families annually, requiring monthly average of 29,689 responses; 0.08333 hours per response; 29,689.17 total burden hours.

*Status of the Proposed Information Collection:* New Request. Pending Authorization.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: September 24, 2009.

**Bessy Kong,**

*Deputy Assistant Secretary for Policy, Programs, and Legislative Initiatives.*

[FR Doc. E9–23846 Filed 10–1–09; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5280–N–38]**

### Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**DATES:** *Effective Date:* October 2, 2009.

**FOR FURTHER INFORMATION CONTACT:** Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7262, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

**SUPPLEMENTARY INFORMATION:** In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: September 24, 2009.

**Mark R. Johnston,**

*Deputy Assistant Secretary for Special Needs.*

[FR Doc. E9–23480 Filed 10–1–09; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5300–FA–28]**

### Announcement of Funding Awards for Fiscal Year 2009; Hispanic-Serving Institutions Assisting Communities Program

**AGENCY:** Office of the Assistant Secretary for Policy Development and Research, HUD.

**ACTION:** Announcement of funding awards.

**SUMMARY:** In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development (HUD) Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 2009 Hispanic-Serving Institutions Assisting Communities (HSIAC) Program. The purpose of this document is to announce the names, addresses and the amount awarded to the winners to be used to help Hispanic-Serving Institutions of Higher Education to expand their role and effectiveness in addressing community development needs in their localities, including neighborhood revitalization, housing and economic development, principally for persons of low- and moderate-income consistent with the purposes of Title I of the Housing and Community Development Act of 1974 as amended.

**FOR FURTHER INFORMATION CONTACT:** Susan Brunson, Office of University Partnerships, U.S. Department of Housing and Urban Development, Room 8226, 451 Seventh Street, SW., Washington, DC 20410, Telephone (202) 402–3852. To provide service for persons who are hearing-or-speech-impaired, this number may be reached via TTY by dialing the Federal Information Relay Service on (800) 877–8339 or (202) 708–1455. (Telephone

numbers, other than ''800'' TTY numbers, are not toll free.)

**SUPPLEMENTARY INFORMATION:** The Hispanic-Serving Institutions Assisting Communities Program was approved by Congress under the Appropriations Act, 2009 (Pub. L. 111–8, approved March 11, 2009) and is administered by the Office of University Partnerships under the Assistant Secretary for Policy Development and Research. In addition to this program, the Office of University Partnerships administers HUD's ongoing grant programs to institutions of higher education as well as creates initiatives through which colleges and universities can bring their traditional missions of teaching, research, service, and outreach to bear on the pressing local problems in their communities.

The HSIAC program provides funds for a wide range of CDBG-eligible activities including housing rehabilitation and financing, property demolition or acquisition, public facilities, economic development, business entrepreneurship, and fair housing programs.

The Catalog of Federal Domestic Assistance number for this program is 14.514.

On July 8, 2009, a Notice of Funding Availability (NOFA) for this program was posted on Grant.gov (Attachment 1) announcing the availability of approximately $6 million for funding grants under this program. The maximum amount an applicant can be awarded is $600,000 for a three-year (36 months) grant performance period. The Department reviewed, evaluated, and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the applications below, in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545). More information about the winners can be found at *http://www.oup.org*.

**List of Awardees for Grant Assistance Under the FY 2009 Hispanic-Serving Institutions Assisting Communities Program Funding Competition, by Institution, Address and Grant Amount**

*Region IV*

1. Conservatory of Music of Puerto Rico, Mara del Carmen, Conservatory of Music of Puerto Rico, 951 Ave Ponce de Le Pda 15 Miramar, San Juan, PR 00907–3373. Grant: $599,398.
2. SUAGM, Inc. dba Universidad del Turabo, Besty Vidal, SUAGM, Inc. dba Universidad del Turabo, State Road #189, KM 3.3, PO Box 3033, Gurabo, PR 00778–3030. Grant: $528,136.

*Region V*

3. Elgin Community College, Susan VanWeelden, Elgin Community College, 1700 Spartan Drive, Elgin, IL 60123. Grant: $600,000.

*Region VI*

4. Regents of NMSU–Dona Ana Community College, John Walker, Regents of NMSU–Dona Ana Community College, 3400 S. Espina, PO Box 30001, MSC 3DA, Las Cruces, NM 88003–0001. Grant: $600,000.
5. El Paso County Community College District, Alfred Lawrence, El Paso County Community College District, PO Box 20500, El Paso, TX 79998. Grant: $600,000.

*Region VIII*

6. Adams State College, Mary Hoffman, Adam State College, 208 Edgemont Street, Alamosa, CO 81102. Grant: $599,935.

*Region IX*

7. University Corporation at Monterey Bay, Seth Pollack, University Corporation at Monterey Bay, 100 Campus Center, Alumni & Visitor Center, Seaside, CA 93955. Grant: $599,298.
8. Woodbury University, Peter Arnold, Woodbury University, 7500 Glenoaks Boulevard, Burbank, CA 91510–7846. Grant: $600,000.

*Region X*

9. Heritage University, Ricardo Valdez, Heritage University, 3240 Fort Road, Toppenish, WA 98948. Grant: $599,975.
10. Columbia Basin College, Brett Riley, Columbia Basin College, 2600 N. 20th Avenue, Pasco, WA 99301. Grant: $600,000.

Dated: September 4, 2009.

**Raphael W. Bostic,**

*Assistant Secretary for Policy Development and Research.*

[FR Doc. E9–23843 Filed 10–1–09; 8:45 am]

BILLING CODE 4210–67–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5300–FA–30]**

## Announcement of Funding Awards for Fiscal Year 2009; Historically Black Colleges and Universities Program

**AGENCY:** Office of the Assistant Secretary for Policy Development and Research, HUD.

**ACTION:** Announcement of funding awards.

**SUMMARY:** In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development (HUD) Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year (FY) 2009 Historically Black Colleges and Universities Program. The purpose of this document is to announce the names, addresses and the amount awarded to the winners to be used to help Historically Black Colleges and Universities (HBCUs) expand their role and effectiveness in addressing community development needs in their localities, consistent with the purposes of Title I of the Housing and Development Act of 1974, as amended.

**FOR FURTHER INFORMATION CONTACT:** Susan Brunson, Office of University Partnerships, U.S. Department of Housing and Urban Development, Room 8226, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 402–3852. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TTY by dialing the Federal Information Relay Service on 800–877–8339 or 202–708–1455. (Telephone number, other than ''800'' TTY numbers are not toll free).

**SUPPLEMENTARY INFORMATION:** The Historically Black Colleges and Universities Program was approved by the Appropriations Act, 2009 (Pub. L. 111–8, approved March 11, 2009) and is administered by the Office of University Partnerships under the Office of the Assistant Secretary for Policy Development and Research. In addition to this program, the Office of University Partnerships administers HUD's ongoing grant programs to institutions of higher education as well as creates initiatives through which colleges and universities can bring their traditional missions of teaching, research, service, and outreach to bear on the pressing local problems in their communities.

The HBCU Program provides funds for a wide range of CDBG-eligible activities including housing rehabilitation, property demolition or acquisition, public facilities, economic development, business entrepreneurship, and fair housing programs.

The Catalog of Federal Domestic Assistance number for this program is 14.520.

On June 25, 2009, a Notice of Funding Availability (NOFA) was posted on Grants.gov announcing the availability of approximately $9 million for funding grants under this program. The maximum amount an applicant could be

awarded this year is $800,000 for a three-year (36 months) grant performance period.

The Department reviewed, evaluated, and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the applications below, in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545). More information about the winners can be found at *http://www.oup.org*.

**List of Awardees for Grant Assistance Under The FY 2009 Historically Black Colleges and Universities Program Funding Competition, by Institution, Address, and Grant Amount**

*Region III*

1. Howard University, Dr. Rodney D. Green, Howard University, 2400 Sixth Street, NW. Washington, DC 20059. Grant: $463,960.

*Region IV*

2. Winston-Salem State University, Ms. Valerie Howard, Winston-Salem State University, 601 South Martin Luther King, Jr. Drive, Winston-Salem, NC 27110. Grant: $724,687.
3. Elizabeth City State University, Morris Autry, Elizabeth City State University, 1704 Weeksville Road, Elizabeth City, NC 27909. Grant: $800,000.
4. Hinds Community College-Utica Campus, Bobby Pamplin, Hinds Community College-Utica Campus, 34175 Hwy 18 West, Utica MS 39175. Grant: $713,529.
5. Benedict College, Larry Salley, Benedict College, 1600 Harden Street, Columbia, SC, 29204–1086. Grant: $800,000.
6. South Carolina State University, Merylin Jackson, South Carolina State University, 300 College Street, Orangeburg, SC 29117. Grant: $800,000.
7. LeMoyne-Owen College, Jeffery Higgs, LeMoyne-Owen College, 802 Walker Avenue, Suite 5, Memphis, TN 38126. Grant: $800,000.
8. Tennessee State University, Ginger Hausser-Pepper, Tennessee State University, 3500 John A Merritt Blvd., Campus Box 9503, Nashville, TN 37209. Grant: $800,000.
9. University of the Virgin Islands, Kathleen Davison, University of the Virgin Islands, # 2 John Brewer's Bay, St Thomas, VI, 00802. Grant: $794,220.

*Region VI*

10. Southern University at New Orleans, Cynthia Beaulieu, Southern University at New Orleans, 6400 Press Drive, New Orleans, LA, 70126. Grant: $703,604.
11. Southern University at Shreveport, Janice Sneed, Southern University at Shreveport, 3050 Martin Luther King Drive, Shreveport, LA, 71107. Grant: $800,000.

*Region VI*

12. Langston University, Linda Tillman, Langston University, 4205 North Lincoln Blvd., Oklahoma City, OK, 73105. Grant: $800,000.

Dated: September 4, 2009.

**Raphael W. Bostic,**

*Assistant Secretary for Policy Development and Research.*

[FR Doc. E9–23845 Filed 10–1–09; 8:45 am]

BILLING CODE 4210–67–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R8–ES–2009–N158; 1112–0000–81420–F2]**

### Amendment to the Incidental Take Permit for the San Bruno Mountain Habitat Conservation Plan in San Mateo County, CA

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of finding of no significant impact (FONSI) and issuance of amended incidental take permit.

**SUMMARY:** On May 20, 2009, we, the U.S. Fish and Wildlife Service, made a FONSI determination for the action described in the final Environmental Assessment (EA) for the San Bruno Mountain Habitat Conservation Plan (HCP) Amendment. As authorized by the Endangered Species Act, as amended (Act), we issued an amended Incidental Take Permit to the Cities of Brisbane, South San Francisco, and Daly City, and the County of San Mateo, subject to certain conditions set forth in the permit.

**ADDRESSES:** Eric Tattersall, Deputy Assistant Field Supervisor, Conservation Planning and Recovery Division, or Mike Thomas, Conservation Planning Branch, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, CA 95825.

**FOR FURTHER INFORMATION CONTACT:** Additional information on this permit may be requested by contacting Eric Tattersall, Deputy Assistant Field Supervisor, Conservation Planning and Recovery Division, at the address shown above or at (916) 414–6600 (telephone). The final EA, Response to Comments, and FONSI are on the Service's Web site at *http://www.fws.gov/sacramento/es/hcp.htm.*

**SUPPLEMENTARY INFORMATION:** On April 15, 2008, we published a notice in the **Federal Register** (73 FR 20324) announcing the availability of an EA and amended HCP, and our receipt of an incidental take permit application from the City of Brisbane for an amendment to the San Bruno Mountain Habitat Conservation Plan, in San Mateo County, California. Pursuant to section 10(a)(1)(A) of the Act, the amended permit authorizes the incidental take of the federally endangered callippe silverspot butterfly (*Speyeria callippe callippe*) and federally threatened Bay checkerspot butterfly (*Euphydryas editha bayensis*) within the HCP's 228.3-acre Northeast Ridge (Administrative Parcel 1–07) and protected habitat (Conserved Habitat) area under the terms of the amended HCP. Incidental take of the two butterflies would be in connection with development activities on the Northeast Ridge and management and monitoring of Conserved Habitat currently held or that will be held in fee title by San Mateo County or the State of California and carried out under the San Bruno Mountain HCP. Incidental take of the Bay checkerspot butterfly is not expected to occur since the species has not been observed on San Bruno Mountain since the mid 1980s. However, if the Bay checkerspot butterfly is reintroduced to San Bruno Mountain or naturally recolonizes the area, incidental take resulting from monitoring and management of Conserved Habitat will be covered under the amended incidental take permit.

The amended HCP reduces the size of the Northeast Ridge development area and increases the size of Conserved Habitat. The amended HCP increases undisturbed Conserved Habitat by 20.36 acres, and increases total Conserved Habitat to 144.7 acres in the Northeast Ridge parcel. The reconfigured Conserved Habitat area preserves high quality butterfly habitat including hilltops (used as mating sites), topographic diversity, and a high density of callippe silverspot butterfly larval host plants. The amendment eliminates the Unit II–Neighborhood I subdivision (UII–NI) and increases the size of the Unit II–Neighborhood II subdivision (UII–NII). The reconfigured UII–NII is within an area that has generally lower value habitat (*i.e.,* lower density of larval host plants, fewer hilltops, and a 7.85-acre grove of

eucalyptus trees) than would have been disturbed by UII–NI. The increased development acreage in UII–NII would occur in the eucalyptus grove and areas previously proposed as revegetated areas.

Notice is hereby given that on May 20, 2009, the Proposed Action (Alternative 1) was selected and a FONSI determination was made for the action as described in the final EA for the San Bruno Mountain HCP Amendment. As authorized by the provisions of the Act (16 U.S.C. 1531 *et seq.*), we issued an amended permit (TE–215574–5) to the Cities of Brisbane, South San Francisco, and Daly City, and the County of San Mateo, subject to certain conditions set forth in the permit. The permit amendment was granted only after we determined it was applied for in good faith, that granting the permit amendment would not be to the disadvantage of the listed species, and that granting the permit amendment was consistent with the purposes and policy set forth in the Act.

**John Enbring,**

*Acting Deputy Regional Director, Pacific Southwest Region, Sacramento, California.*

[FR Doc. E9–23763 Filed 10–1–09; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLOR932000–L16100000–DF0000–LXSS062H0000; HAG 9–0209]**

### Notice of Availability of Draft Environmental Impact Statement for Vegetation Treatments Using Herbicides on Bureau of Land Management Lands, Oregon

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** In accordance with the National Environmental Policy Act of 1969 (NEPA), the Bureau of Land Management (BLM) has prepared a Draft Environmental Impact Statement (DEIS) for Vegetation Treatments Using Herbicides on BLM Lands in Oregon (Vegetation Treatments DEIS) and by this Notice is announcing the opening of the comment period.

**DATES:** To ensure comments will be considered, the BLM must receive written comments on the Vegetation Treatments DEIS within 60 days following the date the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**.

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

- *Web site: http://www.blm.gov/or/plans/vegtreatmentseis/*
- *E-mail: orvegtreatments@blm.gov.*
- *Mail:* Vegetation Treatments EIS Team, P.O. Box 2965, Portland, OR 97208–2965.

Copies of the Vegetation Treatments DEIS are available on the Internet at: *http://www.blm.gov/or/plans/vegtreatmentseis/*. Requests to receive printed or CD copies of the DEIS should be sent to one of the addresses listed above.

**FOR FURTHER INFORMATION CONTACT:** Todd Thompson, EIS Project Manager, by mail at Bureau of Land Management—OR932, P.O. Box 2965, Portland, OR 97208; by telephone at (503) 808–6326; or by email to the EIS Team at the address listed above.

**SUPPLEMENTARY INFORMATION:** In 1984, the BLM was prohibited from using herbicides in Oregon by a U.S. District Court injunction issued in *Northwest Coalition for Alternatives to Pesticides, et al.* v. *Block, et al.* (Civ. No. 82–6273–E). Following completion of an EIS examining the use of four herbicides just on noxious weeds, the injunction was modified by the court in November 1987 (Civ. No. 82–6272–BU). For the subsequent 22 years, the BLM in Oregon has limited its herbicide use to the four herbicides analyzed and limited use of those four herbicides to the control and eradication of Federal-, state-, or county-listed noxious weeds. In that time, new herbicides have become available that can be used in smaller doses, are more target-specific, and are less likely to adversely affect people and other non-target organisms. These new herbicides are being used by adjacent cooperating agencies and landowners to achieve better invasive weed control. Further, there are limited additional native vegetation treatment needs that would be more feasibly met, and more efficiently accomplished with selected herbicides.

In 2007, the BLM Washington Office (WO220) completed the Vegetation Treatments Using Herbicides on Bureau of Land Management Lands in 17 Western States Programmatic Environmental Impact Statement (PEIS) and related Record of Decision making 18 herbicides available for a full range of non-commodity vegetation treatments in 17 western states including Oregon. Oregon cannot implement that decision, however, until and unless the District Court injunction is lifted. The DEIS being released today, Vegetation Treatments Using Herbicides on BLM Lands in Oregon, tiers to the PEIS, incorporates additional detailed analysis regarding the potential for human and environmental risks specific to Oregon and addresses the issues in the 1984 District Court decision and other information specific to Oregon. The additional analysis is similar to that presented in a similar EIS completed by the Forest Service in Oregon in 2005. The DEIS is programmatic, addressing all 15.7 million acres in Oregon and addressing all 18 herbicides approved for use by the 2007 Record of Decision for the PEIS and being used in the other 16 western states. The DEIS analyzes one ''no action'' alternative, one ''no herbicide'' alternative, and 3 action alternatives which were shaped in part by the comments received during 12 public scoping meetings held throughout Oregon in July 2008. No projects will be authorized; site-specific projects will be subject to additional National Environmental Policy Act analysis.

The analysis indicates that by using BLM manual section and policy standard operating procedures, along with PEIS-adopted mitigation measures, human and environmental risk from the use of herbicides is both minimized and reduced from current levels. The proposed action would also slow the spread of noxious weeds on BLM lands by about 50 percent and result in 2.2 million fewer infested acres in 15 years than under current program capabilities.

Following the public comment period, the BLM will prepare a Final Environmental Impact Statement and Record of Decision. These are planned for release in mid-summer 2010.

The responsible official for the EIS is the BLM Oregon and Washington State Director. No public hearings or meetings are planned during the public comment period for the DEIS. Please note that public comments and information submitted; including the names, street addresses, and email addresses of respondents; will be available for public review and disclosure during regular business hours (8 a.m. to 4 p.m.), Monday through Friday, except holidays, at the following address: 333 SW. 1st Avenue, Portland, OR 97204.

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.

**Edward W. Shepard,**

*State Director, Oregon/Washington BLM.*

[FR Doc. E9–23678 Filed 10–1–09; 8:45 am]

**BILLING CODE 4310–33–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### National Mall and Memorial Parks, Washington, DC; Notice of Availability of a Finding of No Significant Impact for the Proposed West Potomac Park Levee Project

**AGENCY:** Department of the Interior, National Park Service.

**ACTION:** Notice of Availability of a Finding of No Significant Impact.

**SUMMARY:** Pursuant to the National Environmental Policy Act (NEPA) and National Park Service (NPS) NEPA guidelines, NPS prepared and, from January 30 to March 2, 2009, made available for a 30-day public review an Environmental Assessment (EA) evaluating the potential impacts of proposed improvements to the existing West Potomac Park Levee System which extends from 23rd Street, NW., to the grounds of the Washington Monument in Washington, DC. The goal of this project is to improve the reliability of the existing levee in order to meet the current post-Hurricane Katrina standards for flood protection as required by the U.S. Army Corps of Engineers (USACE) and the Federal Emergency Management Agency (FEMA). The existing levee protects much of the monumental core and large portions of downtown Washington, DC.

After the end of the 30-day public review period, the NPS selected for implementation, the preferred alternative as described in the EA, and determined it will not have a significant impact on the quality of the human environment and that an Environmental Impact Statement is not required. In making that selection and determination, the NPS considered the information and analysis contained in the EA and the comments received during the public review period. The NPS has accordingly prepared a Finding of No Significant Impact (FONSI) for the proposed West Potomac Park Levee Project. The FONSI is also accompanied by an errata sheet that corrected some minor inaccuracies and updated some information. The errata did not result in any changes in the overall findings of the EA and had no bearing on its determination of no significant impact.

**FOR FURTHER INFORMATION CONTACT:** Mr. Doug Jacobs, Deputy Associate Regional Director for Lands, Resources and Planning, National Capital Region, National Park Service, 1100 Ohio Drive, SW., Washington, DC 20242, by telephone at (202) 619–7025 or by e-mail at *doug_jacobs@nps.gov*.

**SUPPLEMENTARY INFORMATION:** Since the Potomac Park levee was constructed in the late 1930's, the levee system has relied upon a temporary earthen closure being built across 17th Street in the event of a flood emergency. Based on new policies since Hurricane Katrina (33 CFR 208.10), the USACE has deemed the temporary 17th Street closure unreliable and consequently gave the levee an unacceptable inspection rating. For this reason, FEMA's most recently proposed 100-year floodplain map for this area reflects a 100-year flood event as if the currently-designed 17th Street closure did not exist (44 CFR part 67, 72 FR 54631–54635). This new mapping would place portions of southeast and downtown Washington, DC, including the monumental core, within the 100-year flood insurance rate zone. The placement would require additional flood insurance and/or costly upgrades to comply with building standards for those facilities that would fall within the new 100-year floodplain. In addition, a number of projects that are currently in development on the National Mall would need to be revised and could be delayed in order to comply with these building codes. At the District of Columbia's request, FEMA agreed to delay issuance of the new floodplain map until November, 2009, in order to allow the District and the NPS time to design and implement a solution that will reliably stop a 100-year flood at 17th Street, NW., and therefore make re-mapping unnecessary.

In addition, the USACE requested that the solution be designed in such a manner as to allow for easy modification to meet the higher level of protection authorized by Congress in 1936 but never funded. The congressionally authorized level of protection is roughly equivalent to a 187-year storm. The District and NPS agreed that any improvements to the levee should be consistent with the current authorization so that the congressionally authorized level of protection can ultimately be achieved once funding is appropriated.

The EA evaluated five alternatives, all of which incorporate a permanent structure from Overlook Terrace in Constitution Gardens to the west side of 17th Street and another permanent structure on the east side of 17th Street which extends into the natural rise of the Washington Monument Grounds. The intervening space across 17th Street will have footings designed to receive a temporary post and panel closure system that would be deployed only during a major flood event. The permanent structures on either side of 17th Street will be a combination of earthen berms and concrete walls/embankments which will be clad in stone during a subsequent phase of the project. Since full funding for the entire project was not certain, all of the alternatives in this EA are presented in a phased approach.

The NPS identified Alternative 1B as its Preferred Alternative and has selected it for implementation. During the completion of this EA, it became apparent that considerable costs and time of construction and, therefore, time of disturbance to the National Mall and visitors, could be avoided if the levee at 17th Street was constructed to the higher level of protection initially, if funding would be available. Under Phase 1 of the alternative, a levee closure structure will be constructed at 17th Street, approximately 253 feet south of the centerline of Constitution Avenue, NW. The closure structure will consist of two symmetrical curved concrete flood walls built to the height of the Congressionally-authorized solution and set back approximately 23 feet to the east and west of 17th Street. The flood walls will require the re-grading of both the northwest corner of the Monument Grounds as well as the eastern edge of Constitution Gardens between the Overlook Terrace and 17th Street. Tree planting and final landscaping will also be completed as the first phase of the project. In the second phase of implementation, the remaining visible sections of the levee wall at 17th Street will be clad in stone to match the historic character of the adjacent cultural landscapes and historic resources. The cladding will enhance the aesthetic quality and character of the landscape to mitigate against adverse effects associated with concrete walls.

Phase Two includes a pedestrian path and additional landscaping. Improvements to the other parts of the Potomac Levee will also occur as part of the second phase of implementation since the existing conditions at 23rd Street, NW. and the Reflecting Pool do not meet the Congressionally-authorized level of protection. At the southwest corner of 23rd Street and Constitution Avenue, NW., portions of the site will be re-graded and raised by approximately one to two feet. Along

the levee that runs parallel to the Reflecting Pool, several hundred feet of low spots will be filled to bring the height of the levee to the Congressionally-authorized level of protection.

This alternative will be further developed into preliminary and final designs which will be subject to additional review by the National Park Service, the National Capital Planning Commission and the Commission of Fine Arts.

The FONSI and other documents related to this action are available for review on the NPS's Planning, Environment, and Public Comment (PEPC) Web site at *http://parkplanning.nps.gov/projectHome.cfm?parkID=427&projectId=22260.* You may also request a hard copy at (202) 619–7025.

Signed on July 29, 2009.

**Margaret O'dell,**

*Regional Director, National Capital Region.*

[FR Doc. E9–23550 Filed 10–1–09; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLCAN00000.L18200000.ZX0000]**

### Notice of Public Meeting: Northwest California Resource Advisory Council

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Northwest California Resource Advisory Council will meet as indicated below.

**DATES:** The meeting will be held Thursday and Friday, October 29 and 30, 2009, in Calistoga, CA. On October 29, the council convenes at 10 a.m. at the Calistoga Spa Hot Springs, 1006 Washington St., and departs for a field tour to public land sites managed by the BLM Ukiah Field Office. On October 30, the council meeting begins at 8 a.m. in the Conference Room of the Silver Rose Inn, 351 Rosedale Rd. The meeting will run until about 3 p.m. Public comments will be accepted at 11 a.m.

**FOR FURTHER INFORMATION CONTACT:** Nancy Haug, BLM Northern California District Manager, (530) 221–1743; or BLM Public Affairs Officer Joseph J. Fontana, (530) 252–5332.

**SUPPLEMENTARY INFORMATION:** The 12-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Northwest California. At this meeting agenda topics include discussion of BLM image and identity issues, a status report on public land equestrian projects, a status report on land use planning, information on the Weaverville Community Forest, a status report on development of a north coast Geotourism Map Guide, access to South Cow Mountain, and an update on BLM projects under the American Reinvestment and Recovery Act (ARRA). All meetings are open to the public. Members of the public may present written comments to the council. Each formal council meeting will have time allocated for public comments. Depending on the number of persons wishing to speak, and the time available, the time for individual comments may be limited. Members of the public are welcome on field tours, but they must provide their own transportation and meals. Individuals who plan to attend and need special assistance, such as sign language interpretation and other reasonable accommodations, should contact the BLM as provided above.

Dated: September 24, 2009.

**Joseph J. Fontana,**

*Public Affairs Officer.*

[FR Doc. E9–23760 Filed 10–1–09; 8:45 am]

**BILLING CODE 4310–40–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Clean Air Act and the Emergency Planning & Community Right-To-Know Act

Notice is hereby given that on September 23, 2009, a proposed Stipulation of Settlement and Judgment in *United States* v. *Midwest Renewable Energy, LLC,* Civil Action No. 8:09CV337, was lodged with the United States District Court for the District of Nebraska.

In this action, the United States sought an injunction ordering the defendant to comply with Sections 112(r) and 113(b) of the Clean Air Act, 42 U.S.C. 7412(r) and 7413(b), and Section 325(c) of the Emergency Planning and Community Right-to-Know Act (''EPCRA''), 42 U.S.C. 11025(c), and the regulations promulgated thereunder. The United States also sought civil penalties for the past violations of these statutes and regulations, arising out of Midwest Renewable Energy's operations at an ethanol plant it owns and operates Sutherland, Nebraska. Midwest Renewable Energy (''MRE'') began production of ethanol at the facility in September 2004. In the stipulation, MRE certifies that it has remedied each of the alleged violations in the complaint and agrees to pay a civil penalty of $10,000.

For thirty (30) days after the date of this publication, the Department of Justice will receive comments relating to the Stipulation of Settlement and Judgment. 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. In either case, the comments should refer to *United States* v. *Midwest Renewable Energy, LLC,* Civil Action No. 8:09CV337, D.J. Ref. No. 90–5–2–1–09275.

The stipulation may be examined at the Office of the United States Attorney, District of Nebraska, 1620 Dodge Street, Suite 1400, Omaha, Nebraska 68102. During the comment period, the Stipulation of Settlement and Judgment may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Stipulation of Settlement and Judgment 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 $38.00 (25 cents per page reproduction cost) payable to the United States Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

**Maureen Katz,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. E9–23747 Filed 10–1–09; 8:45 am]

**BILLING CODE 4410–15–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (09–088)]**

### Aerospace Safety Advisory Panel; Meeting

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announce a forthcoming meeting of the Aerospace Safety Advisory Panel.

**DATES:** Thursday, October 22, 2009, 1 p.m. to 3 p.m.

**ADDRESSES:** Kennedy Space Center Visitor Complex, Astronaut Encounter Theatre, SR 405, Kennedy Space Center, FL 32899.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kathy Dakon, Aerospace Safety Advisory Panel Executive Director, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–0732.

**SUPPLEMENTARY INFORMATION:** The Aerospace Safety Advisory Panel will hold its 4th Quarterly Meeting for 2009. This discussion is pursuant to carrying out its statutory duties for which the Panel reviews, identifies, evaluates, and advises on those program activities, systems, procedures, and management activities that can contribute to program risk. Priority is given to those programs that involve the safety of human flight. The agenda will include Safety Mission Assurance Updates; Launch Services Program Overview; International Space Station Commercial Resupply Services Overview; and Thrust Oscillation Update.

The meeting will be open to the public up to the seating capacity of the room. Seating will be on a first-come basis. Visitors will be requested to sign a visitor's register. Photographs will only be permitted during the first 10 minutes of the meeting. During the first 30 minutes of the meeting, members of the public may make a 5-minute verbal presentation to the Panel on the subject of safety in NASA. To do so, please contact Ms. Susan Burch at *susan.burch@nasa.gov* at least 48 hours in advance. Any member of the public is permitted to file a written statement with the Panel at the time of the meeting. Verbal presentations and written comments should be limited to the subject of safety in NASA.

Dated: September 29, 2009.

**P. Diane Rausch,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. E9–23835 Filed 10–1–09; 8:45 am]

BILLING CODE P

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–445 and 50–446; NRC–2009–0437]**

### Luminant Generation Company LLC; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Luminant Generation Company LLC (the licensee) to withdraw its March 4, 2009, application, as supplemented by letter dated September 14, 2009, for a proposed amendment to Facility Operating License Nos. NPF–87 and NPF–89 for the Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, located in Somervell County, Texas.

The proposed amendment would have added a license condition for submittal of inservice inspection (ISI) information and analyses requested in Section (e) of the final rule in Title 10 of the *Code of Federal Regulations* (10 CFR), Part 50.61a, or the proposed rule (October 3, 2007; 72 FR 56275), prior to issuance of the 10 CFR 50.61a, within 1 year of completing each American Society of Mechanical Engineers Boiler and Pressure and Vessel Code (ASME Code), Section XI, Category B–A and B–D reactor vessel (RV) weld inspections. This amendment request was associated with the request for relief to extend the ISI interval for ASME Code, Section XI, Category B–A and B–D RV welds from 10 years to 20 years (TAC Nos. ME0777 and ME0778) and the license condition was required in accordance with the conditions and limitations of U.S. Nuclear Regulatory Commission (NRC) approved WCAP–16168–NP, Revision 2, ''Risk-Informed Extension of the Reactor Vessel In-service Inspection Interval.''

The request was to defer the ASME Code-required volumetric examination of the CPSES, Unit 1, for the second ISI from refueling outage 1RF14 in 2010 until refueling outage 1RF20 and to perform the third ISI on a 20-year inspection interval, instead of the currently required 10-year interval. By letter dated September 14, 2009, the licensee revised its application for relief request for a one-time extension only and requested to withdraw the proposed amendment and associated license condition.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on May 5, 2009 (74 FR 20750). However, by letter dated September 14, 2009, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated March 4, 2009, and the licensee's letter dated September 14, 2009, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr.resource@nrc.gov*.

Dated at Rockville, Maryland, this 25th day of September 2009.

For the Nuclear Regulatory Commission.

**Balwant K. Singal,**

*Senior Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. E9–23779 Filed 10–1–09; 8:45 am]

BILLING CODE 7590–01–P

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #11886 and #11887]**

### Georgia Disaster Number GA–00027

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 1.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the State of Georgia (FEMA–1858–DR), dated 09/24/2009.

*Incident:* Severe Storms and Flooding.

*Incident Period:* 09/18/2009 and continuing.

**DATES:** *Effective Date:* 09/25/2009.

*Physical Loan Application Deadline Date:* 11/23/2009.

*EIDL Loan Application Deadline Date:* 06/24/2010.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the Presidential disaster declaration for the State of Georgia, dated 09/24/2009 is hereby amended to include the following areas as adversely affected by the disaster:

*Primary Counties: (Physical Damage and Economic Injury Loans):*
Carroll, Chattooga, Stephens.
*Contiguous Counties: (Economic Injury Loans Only):*
Georgia: Banks, Coweta, Floyd, Franklin, Habersham, Heard, Walker.
Alabama: Cherokee, Cleburne, Randolph.
South Carolina: Oconee.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**Roger B. Garland,**
*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. E9–23775 Filed 10–1–09; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #11886 and #11887]**

### Georgia Disaster Number GA–00027

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 2.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the State of Georgia (FEMA–1858–DR), dated 09/24/2009.
*Incident:* Severe Storms and Flooding.
*Incident Period:* 09/18/2009 and continuing.

**DATES:** *Effective Date:* 09/25/2009.
*Physical Loan Application Deadline Date:* 11/23/2009.
*EIDL Loan Application Deadline Date:* 06/24/2010.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the Presidential disaster declaration for the State of Georgia, dated 09/24/2009 is hereby amended to include the following areas as adversely affected by the disaster:

*Primary Counties: (Physical Damage and Economic Injury Loans):*
Bartow, Catoosa, Coweta, Dekalb, Fulton, Gwinnett, Heard, Newton, Rockdale, Walker.
*Contiguous Counties: (Economic Injury Loans Only):*
Georgia: Barrow, Butts, Clayton, Dade, Fayette, Hall, Henry, Jackson, Jasper, Meriwether, Morgan, Spalding, Troup, Walton, Whitfield.
Alabama: Dekalb.
Tennessee: Hamilton.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**
*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. E9–23774 Filed 10–1–09; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #11886 and #11887]**

### Georgia Disaster # GA–00027

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for the State of Georgia (FEMA–1858–DR), dated 09/24/2009.
*Incident:* Severe Storms and Flooding.
*Incident Period:* 09/18/2009 and continuing.

**DATES:** *Effective Date:* 09/24/2009.
*Physical Loan Application Deadline Date:* 11/23/2009.
*Economic Injury (EIDL) Loan Application Deadline Date:* 06/24/2010.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 09/24/2009, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties (Physical Damage and Economic Injury Loans):*
Cherokee, Cobb, Douglas, Paulding.
*Contiguous Counties (Economic Injury Loans Only):*
Georgia: Bartow, Carroll, Dawson, Forsyth, Fulton, Gordon, Haralson, Pickens, Polk.

*The Interest Rates are:*

| | Percent |
|---|---|
| For Physical Damage: | |
| Homeowners With Credit Available Elsewhere | 5.500 |
| Homeowners Without Credit Available Elsewhere | 2.750 |
| Businesses With Credit Available Elsewhere | 6.000 |
| Other (Including Non-Profit Organizations) With Credit Available Elsewhere | 4.500 |
| Businesses and Non-Profit Organizations Without Credit Available Elsewhere | 4.000 |
| For Economic Injury: | |
| Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere | 4.000 |

The number assigned to this disaster for physical damage is 118866 and for economic injury is 118870.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**Lisa Lopez-Suarez,**
*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. E9–23714 Filed 10–1–09; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #11888 and #11889]**

### Georgia Disaster # GA–00028

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Georgia (FEMA–1858–DR), dated 09/26/2009.
*Incident:* Severe Storms and Flooding.
*Incident Period:* 09/18/2009 and continuing.

**DATES:** *Effective Date:* 09/26/2009.
*Physical Loan Application Deadline Date:* 11/25/2009.

*Economic Injury (EIDL) Loan Application Deadline Date:* 06/28/2010.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 09/26/2009, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:*

Carroll, Catoosa, Chattooga, Cobb, Douglas, Gwinnett, Paulding, Stephens, Walker.

The Interest Rates are:

| | Percent |
|---|---|
| Other (Including Non-Profit Organizations) With Credit Available Elsewhere: | 4.500 |
| Businesses And Non-Profit Organizations Without Credit Available Elsewhere: | 4.000 |
| The number assigned to this disaster for physical damage is 118886 and for economic injury is 118896. | |

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. E9–23776 Filed 10–1–09; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

### Interest Rates

The Small Business Administration publishes an interest rate called the optional ''peg'' rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 4.000 (4) percent for the October–December quarter of FY 2009.

Pursuant to 13 CFR 120.921(b), the maximum legal interest rate for any third party lender's commercial loan which funds any portion of the cost of a 504 project (see 13 CFR 120.801) shall be 6% over the New York Prime rate or, if that exceeds the maximum interest rate permitted by the constitution or laws of a given State, the maximum interest rate will be the rate permitted by the constitution or laws of the given State.

**Richard C. Blewett,**

*Acting Director, Office of Financial Assistance.*

[FR Doc. E9–23772 Filed 10–1–09; 8:45 am]

BILLING CODE P

## SECURITIES AND EXCHANGE COMMISSION

**[File No. 500–1]**

### In the Matter of Emergent Health Corp.; Order of Suspension of Trading

September 30, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Emergent Health Corp. because questions have arisen regarding the company's issuance of stock and trading in the company's stock.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

*Therefore, it is ordered,* pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT on September 30, 2009, through 11:59 p.m. EDT, on October 13, 2009.

By the Commission.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. E9–23882 Filed 9–30–09; 11:15 am]

BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–60726; File No. SR–FINRA–2009–010]**

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2 Thereto, Expanding TRACE To Include Agency Debt Securities and Primary Market Transactions

September 28, 2009.

### I. Introduction

On March 18, 2009, the Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to expand TRACE to include Agency Debt Securities and primary market transactions. On April 8, 2009, FINRA filed Amendment No. 1 to the proposal.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on April 16, 2009.[4] The Commission received eight comment letters in response to the proposed rule change.[5] On August 26, 2009, FINRA responded to the comment letters [6] and filed Amendment No. 2 to the proposed rule change.[7] The Commission is publishing this notice and order to solicit comments on Amendment No. 2 and to approve the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

### II. Description of the Proposal

Currently, FINRA utilizes the Trade Reporting and Compliance Engine (''TRACE'') to collect and disseminate information on secondary over-the-

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 was a partial amendment that: (1) Revised the description of the proposal to accurately reflect the proposed rule text; (2) amended the definition of ''TRACE–Eligible Security'' to remove a parenthetical that was inadvertently included in the original proposal; and (3) made minor technical edits to the purposed rule text.

[4] Securities Exchange Act Release No. 59733 (April 8, 2009), 74 FR 17709 (''Notice'').

[5] *See infra* note 12.

[6] *See* letter from Sharon Zackula, Associate Vice President and Associate General Counsel, FINRA, to Elizabeth M. Murphy, Secretary, Commission, dated August 26, 2009 (''FINRA Response'').

[7] *See infra* Section III.

counter transactions in corporate debt securities. FINRA has proposed to extend TRACE to include most primary market transactions as well as transactions in debt securities that are issued or guaranteed by a government-sponsored enterprise or U.S. government agency (''Agency Debt Securities''). Specifically, the proposed rule change would:

(1) In Rule 6710, amend the defined terms (a) ''TRACE–Eligible Security'' to include Agency Debt Securities; (b) ''Reportable TRACE Transaction'' to include primary market transactions; and (c) ''Investment Grade'' and ''Non-Investment Grade'' to classify unrated Agency Debt Securities as investment grade securities for purposes of the dissemination provisions of the TRACE rules;

(2) amend Rule 6710(a), to require members to provide FINRA certain information regarding debt securities that are not assigned CUSIPs, but otherwise meet TRACE eligibility standards;

(3) in Rule 6710, delete the definition of ''Money Market Instrument'' embedded in the term ''TRACE–Eligible Security'' and add it as a separately defined term in new proposed Rule 6710(o);

(4) in Rule 6710, add the defined terms, ''Agency,'' ''Agency Debt Security,'' ''Asset-Backed Security,'' ''Government-Sponsored Enterprise,'' ''Money Market Instrument,'' ''U.S. Treasury Security,'' ''List or Fixed Offering Price Transaction,'' and ''Takedown Transaction;''

(5) in Rule 6710, make certain technical changes to a number of the defined terms;

(6) in Rule 6730, establish reporting requirements for primary market transactions that are List or Fixed Offering Price Transactions [8] or Takedown Transactions; [9]

(7) in Rule 6750, provide that transaction information for List or Fixed Offering Price Transactions and Takedown Transactions will not be disseminated. FINRA has represented that it will study the reported data for these primary market transactions for a period of time after reporting begins and, at a later date, determine if dissemination of the information is appropriate and, if appropriate, develop a dissemination strategy;

(8) in Rule 6760, amend the requirements for members to provide FINRA with notice of and information about new issuances of TRACE-Eligible Securities to facilitate timely reporting of such securities in both primary and secondary market transactions;

(9) establish new Rule 6770, which would provide FINRA emergency authority, to be exercised in consultation with the Commission, that would permit FINRA to suspend the reporting and/or dissemination of certain transactions in TRACE-Eligible Securities, or the reporting of certain data elements that are otherwise required under Rule 6730 and/or the dissemination of certain data elements as market conditions warrant and for such period of time as FINRA deemed necessary; [10]

(10) in Rule 7730, establish reporting and market data fees for Agency Debt Securities and primary market transactions generally at the same rates in effect for corporate bonds; [11] and

(11) amend various rules in the FINRA Rule 6700 and 7730 series to reflect minor technical, stylistic, or confirming changes.

In its filing with the Commission, FINRA acknowledged that its proposal to extend TRACE reporting to include Agency Debt Securities may result in certain trading desks having to report transactions to TRACE for the first time. Consequently, FINRA represented that it would continue to work with members and third-party vendors to ensure effective and efficient implementation. FINRA further stated that it will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. According to FINRA, the effective date will be no later than 180 days following publication of the *Regulatory Notice* announcing Commission approval.

## III. Summary of Comments and Amendment No. 2

The Commission received eight comments on the proposed rule change.[12] Four commenters expressed strong support for the proposal.[13] Two other commenters were not opposed to FINRA's proposal, but raised concerns regarding operation and implementation.[14]

Two commenters indicated support for more transparency in the fixed income markets, but opposed the proposed rule change.[15] Both commenters believed that the market in Agency Debt Securities is highly liquid and questioned the need for expanding TRACE to cover it.[16] One of the commenters stated that any expansion of TRACE to include Agency Debt Securities or primary market transactions would impose significant costs on firms that engage in such transactions.[17]

FINRA responded that, although multiple vendors provide data on Agency Debt Securities, there is no centralized public dissemination of

[8] The term ''List or Fixed Offering Price Transaction'' means a primary market sale transaction sold on the first day of trading of a new issue: (i) by a sole underwriting, syndicate manager, syndicate member or selling group member at the published or stated list or fixed offering price, or (ii) in the case of a primary market sale transaction effected pursuant to Securities Act Rule 144A, by an initial purchaser, syndicate manager, syndicate member or selling group member at the published or stated fixed offering price. *See* proposed FINRA Rule 6710(q).

[9] The term ''Takedown Transaction'' means a primary market sale transaction sold on the first day of trading of a new issue: (i) by a sole underwriter or syndicate manager to a syndicate or selling group member at a discount from the published or stated list or fixed offering price, or (ii) in the case of a primary market sale transaction effected pursuant to Securities Act Rule 144A, by an initial purchaser or syndicate manager to a syndicate or selling group member at a discount from the published or stated fixed offering price. *See* proposed FINRA Rule 6710(r).

[10] *See* Amendment No. 2, *infra* Section III.

[11] Under the proposal, for fee purposes, FINRA will distinguish TRACE transaction data as two data sets: one comprised of corporate bond transaction information and the other comprised of Agency Debt Security transaction information. The fee schedule set forth in FINRA Rule 7730 would apply to Agency Debt Securities and primary market transactions. Additionally, FINRA has proposed to amend the fees for ''Web Browser Access,'' which would vary depending on factors such as the number of users and whether the user(s) would have access to one or both data sets.

[12] *See* letter from Robert F. Anderson, Senior Managing Director, Fixed Income Trading, dated April 17, 2009 (''Anderson Letter''); letter from Beth N. Lowson, The Nelson Law Firm, LLC, dated May 5, 2009 (''Nelson Letter''); letter from Manisha Kimmel, Executive Director, Financial Information Forum, dated May 7, 2009 (''FIF Letter''); letter from Heather Traeger, Associate Counsel, Investment Company Institute, dated May 7, 2009 (''ICI Letter''); letter from Joseph W. Sack, Managing Director, Asset Management Group, Securities Industry and Financial Markets Association, dated May 7, 2009 (''AMG–SIFMA Letter''); letter from Sean C. Davy, Managing Director and Robert Toomey, Managing Director, and Associate General Counsel, Capital Markets Group of Securities Industry and Financial Markets Association, dated May 7, 2009 (''CMG–SIFMA Letter''); letter from Michael Decker and Mike Nicholas, Co-Chief Executive Officers, Regional Bond Dealers Association, dated May 7, 2009 (''RBDA Letter''); letter from Don Winton, Crews & Associates, Inc., dated May 22, 2009 (Crews Letter'') (collectively, the ''Comment Letters'').

[13] *See* Anderson Letter (supporting FINRA's overall goal of improving bond market transparency); Nelson Letter (supporting the proposal because it provides for increased price transparency in the market by broadening the range of securities trades that must be reported and disseminated); AMG–SIFMA Letter (arguing that real-time prices would be helpful to large asset management firms with respect to trading activities, portfolio management, and valuation activities); ICI Letter (citing the benefits to investors in bonds and noting that transparency helps to improve price discovery and ensure the integrity of the debt markets).

[14] *See* Crews Letter; FIF Letter.

[15] *See* CMG–SIFMA Letter; RBDA Letter.

[16] *See* CMG–SIFMA Letter, at 1–2; RBDA Letter, at 2.

[17] *See* CMG–SIFMA Letter, at 1.

information regarding transactions in Agency Debt Securities. FINRA noted that the pre-trade information available is generally indicative, while post-trade information—whether via a subscriber service or at a publicly accessible Web site—is not available at all. FINRA concluded that ''[t]he expansion of TRACE will create consolidated post-trade transparency in Agency Debt Securities, and the dissemination of transaction information will assist in price discovery and valuation processes for all market participants and provide retail investors access to price information current not readily available to non-professionals.''[18]

Three commenters requested that the distinction between primary and secondary transactions be clarified for reporting purposes.[19] In its original filing, FINRA proposed that member use one of three indicators when reporting transactions to distinguish between primary and secondary transactions, and to further distinguish List or Fixed Offering Price Transactions and Takedown Transactions from other primary market transactions. In response, FINRA revised Rule 6730(d)(4)(D) to eliminate the proposed indicators for secondary market and primary market transactions that are not List or Fixed Offering Price Transactions or Takedown Transactions. The rule would retain the requirement that members use the remaining proposed indicator when reporting primary market transactions that are List or Fixed Offering Price Transactions and Takedown transactions.[20] One commenter suggested that that the definition of List or Fixed Offering Price Transaction and Takedown Transaction be amended for reporting purposes to include primary market transactions that are executed after the day of pricing, but would otherwise qualify as a List or Fixed Offering Price Transaction or Takedown Transaction. FINRA responded that it did not believe that the definition should be amended but, rather proposed to amend the deadline for reporting all List or Fixed Offering Price Transactions or Takedown Transactions to no later than T+1 during TRACE system hours. By extending the reporting period to T+1, FINRA would eliminate the distinction between a transaction executed in connection with an offering priced before 5 p.m. ET and a transaction executed as part of an offering priced on the same day but after 5 p.m. ET when the TRACE system is closed. FINRA believes this change will address operational concerns without negatively impacting regulatory surveillance or market transparency.[21]

One commenter also raised a compliance concern with regard to reverse inquiries.[22] The commenter argued that complying with the proposed requirement to notify FINRA about new issues ''prior to the commencement of primary market transactions'' would be impossible in the case of a reverse inquiry, because the new issue materializes and the primary market transaction takes place precisely upon the agreement of the issuer to sell bonds at the terms proposed by the investor. Accordingly, the commenter recommended that FINRA amend Rule 6760 so that underwriting broker-dealers would be required to notify FINRA within 15 minutes of commencement of primary market trading after the underwriting of the new issue, in the instances where it is not possible to do so prior to the commencement of primary market transactions.[23]

In response, FINRA proposed to amend Rule 6760 so that if a member is involved in an intraday offering that is priced and commences between 9:30 a.m. and 4 p.m. ET, the member would be permitted to provide FINRA Operations the required information available prior to the execution of the first transaction in the distribution or offering. All other information required under the rule would have to be provided within 15 minutes of the time of execution of the first transaction in such distribution or offering.[24]

Two commenters stated that firms should be permitted to rely on the TRACE Issue Master to determine if a security is TRACE-eligible.[25] FINRA responded that it has often stated that it a firm's obligation under Rule 6730 is to report transactions in securities that meet the definition of TRACE-Eligible Security. FINRA further stated that if a firm has a reporting obligation under Rule 6730 in a security that is a TRACE-Eligible Security but is not included in the TRACE Issue Master, the firm must notify FINRA immediately and provide the CUSIP and other information necessary for FINRA to update the TRACE Issue Master, allowing the firm to report its transaction to TRACE promptly and comply with its obligations under FINRA Rule 6730.[26] Additionally, one commenter objected to including securities without a CUSIP as TRACE-eligible due increased costs and potential reporting errors, and questioned whether incorporating such securities into TRACE would contribute to meaningful price discovery.[27] FINRA responded that only a small number of securities trade without a CUSIP and that, where a security is not identified by a CUSIP, FINRA would work with members to ensure effective and efficient reporting.[28]

With regard to the expansion of TRACE to include primary market transactions, one commenter noted that such expansion would impose operational and compliance issues and require firms to engage in extensive and costly systems development.[29] Consequently, the commenter urged FINRA to provide up to 18 months from the publication date of the technical specifications to accommodate necessary technical systems changes.[30] The commenter further recommended a phased-in compliance implementation process, whereby the expanded reporting requirements for transactions in Agency Debt Securities be implemented first, followed by reporting in primary market transactions for corporate bonds and primary market transactions for Agency Debt Securities, respectively.[31] Another commenter stated that 12 months would be needed for systems development and testing before the requirement for TRACE reporting of Agency Debt Securities and primary market transactions is enforced.[32]

In response, FINRA recognized that implementation of the proposal may create short-term operational issues and require a number of permanent modifications to reporting and other technology systems. FINRA stated that it will work with members to address issues and provide them sufficient notice to modify their reporting systems.[33]

One commenter raised the concern that such expansion may cause competitive disparities between FINRA member firms, which are subject to TRACE reporting, and bank government

[18] FINRA Response, at 3.

[19] *See* CMG–SIFMA Letter, at 5; RBDA Letter, at 3; FIF Letter, at 3.

[20] *See* FINRA Response, at 5.

[21] *See id.*

[22] *See* RBDA Letter, at 2–3. In a reverse inquiry, investors or dealers determine an amount and type of bond that they wish to purchase and approach the issuer with a request to buy debt securities with those features at a particular price. If the issuer agrees, the bonds are issued and purchased.

[23] *See* RBDA Letter, at 3.

[24] *See* FINRA Response, at 5.

[25] *See* CMG–SIFMA Letter, at 4; FIF Letter, at 1.

[26] *See* FINRA Response, at 5.

[27] *See* FIF Letter, at 2–3.

[28] *See* FINRA Response, at 6.

[29] *See* CMG–SIFMA Letter, at 4.

[30] *See id.,* at 6–7.

[31] *See id.,* at 6.

[32] *See* FIF Letter, at 3–4.

[33] *See* FINRA Response, at 6.

securities dealers, which are not.[34] Further, the commenter asserted that bank dealers would have an advantage over FINRA members in competing for the business of institutional investors that wish to keep their trading activity confidential.[35] In response, FINRA noted the statutory requirement that a proposed rule not impose any burden on competition not necessary or appropriate in furtherance of the Act and stated its belief that it is axiomatic that increasing transparency in a securities trading market appropriately furthers the purposes of the Act. Consequently, FINRA believes such comments are without merit.[36]

Two commenters requested that TRACE fees related to Agency Debt Securities be reduced to the extent that such fees are not necessary to cover FINRA's expenses in connection with the collection and dissemination of TRACE data.[37] Another commenter argued that charging a separate fee for the use of Agency Debt Securities data is unwarranted, and urged the Commission to require FINRA to offer data on corporate debt securities and Agency Debt Securities as a single data set, priced no higher than the current rate for corporate bond data.[38] FINRA responded that it will undertake review of the fee structure for Agency Debt Securities after implementation of the proposal, when FINRA can accurately assess the trading volume and demand for Agency Debt Securities data.[39]

Four commenters raised concerns about trade modifications in TRACE.[40] The commenters suggested that firms acting in good faith should be able to modify, cancel, or correct trade reports without incurring fees or penalties and that the TRACE platform be enhanced to allow modifications to trades submitted, rather than full re-submissions, which could help eliminate duplicative reporting.[41] In response, FINRA asserted that modifications of trade reports are not relevant to the proposed rule change, but that FINRA reviews operational issues raised by firms on an ongoing basis and will take the issue under consideration.[42] FINRA also declined to address other commenters' concerns that were outside the scope of the proposal, including commenter recommendations regarding dissemination protocols.[43]

In Amendment No. 2, FINRA proposed limited amendments to various proposed reporting, dissemination, and notification provisions in the Rule 6700 series, and to Rule 7730. FINRA further proposed to add new Rule 6770 to provide emergency authority to FINRA, in consultation with the Commission, to suspend reporting and/or dissemination of certain transactions in TRACE–Eligible Securities.

FINRA maintains that the proposed amendments to the Rule 6700 series address many of the substantive issues raised by commenters.[44] The proposed amendments would extend the period to report primary market transactions that are List or Fixed Offering Price Transactions or Takedown Transactions to the close of the TRACE system on T+1, and simplify the reporting of all transactions by eliminating two of three proposed indicators. In addition, the proposed amendments would modify Rule 6760, providing greater flexibility to underwriters (or other persons designated in the rule) that are required to provide FINRA Operations notice and are engaged in an offering that is priced and commences between 9:30 a.m. and 4 p.m. ET. In conjunction with this change, a member would be required to indicate in its notice to FINRA Operations the time that the new issue is priced and, if different, the time that primary transactions in the new issue commence. FINRA also has proposed certain other minor changes, including non-substantive, clarifying, or formatting changes to the Rule 6700 Series and Rule 7730.

*Rule 6730*

FINRA originally proposed that primary market transactions that are List or Fixed Offering Price Transactions or Takedown Transactions be reported by the end of the day on the day such securities were priced, if the pricing occurred by 5 p.m. In Amendment No. 2, FINRA is revising two provisions of Rule 6730 regarding the reporting of such transactions to address certain concerns raised by the commenters. Specifically, FINRA has proposed to extend the reporting period by a full day, requiring members to report List or Fixed Offering Price Transactions and Takedown Transactions not later than T+1 during TRACE system hours, with limited exceptions for transactions that occur on weekends or holidays. For List or Fixed Offering Price Transactions or Takedown Transactions that are priced on a Saturday, Sunday, or a federal or religious holiday on which the TRACE system is closed, Rule 6730(a)(5) as revised by Amendment No. 2 would require a member to report the transaction the next business day at any time during TRACE system hours.

Second, FINRA originally proposed that members use one of three indicators when reporting transactions in TRACE-Eligible Securities in proposed amended Rule 6730(d)(4)(D). The purpose was to distinguish between primary and secondary market transactions, as primary market transactions would be reported for the first time, and to distinguish List or Fixed Offering Price Transactions and Takedown Transactions from other primary market transactions. Certain commenters raised issues regarding the use of the three proposed indicators.[45]

In Amendment No. 2, FINRA has proposed to amend Rule 6730(d)(4)(D) to eliminate the proposed indicators for secondary market transactions and for primary market transactions that are not List or Fixed Offering Price Transactions or Takedown Transactions. Rule 6730(d)(4)(D) would retain the requirement that members use the remaining proposed indicator when reporting primary market transactions that are List or Fixed Offering Price Transactions and Takedown Transactions. The remaining indicator will enable FINRA to identify transaction information received for such transactions that will be disseminated, which FINRA proposed in the original rule filing. In addition, FINRA will use the indicator for surveillance purposes to determine if members are properly categorizing transactions as List or Fixed Offering Price Transactions and Takedown Transactions, and to determine if a member is selecting the indicator inappropriately to obtain the advantages of more relaxed reporting requirements or to avoid dissemination of selected reported transactions.

*Rule 6760*

In its original proposal, FINRA proposed to amend the notice and information reporting requirements in Rule 6760. Specifically, a member providing notice would be required to include ''the time the new issue is priced.'' Additionally, the original proposal required that information be provided ''prior to the commencement of primary market transactions.'' In Amendment No. 2, FINRA proposes to

[34] *See* CMG–SIFMA Letter, at 3.

[35] *See id.*

[36] *See* FINRA Response, at 7.

[37] *See* CMG–SIFMA Letter, at 4.

[38] *See* RBDA Letter, at 4.

[39] *See* FINRA Response, at 7.

[40] *See* CMG–SIFMA Letter, at 5; RBDA Letter, at 4–5; Crews Letter, at 1–2; FIF Letter, at 2.

[41] *See* CMG–SIFMA Letter, at 5.

[42] *See* FINRA Response, at 6.

[43] *See, e.g.,* FINRA Response, at 3.

[44] *See* FINRA Response, at 8.

[45] *See* CMG–SIFMA Letter, at 3; RBDA Letter, at 3.

amend the notification requirements for new TRACE-Eligible Securities in Rule 6760 in response to comments. The most significant amendment to Rule 6760, in Rule 6760(b), provides more flexibility for underwriters (or other designated persons) that are required to give notice to FINRA Operations regarding a new TRACE-Eligible Security that is the subject of an offering that is priced and commences on the same business day between 9:30 a.m. and 4 p.m. ET. The proposed amendment would require the underwriter (or other designated person) to provide FINRA Operations as much of the information required under the rule that is available prior to the execution of the first transaction in the distribution or offering, and all other information required under Rule 6760 within 15 minutes of the time of execution of the first transaction in such distribution or offering.[46]

FINRA also has proposed two additional amendments to the member notification requirements in Rule 6760(b). In response to comments regarding the operational difficulties of complying with TRACE requirements for securities not having a CUSIP number, FINRA proposes to amend Rule 6760(b) to permit the underwriter (or another designated person) providing the notice to submit, in lieu of a CUSIP, ''a similar numeric identifier (or a TRACE symbol, which is assigned by FINRA upon request).'' Also, FINRA originally proposed that an underwriter (or another designated person) notify FINRA Operations of the time that a new issue is priced. In Amendment No. 2, FINRA has proposed to add to such requirement that a member provide the time that the first transaction of the distribution or offering of the new issue is executed, if the time is different from the time of pricing of the new issue. The amended notification requirement would enable FINRA to determine if members comply with Rule 6760 to provide notification when required. FINRA believes that members' timely notification to FINRA Operations of new TRACE-Eligible Securities that are about to be offered plays a significant part of the process of continuously updating the TRACE system, and members that fail to comply with Rule 6760 impair the reporting of transactions by other members and adversely affect price transparency in the security during the most active or one of the most active trading periods in the security.

[46] Rule 6760 does not apply to secondary offerings or distributions.

*Proposed Rule 6770*

In Amendment No. 2, FINRA proposed new Rule 6770, which would provide FINRA emergency authority to suspend the reporting and/or dissemination of certain transactions in TRACE-Eligible Securities, or the reporting of certain data elements that are otherwise required under Rule 6730 and/or the dissemination of certain data elements, as market conditions warrant and for such period of time as FINRA deems necessary. FINRA represented that each action that FINRA might consider under proposed Rule 6770 would be subject to review and discussion with the Commission prior to FINRA's use of such authority.[47] Although FINRA does not anticipate that such emergency authority would be used, FINRA believes it is prudent for such authority to be in place.

*Other Amendments*

Finally, in Amendment No. 2, FINRA proposed to incorporate non-substantive, technical, clarifying and formatting amendments in the Rule 6700 series and Rule 7730.

## IV. Discussion

After carefully considering the proposal and the comments submitted, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[48] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[49] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission does not believe that the comments raise any issue that would preclude approval of the proposal. Indeed, the Commission believes that the proposal promotes the goals of transparency, increased price discovery, and debt market integrity cited by several commenters.

In originally approving TRACE, the Commission stated that price transparency plays a fundamental role in promoting fairness and efficiency of U.S. capital markets and that market surveillance was a fundamental means of promoting fairness and confidence in those markets.[50] To further those goals, the Commission believes that it is reasonable and consistent with the Act for FINRA to expand TRACE in the manner set forth in the proposal.

Prior to TRACE's implementation, the NASD did not have routine access to comprehensive transaction information for the over-the-counter corporate bond market, even though the NASD bore responsibility for surveilling and regulating that market. Similarly, with respect to the over-the-counter market for Agency Debt Securities and for primary market bond transactions, FINRA currently does not possess the comprehensive transaction information that would help it carry out its statutory duties to regulate the market. Expanding TRACE to include Agency Debt Securities and primary market transactions will assist FINRA in fulfilling its mandate in Section 15A(b)(6) of the Act[51] to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

Furthermore, the Commission believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[52] in which Congress found that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations and transactions in securities. This proposal furthers this goal by increasing the amount of public information available in the over-the-counter market for debt securities. By increasing public availability of information about additional categories of debt, this proposal is reasonably designed to encourage greater participation in the market by retail and institutional investors, which should contribute to deeper markets and increased competition. Moreover, the additional transaction data reported to TRACE will allow FINRA to obtain a more complete audit trail of transactions in the market for TRACE-Eligible Securities. Although the Commission acknowledges the potential for firms covered by these new reporting requirements to incur additional compliance burdens and costs, the Commission believes that any such burdens are substantially outweighed by the overall benefits of increased transparency and access to

[47] *See* Amendment No. 2, at 6.

[48] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[49] 15 U.S.C. 78o–3(b)(6).

[50] *See* Securities Exchange Act Release No. 43873 (January 23, 2001) 66 FR 8131, 8136 (January 29, 2001).

[51] 15 U.S.C. 78o–3(b)(6).

[52] 15 U.S.C. 78k–1(a)(1)(C)(iii).

more comprehensive trade information in the fixed income markets.

The Commission further finds that the proposed fees for: (1) Reporting of Agency Debt Securities and primary market transactions, (2) receipt of market data for Agency Debt Securities and primary market transactions, and (3) subscribing to ''Web Browser Access'' for TRACE reporting and/or market data receipt are consistent with Section 15A(b)(5) of the Act, which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls.[53] These fees are similar to those that currently apply to corporate debt securities.

## V. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[54] for approving the proposed rule change, as modified by Amendment No. 2 thereto, prior to the 30th day after the date of publication in the **Federal Register**. The changes proposed in Amendment No. 2 are minor and technical in nature or designed to respond to specific concerns raised by commenters. With respect to the proposed provision that would permit FINRA to suspend TRACE reporting or dissemination in certain emergency circumstances, the Commission notes that such authority could be exercised only in consultation with the Commission. Accordingly, the Commission finds that good cause exists to approve the proposal, as modified by Amendment No. 2, on an accelerated basis.

## VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 2 to the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2009–010 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–FINRA–2009–010. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–FINRA–2009–010 and should be submitted on or before October 23, 2009.

## VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[55] that the proposed rule change (SR–FINRA–2009–010), as modified by Amendments Nos. 1 and 2, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[56]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–23729 Filed 10–1–09; 8:45 am]

BILLING CODE 8011–01–P

[53] 15 U.S.C. 78o–3(b)(5).

[54] 15 U.S.C. 78s(b)(2).

[55] 15 U.S.C. 78s(b)(2).

[56] 17 CFR 200.30–3(a)(12).

## DEPARTMENT OF STATE

**[Public Notice 6778]**

## Culturally Significant Objects Imported for Exhibition Determinations: ''Rembrandt's People''

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects in the exhibition: ''Rembrandt's People'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Wadsworth Atheneum Museum of Art, Hartford, CT, from on or about October 10, 2009, until on or about January 24, 2010, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The address is U.S. Department of State, L/PD, SA–5, 2200 C Street, NW., Suite 5H03, Washington, DC 20522–0505.

Dated: September 28, 2009.

**Maura M. Pally,**

*Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. E9–23813 Filed 10–1–09; 8:45 am]

BILLING CODE 4710–05–P

## DEPARTMENT OF STATE

**[Public Notice 6776]**

### Bureau of Western Hemisphere Affairs, Executive Order 11423, as Amended; Notice of Receipt of Application for a Presidential Permit for an International Pedestrian Bridge on the U.S.-Mexico Border Near San Diego, California and Tijuana, Baja California, Mexico

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** The Department of State hereby gives notice that, on September 18, 2009, it received from Otay-Tijuana Venture, L.L.C., an application for a Presidential permit to authorize the construction, operation, and maintenance of a new international pedestrian bridge called the San Diego-Tijuana Airport Cross Border Facility (CBF) on the U.S.-Mexico border near San Diego, California and Tijuana, Baja California, Mexico. According to the application, Otay-Tijuana Venture, L.L.C., is a company created under Delaware law and consists of companies owned by American and Mexican investors with experience in real estate, corporate investing, and airport operations. Otay-Tijuana Venture, L.L.C. states that it is undertaking the project as a for-profit, commercial activity. According to the application, the CBF would enable ticketed airline passengers to travel between Mexico's Tijuana International Airport (TIJ) and San Diego, California, via an enclosed, elevated pedestrian bridge. The CBF will consist of: a main building on the U.S. side of the border housing U.S. Customs and Border Protection (CBP) inspection facilities along with shops and services to accommodate travelers; an approximately 525-foot pedestrian bridge from the main building on the U.S. side connecting into TIJ's passenger terminal on the Mexican side; and parking facilities and areas for car rentals and potentially bus service on the U.S. side. According to the application, the CBF would allow passengers to bypass San Diego's congestion-prone ports of entry and avoid driving through the City of Tijuana.

The Department's jurisdiction over this application is based upon Executive Order 11423 of August 16, 1968, as amended. As provided in E.O. 11423, the Department is circulating this application to relevant Federal and State agencies for review and comment. Under E.O. 11423, the Department has the responsibility to determine, taking into account input from these agencies and other stakeholders, whether issuance of a Presidential permit for this proposed bridge would be in the U.S. national interest.

**DATES:** Interested members of the public are invited to submit written comments regarding this application on or before December 31, 2009 to Mr. Stewart Tuttle, U.S.-Mexico Border Affairs Coordinator, via e-mail at *WHA–BorderAffairs@state.gov*, or by mail at WHA/MEX—Room 3909, Department of State, 2201 C St. NW., Washington, DC 20520.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stewart Tuttle, U.S.-Mexico Border Affairs Coordinator, via e-mail at *WHA–BorderAffairs@state.gov;* by phone at 202–647–9894; or by mail at WHA/MEX—Room 3909, Department of State, 2201 C St. NW., Washington, DC 20520. General information about Presidential Permits is available on the Internet at *http://www.state.gov/p/wha/rt/permit/*.

**SUPPLEMENTARY INFORMATION:** This application and supporting documents are available for review in the Office of Mexican Affairs during normal business hours.

Dated: September 28, 2009.

**Alex Lee,**

*Director, Office of Mexican Affairs, Department of State.*

[FR Doc. E9–23812 Filed 10–1–09; 8:45 am]

**BILLING CODE 4710–29–P**

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

**[Docket No. WTO/DS399/1]**

### WTO Dispute Settlement Proceeding Regarding United States—Certain Measures Affecting Imports of Certain Passenger Vehicle and Light Truck Tires From China

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Office of the United States Trade Representative (''USTR'') is providing notice that on September 14, 2009, the People's Republic of China (''China'') requested consultations with the United States under the *Marrakesh Agreement Establishing the World Trade Organization* (''WTO Agreement'') with respect to certain measures affecting the import of certain passenger vehicle and light truck tires from China (China tires) into the United States. That request may be found at *http://www.wto.org* contained in a document designated as WT/DS399/1. USTR invites written comments from the public concerning the issues raised in this dispute.

**DATES:** Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before October 30 to be assured of timely consideration by USTR.

**ADDRESSES:** Public comments should be submitted electronically to *http://www.regulations.gov,* docket number USTR–2009–0035. If you are unable to provide submissions by *http://www.regulations.gov,* please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission. If (as explained below) the comment contains confidential information, then the comment should be submitted by fax only to Sandy McKinzy at (202) 395–3640.

**FOR FURTHER INFORMATION CONTACT:** María L. Pagán, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, (202) 395–9626.

**SUPPLEMENTARY INFORMATION:** USTR is providing notice that consultations have been requested pursuant to the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* (''DSU''). If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within nine months after it is established.

#### Major Issues Raised by China

On September 14, 2009, China requested consultations regarding restrictions recently announced by the United States on imports of Chinese tires. According to China, these restrictions take the form of substantially higher tariffs over the next three years well in excess of the tariff rates permitted under U.S. international obligations to China. The restrictions were announced on September 11, 2009, by U.S. authorities following an investigation pursuant to section 421 of the Trade Act of 1974, as amended (19 U.S.C. 2451). The report by the U.S. International Trade Commission issued as part of the investigation can be found at *Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China,* Investigation No. TA–421–7, USITC Publication No. 4085 (July 2009). The decision by the President can be found in the Proclamation issued by President Obama on September 11, 2009. The measures are to take effect on September 26, 2009. The request purports to include any other measures

the United States may announce to implement the decision.

China alleges that the higher tariffs, not having been justified as emergency action under relevant WTO rules, are inconsistent with Article I:1 of the *General Agreement on Tariffs and Trade 1994* (''GATT 1994''). China also alleges that these measures have not been properly justified pursuant to Article XIX of the GATT 1994 and the WTO *Agreement on Safeguards.* China also alleges that these measures have not been properly justified as China-specific restrictions under the *Protocol on the Accession of the People's Republic of China* (Protocol of Accession).

Furthermore, China alleges that the U.S. statute authorizing these China-specific restrictions is inconsistent on its face with Article 16 of the Protocol of Accession because, according to China, the statute impermissibly defines ''significant cause'' more narrowly than required by the ordinary meaning of the phrase as used in Article 16.4 of the Protocol of Accession. Finally, China alleges that each measure, as applied, is also inconsistent with the Protocol of Accession.

**Public Comment: Requirements for Submissions**

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit public comments electronically to *http://www.regulations.gov* docket number USTR–2009–0035. If you are unable to provide submissions by *http://www.regulations.gov,* please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission.

To submit comments via *http://www.regulations.gov,* enter docket number USTR–2009–0035 on the home page and click ''search''. 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 ''Submit a Comment.'' (For further information on using the *http://www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on ''How to Use This Site'' on the left side of the home page.)

The *http://www.regulations.gov* site provides the option of providing comments by filling in a ''Type Comment and Upload File'' field, or by attaching a document. It is expected that most comments will be provided in an attached document. If a document is attached, it is sufficient to type ''See attached'' in the ''Type Comment and Upload File'' field.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked ''BUSINESS CONFIDENTIAL'' at the top and bottom of the cover page and each succeeding page. Any comment containing business confidential information must be submitted by fax to Sandy McKinzy at (202) 395–3640. A non-confidential summary of the confidential information must be submitted to *http://www.regulations.gov.* The non-confidential summary will be placed in the docket and open to public inspection.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' at the top and bottom of the cover page and each succeeding page; and

(3) Must provide a non-confidential summary of the information or advice.

Any comment containing confidential information must be submitted by fax. A non-confidential summary of the confidential information must be submitted to *http://www.regulations.gov.* The non-confidential summary will be placed in the docket and open to public inspection.

USTR will maintain a docket on this dispute settlement proceeding accessible to the public. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened or in the event of an appeal from such a panel, the U.S. submissions, any non-confidential submissions, or non-confidential summaries of submissions, received from other participants in the dispute; the report of the panel; and, if applicable, the report of the Appellate Body.

Comments will be placed in the docket and open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15 or information determined by USTR to be confidential in accordance with 19 U.S.C. 2155(g)(2). Comments open to public inspection may be viewed on the *http://www.regulations.gov* Web site.

**Daniel Brinza,**

*Assistant United States Trade Representative for Monitoring and Enforcement.*

[FR Doc. E9–23829 Filed 10–1–09; 8:45 am]

**BILLING CODE 3190–W9–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 35259]**

### Boise Valley Railroad, Inc.—Assignment of Lease Exemption—Union Pacific Railroad Company and Idaho Northern & Pacific Railroad Company

Boise Valley Railroad, Inc. (BVR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire by assignment of lease from Idaho Northern and Pacific Railroad Company (INPR) the operating and lease rights over approximately 35.99 miles (not including yard tracks) of rail lines owned by Union Pacific Railroad Company (UP). The lines BVR seeks to acquire by assignment of lease are: (i) between milepost 0.2, near Caldwell, ID, and milepost 11.39, at Wilder; ID; (ii) between milepost 443.0, near Hillcrest, ID, and milepost 467.8, at Nampa, ID; and (iii) track numbers 40, 401, 402, 403, 404, 406, 407, 408, 409, 410, 411, 412, 413, 414, and 415 in UP's Nampa Yard, at Nampa. BVR will also acquire by assignment from INPR approximately 12.11 miles of incidental trackage rights over two segments of UP's lines in order to interchange traffic with UP at Nampa and to access one of the leased lines. The incidental trackage rights BVR seeks to acquire by assignment of lease are between: (i) milepost 465.91, at Caldwell, and milepost 454.0, at Nampa; and (ii) milepost 465.91, at Caldwell, and milepost 0.2, near Caldwell, on the Wilder Branch.[1]

This transaction is related to the concurrently filed notice of exemption in STB Finance Docket No. 35260, *Watco Companies, Inc—Continuance in Control Exemption—Boise Valley*

[1] According to BVR, neither the assignment of lease between INPR and BVR nor the lease agreement being assigned contains any provision that would prohibit BVR from interchanging traffic with a third party.

*Railroad, Inc.* In that proceeding, Watco seeks to continue in control of BVR, upon BVR's becoming a Class III rail carrier.

The transaction is scheduled to be consummated on or after October 16, 2009, (the effective date of the exemption).

BVR certifies that its projected annual revenues as a result of this transaction will not result in BVR becoming a Class II or Class I rail carrier and further certifies that its projected annual revenue will not exceed $5 million.

Pursuant to the Consolidated Appropriations Act, 2008, Public Law 110–161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than October 9, 2009 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35259 must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy must be served on Karl Morell, Of Counsel, Ball Janik LLP, Suite 225, 1455 F Street, NW., Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: September 28, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**Kulunie L. Cannon,**

*Clearance Clerk.*

[FR Doc. E9–23758 Filed 10–1–09; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 35260]**

### Watco Companies, Inc.—Continuance in Control Exemption—Boise Valley Railroad, Inc.

Watco Companies, Inc. (Watco), a noncarrier, has filed a verified notice of exemption under 49 CFR 1180.2(d)(2) to continue in control of Boise Valley Railroad, Inc. (BVR), upon BVR's becoming a Class III rail carrier.[1]

This transaction is related to a concurrently filed verified notice of exemption in STB Finance Docket No. 35259, *Boise Valley Railroad, Inc.—Assignment of Lease Exemption—Union Pacific Railroad Company and Idaho Northern & Pacific Railroad Company*. In that proceeding, BVR seeks an exemption under 49 CFR 1150.31 to acquire by assignment of lease from Idaho Northern & Pacific Railroad Company (INPR) the operating and lease rights over approximately 35.99 miles (not including yard track) of rail line owned by Union Pacific Railroad Company (UP). BVR will also acquire from INPR approximately 12.11 miles of incidental trackage rights over two segments of UP's lines in order to interchange traffic with UP at Nampa, ID, and to access one of the leased lines.

The parties intend to consummate the transaction on or shortly after October 16, 2009 (the effective date of this notice).

Watco currently controls 21 Class III rail carriers: South Kansas and Oklahoma Railroad Company, Palouse River & Coulee City Railroad, Inc., Timber Rock Railroad, Inc., Stillwater Central Railroad, Inc., Eastern Idaho Railroad, Inc., Kansas & Oklahoma Railroad, Inc., Pennsylvania Southwestern Railroad, Inc., Great Northwest Railroad, Inc., Kaw River Railroad, Inc., Mission Mountain Railroad, Inc., Mississippi Southern Railroad, Inc., Yellowstone Valley Railroad, Inc., Louisiana Southern Railroad, Inc., Arkansas Southern Railroad, Inc., Alabama Southern Railroad, Inc., and Vicksburg Southern Railroad, Inc., Austin Western Railroad, Inc., Baton Rouge Southern Railroad, LLC, Pacific Sun Railroad L.L.C., Grand Elk Railroad, and Alabama Warrior Railway, L.L.C.

Watco represents that: (1) The rail lines to be operated by BVR do not connect with any other railroads in the Watco corporate family; (2) the transaction is not part of a series of anticipated transactions that would connect these rail lines with any other railroad in the Watco corporate family; and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed no later than October 9, 2009 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35260, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Karl Morell, Of Counsel, Ball Janik, LLP, Suite 225, 1455 F Street, NW., Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: September 28, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**Jeffrey Herzig,**

*Clearance Clerk.*

[FR Doc. E9–23756 Filed 10–1–09; 8:45 am]

**BILLING CODE 4915–01–P**

[1] Watco owns 100% of the issued and outstanding stock of BVR.

## DEPARTMENT OF THE TREASURY

### Financial Crimes Enforcement Network

### Proposed Collection; Comment Request; Currency Transaction Report

**AGENCY:** Financial Crimes Enforcement Network, Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, the Financial Crimes

Enforcement Network (FinCEN) invites comment on the proposed renewal without change of the Currency Transaction Report (CTR), FinCEN Form 104. This request for comment 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 December 1, 2009.

**ADDRESSES:** Written comments should be submitted to: Regulatory Policy and Programs Division, Financial Crimes Enforcement Network, Department of the Treasury, P.O. Box 39, Vienna, Virginia 22183, Attention: PRA Comments—CTR–Currency Transaction Report, FinCEN Form 104. Comments also may be submitted by electronic mail to the following Internet address: *regcomments@fincen.gov*, again with a caption, in the body of the text, ''Attention: PRA Comments—CTR–Currency Transaction Report, FinCEN Form 104.''

*Inspection of comments.* Comments received 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 3.

**SUPPLEMENTARY INFORMATION:**

*Title:* Currency Transaction Report (CTR), 31 CFR 103.22(b).

*OMB Number:* 1506–0004.

*Form Number:* FinCEN Form 104.

*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. 5311–5332, authorizes the Secretary of the Treasury (Secretary), *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 investigations or proceedings, 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 Title II of 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.

Section 5313(a) of the Bank Secrecy Act authorizes the Secretary to issue regulations that require a report when ''a domestic financial institution is involved in a transaction for the payment, receipt, or transfer of United States coins or currency (or other monetary instruments the Secretary prescribes), in an amount, denomination, or amount and denomination, or under circumstances the Secretary prescribes.'' Regulations implementing section 5313(a) are found at 31 CFR 103.22. In general, the regulations require the reporting of transactions in currency to, by, or through a financial institution in excess of $10,000 by or on behalf of any one person in any one-business day. Financial institutions, as defined in 31 U.S.C. 5312(a)(2) and 31 CFR 103.11, are subject to the currency transaction reporting requirement. The Currency Transaction Report, FinCEN Form 104, is the form that financial institutions use to comply with the currency transaction reporting requirements.

*Current action:* This is a renewal without change of a currently approved collection. A copy of the Currency Transaction Report, FinCEN Form 104, may be obtained from the FinCEN Web site at *http://www.fincen.gov/forms/fin104_ctr.pdf*, or by calling (800) 949–2732 and selecting option 5.

*Type of Review:* Renewal of a currently approved information collection.

*Affected Public:* Business or other for-profit and non-profit institutions.

*Frequency:* As required.

*Estimated Burden:* Reporting average of 20 minutes per response. Form recordkeeping average of ten (10) minutes per response, for a total of 30 minutes.

*Estimated number of respondents* = 54,000.

*Estimated Total Annual Responses* = 13,710,000.

*Estimated Total Annual Burden Hours:* 6,855,000.

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 pursuant to 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: September 28, 2009.

**James H. Freis, Jr.,**

*Director, Financial Crimes Enforcement Network.*

[FR Doc. E9–23750 Filed 10–1–09; 8:45 am]

**BILLING CODE 4810–02–P**

[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 of 2001, Public Law 107–56.

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0227]**

## Agency Information Collection (Nutrition and Food Services) Activities Under OMB Review

**AGENCY:** Veterans Health 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 Health Administration (VHA), 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 and includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before November 2, 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. 2900–0227'' 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. 2900–0227.''

**SUPPLEMENTARY INFORMATION:**

*Titles:* Customer Satisfaction Survey for Nutritional and Food Service.

*OMB Control Number:* 2900–0227.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* VA will use the data collected to determine the level of patient satisfaction and quality of service resulting from advanced food preparation and advanced food delivery systems. Meals are an integral part of a patient's therapy. VA Form 10–5387 will be used to collect and evaluate information needed to determine whether improvements are needed to enhance patient's nutritional therapy.

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 July 29, 2009, at pages 37773–37774.

*Affected Public:* Individuals or households.

*Estimated Total Annual Burden:* 4,187.

*Estimated Average Burden per Respondent:* 2 minutes.

*Frequency of Response:* Quarterly.

*Estimated Number of Respondents:* 125,600.

Dated: September 29, 2009.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Enterprise Records Service.*

[FR Doc. E9–23766 Filed 10–1–09; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Friday,
October 2, 2009

# Part II

# National Archives and Records Administration

36 CFR Chapter XII, Subchapter B
Federal Records Management; Revision; Final Rule

**NATIONAL ARCHIVES AND RECORDS ADMINISTRATION**

**36 CFR Chapter XII, Subchapter B**

**[FDMS Docket NARA–08–0004]**

**RIN 3095–AB16**

## Federal Records Management; Revision

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Final rule.

**SUMMARY:** As part of its initiative to redesign Federal records management, NARA is revising and reorganizing the existing regulations on Federal records management to update records management strategies and techniques and to make the regulations easier to read, understand, and use. This rule will affect Federal agencies.

**DATES:** This rule is effective on November 2, 2009. The incorporation by reference of the publications listed in the rule is approved by the Director of the Federal Register as of November 2, 2009.

**FOR FURTHER INFORMATION CONTACT:** Laura McCarthy at phone number 301–837–3023 or fax number 301–837–0319.

**SUPPLEMENTARY INFORMATION:**

### Background

On August 4, 2008, at 73 FR 45274, NARA published a proposed rule to revise and reorganize the Federal records management regulations contained in 36 CFR Chapter XII, Subchapter B. We received timely comments from 12 Federal agencies, four agency records officers who did not identify their comments as agency responses, one former Federal agency records management professional, and one records management consultant and practitioner. We also considered a late comment submitted by a professional organization.

### Discussion of Comments

*General Overview*

Two agencies concurred without further comment. Several agencies and records officers offered their support for most of the revisions, noting that the new regulations are easier to use and understand, while also addressing specific issues that caused them concern. The comments from the former agency records management official recommended that the regulation be ''fundamentally rethought in light of the born-digital, end-user environment in which agencies operate today'' and offered suggestions for doing so. Specific issues raised in the comments and how we address them in this final rule follow.

*Use of ISO 15489*

Several comments addressed use of ISO 15489–1:2001, *Records Management—Part 1: General* in the regulation. Most supported its use and several suggested additional clauses to reference in specific parts, which we have adopted. The former agency records management official recommended a greater emphasis in the regulations on the ISO 15489–1 concepts of risk and business need. We believe that these concepts are implicit in the regulations. NARA guidance and training emphasize how to apply these concepts.

ARMA International advised against citing the standard because it is undergoing transformation into an ISO Management System Standard for Records Management and has not been adopted as an American National Standard in the United States. We did not accept this comment. NARA guidance and training for some time has emphasized the principles contained in ISO 15489–1. NARA is a participant with ARMA in the international standards (ISO) committee responsible for the standard and we believe that it is useful to records managers. We recognize that when the standard is replaced some time in the future by a new Management System Standard, the regulations will have to be modified. The records management consultant suggested that it wasn't necessary to cite the ISO standard in each part; we did not adopt this comment based on the responses from the agencies and recognition that users frequently consult one or more specific Code of Federal Regulations (CFR) parts and not the whole subchapter, when looking for specific information.

*Updating Agency Guidance To Reflect Subchapter B Restructuring*

Two comments noted that while the revisions were helpful and much needed, the renumbering and reorganization of the regulations will require agencies that reference specific CFR sections in their internal policies to update their citations. We have added a Derivation Table as an appendix to this preamble to assist agencies in performing that update. We note that agencies should review their agency internal policies, in any case, to incorporate changes in the regulations.

*Record/Nonrecord Confusion*

One commenter advised that NARA focused too strongly on the distinction between record/nonrecord status of documentary materials and expressed a view that virtually all documentary materials meet the definition of a Federal record and need to be managed using records management principles. While we have clarified some sections in response to specific comments, we note that 44 U.S.C. 3301 defines what is a Federal record and 44 U.S.C. 3101 assigns to Federal agencies the responsibility to determine what records must be made and preserved for adequate and proper documentation.

*Definition of Terms in § 1220.18*

Several comments concerned the definitions, or omissions of definitions, from § 1220.18, which provides definitions of terms used throughout subchapter B.

In response to one comment on the definition of *Adequate and proper documentation,* we note that the definition is unchanged from the previous definition.

Two comments suggested that the definition of *Electronic records* belongs here rather than only in part 1236, Electronic Records Management; in response to these comments, we have moved the definition to § 1220.18.

We modified the definition of *Nonrecord* materials to use the term ''documentary materials'' instead of ''informational materials,'' as suggested by one comment.

One agency recommended that the definition of *Records maintenance and use* be restored because agencies may misinterpret the meaning of the term. We have added a new definition that emphasizes that the term covers management and handling of records after creation or receipt and before final disposition.

One agency suggested that we use a simpler definition of *Records management* provided by the Society of American Archivists. We have retained the statutory definition from 44 U.S.C. 2901.

We modified the introduction of the definition of *Records schedule or schedule* to clarify that the definition could mean any of the three sub-items, since this was not clear to a couple of reviewers. We did not adopt a recommendation that we add ''or equivalent'' to the first sub-item to allow for future changes in process using the Electronic Records Archives; at this time we do not anticipate such a need.

Finally, we did not move the definition of *Vital records* from § 1223.2, as suggested by one comment, because the term is used primarily in part 1223 and the few other references in other

sections clearly associate the term with part 1223.

*Other General Comments*

Two comments suggested that NARA provide a section in part 1220 that lists the NARA offices and common acronyms referenced throughout the CFR Subchapter B. We agree and have added § 1220.20, What NARA acronyms are used in this subchapter?

One comment applauded the reference to industry (*i.e.,* voluntary consensus) standards that are relevant to records management, but expressed concern over the expense to agencies of purchasing these standards. We note that this final rule specifies in each part that incorporates a standard by reference where the standard may be inspected or purchased. We also note that most of the standards were also incorporated by reference in the previous NARA regulations.

One comment asked what reports, if any, NARA must make to Congress and the Office of Management and Budget (OMB), since the revised regulation does not include the information contained in the previous § 1220.16. NARA makes the reports specified under 44 U.S.C. 2904(c)(8) as part of our Performance and Accountability Act and other special reports. In response to a comment from another individual, we did add a reference in § 1239.20 to the reporting that NARA will make to Congress and OMB on the results of inspections.

We did not adopt one comment that suggested we include a section that provides minimum qualifications for records officers and a process that would promote direct communication between the designated records officer and the head of the agency. We believe that these issues can and should be addressed outside the regulatory process. We note, for example, that NARA has established a records management training certification program and meets regularly with senior agency officials on records management issues, emphasizing the role of the records officer.

*Comments on Part 1220—Federal Records; General*

One comment suggested revising the wording of § 1220.12(c) to emphasize that the appraisal process and Archivist's determination involve both temporary and permanent records. We have clarified the paragraph, although we did not use the suggested wording.

The title and text of § 1220.16 referred to both recorded information and documentary materials. Since ''documentary materials'' are defined in § 1220.18 as recorded information, we accepted a comment to drop ''documentary materials'' from the title of the section. We also struck the reference to ''recorded information'' in the text of the section.

Discussion of the comments on the definitions in § 1220.18 were addressed earlier in this **SUPPLEMENTARY INFORMATION.**

Three comments were received on § 1220.32. One records officer asked for definitions of the terms ''authentic,'' ''reliable,'' and ''useable'' when applied to records; paragraphs (a) through (f) explain how agencies create and maintain such records. In response to an agency comment, we have deleted from § 1220.32(a) a requirement for specifying the form or format of each record, which is not necessary with media-neutral records scheduling. In response to another agency comment, we amended paragraph (b) of this section to incorporate a requirement for ensuring the integrity of records.

One agency asked for more guidance on § 1220.34(c), which requires agencies to issue a records management directive, to disseminate it throughout the agency, and to send a copy to NARA. This is an existing requirement; NARA expects to receive the agency wide directive. Another agency recommended that we specify in § 1220.34(j) that agencies must audit their records management program to keep it up to date. We accepted this comment, modifying the proposed wording slightly.

*Comments on Part 1222—Creation and Maintenance of Federal Records*

We received several comments on the terms explained in § 1222.10(b). In response to two comments that the discussion of ''documentary materials'' did not match our earlier definition, we revised the wording to state that it has the meaning provided in the definition in § 1220.18. One comment on ''made'' asked that we define ''official duties'' to distinguish them from other types of duties that would not result in the creation of records; we do not think that such a definition is needed.

We also received two comments on ''preserved.'' One agency suggested that we clarify the discussion by indicating that it covers documentary materials in any medium; we agree and have made the change. One agency asked if the phrase ''maintaining documentary materials'' should be stated as ''maintaining record material''; since this paragraph is addressing only one of the criteria for determining that documentary material meets the definition of Federal record, ''documentary materials'' is the correct wording.

A former agency records management official asked a series of questions about application of the discussion, but did not offer suggestions for change. He also asked whether information that an agency does not deem ''appropriate for preservation'' is a temporary (disposable) record or nonrecord material. The discussion of the meaning of ''appropriate for preservation'' makes the point that documentary material that the agency believes should be filed, stored or otherwise systematically maintained is a record even if the materials are not covered by the current filing or maintenance procedures.

Three agencies expressed serious concern with the change in the specification in § 1222.12(c) of conditions for determining that working files are records. The previous regulations specified that both of two conditions must be met; the proposed rule changed this to an ''or.'' As two of the agencies pointed out, the revision would require retention as a record of even non-substantive editorial changes to preliminary drafts made by anyone other than the creator. In response to these comments, this final rule restores the requirement that both conditions be met.

One agency suggested that we reference the § 1220.18 definition of record in § 1222.12(b). We do not believe this is needed as the reference is contained in § 1222.12(a).

Another agency felt the proposed change to the second sentence in § 1222.12(d) relating to multiple copies was confusing. We have restored the wording used in the previous regulation.

One agency commended NARA for the clarity of the guidance on identification and management of nonrecord material in § 1222.14, while a former agency records professional recommended removing the reference to the volume of nonrecord materials because in his view, this cannot be proven and it leads people to suspect that much of their documentary materials are nonrecord. We did not remove the reference. However, we agreed with this commenter and another agency comment that the examples of extra copies of documents (§ 1222.12(b)(1)–(4)) should be removed because the examples were confusing and difficult to interpret; we have removed that item from § 1222.12.

One comment asked that we emphasize in § 1222.16 that nonrecord materials be organized, accessible and usable (the same as records) for as long as needed. We do not agree; if the

agency has documentary materials that must be organized and available for use in conducting agency business, it is likely that the materials meet the definition of Federal record. Another comment suggested that we not use the term nonrecord materials but refer to them as documentary materials that can generally be purged; we do not find this suggestion helpful.

A third comment asked for clarification on what needs to be done to separate electronic records and non-records. We note that § 1222.16(b)(2) requires that electronic non-record materials be readily identified and segregable from records; agencies have discretion to specify how that should be accomplished in their working environment. The proposed wording of § 1222.20(b)(2) limited its applicability to electronic non-record materials maintained in an electronic repository. In the course of reviewing this comment, we determined that it should be applicable to all electronic non-record materials.

One agency stated that § 1222.18(d) might be confusing because agencies have specific program requirements for telework and information dissemination. The comment suggested that NARA should elaborate with instructions for following agency program requirements. We did not adopt this comment. Agency records management requirements relating to telework and authorized information dissemination should be addressed in the agency controls over creation, maintenance and use of records in the conduct of current business (see §§ 1220.30(c)(1) and 1220.32).

One agency recommended that the regulation retain the examples of personal files rather than direct users to NARA publications that provide more detailed discussion. The agency suggested that employees needed to see this in the regulation itself. We did not adopt this comment. The examples are not regulatory, and the NARA publication *Documenting Your Public Service* has been used by a number of agencies to brief their personnel on the issue. We also note that the regulation contains the definition of personal files in § 1220.18, which is referenced in § 1220.20(a).

Another agency expressed concern with § 1220.20(b)(2), which allows agencies to redact information about private matters on a copy of the document and treat that copy as the agency record if it was improperly mixed with agency business in a received document that is a Federal record. The agency stated that redacting the original affects its authenticity; private papers and Federal records should always be separate and clearly marked. We did not delete this provision, which has been contained in the NARA regulation on personal papers for a number of years. Agencies have the discretion to require the retention of the original document containing the private matters as the agency record or to do as § 1220.20(b)(2) allows.

One agency suggested adding three additional types of records to the list in § 1222.22 that must be created and maintained. Two items—documenting the National experience and contributing substantially to scientific knowledge—are criteria that NARA uses in appraising records, and not separate categories of adequate documentation of agency business. The third item—documenting data on the observation of natural phenomena—is specific to a subset of agencies and covered, we believe, in paragraph (a) on documenting the persons, places, things or matters dealt with by the agency.

An individual asked for clarification of a number of items, including the relationship of §§ 1222.22 and 1222.24 to the requirement in § 1220.30 to document essential transactions, whether there are agency activities that aren't included in the list in § 1222.22, and whether all employees are agency officials. He suggested that agencies be required to identify essential transactions and that NARA recommend that agencies take a risk management approach to determine what is needed to ensure adequate and proper documentation. Section 1222.22 specifies in broad terms the types of records that agencies must create and maintain in order to carry out their statutory responsibility (44 U.S.C. 3101, as cited in § 1220.30) to ''make and preserve adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency * * *.'' We believe that the wording of § 1222.22 is sufficient to identify essential transactions as well as the other categories of information specified in 44 U.S.C. 3101. Section 1222.24 states how agencies are to carry out the responsibilities in § 1220.30.

One agency recommended incorporating language from § 1224.10(d) relating to addressing records management requirements during the planning stages of an information technology system in §§ 1222.24 or 1222.26, or both. We did not adopt this comment. The provision is explicitly addressed in § 1220.34(d) and (e) and § 1236.12.

One commenter suggested adding a requirement to § 1222.28 to create documentation of e-mail, phone calls, etc. We believe that § 1222.26, when taken in conjunction with § 1222.28, provides this requirement. Section 1222.26 is focused on maintenance requirements. The commenter also suggested that § 1222.28(e) should focus on determining and standardizing the retention of working files for specific types of transactions rather than determining which working files are records; we did not adopt this suggestion. We agree with his premise that working files necessary to conduct the work of the agency should meet the definition of a record; this paragraph is requiring agencies to identify what working files meet the conditions in § 1222.12(c) to be a record. Determining and standardizing the retention of working files for specific types of transactions should be done in conjunction with the scheduling process prescribed in part 1225.

Two agencies and one individual commented on § 1222.32. One agency stated that the language is clear and unambiguous, while the other agency asked for additional stronger language in several areas, including regarding when contractor records belong to the government, the authority of record managers to determine whether contract records belong to the government, and that contractors must follow agency records management requirements. We believe that these issues are clearly addressed in §§ 1222.32(b), (a)(3), and (a)(2), respectively. The agency also asked for a statement that all records created or stored on government networks are the property of the government and to have a sample list of the types of contractor records the government has no interest in. We also did not adopt these comments. As we noted previously with the comment on telework policy, policies relating to storing records on government networks should be addressed in the agency controls over creation, maintenance and use of records in the conduct of current business (see §§ 1220.30(c)(1) and 1220.32). There is no single list of examples of contractor records that would be applicable to all contracts.

The individual recommended that we modify the language of § 1222.32(a)(4) to read ''* * * sufficient technical documentation to permit understanding and use of the records and data,'' because ''use'' alone could be very narrowly interpreted. We have made this change.

One agency commented that § 1222.34(d) should include a requirement to ensure that electronic records are migrated to future technology to ensure their readability.

We did not adopt this comment. Paragraph (b) of this section requires agencies to maintain electronic records in accordance with 36 CFR part 1236; one of the requirements in part 1236 addresses migration. In response to a comment from an individual, we have modified § 1222.34(f) to reference § 1222.16, which calls for electronic nonrecord material to be segregable from electronic records.

*Comments on Part 1223—Managing Vital Records*

One comment noted that this part makes no reference to records safety procedures that should be followed in the day-to-day operations of an agency. Such procedures are addressed in other parts; part 1223 concerns the agency vital records program that is part of the agency's continuity of operations program (COOP). Two agencies noted that Federal Preparedness Circular (FPC) 65 has been superseded by Federal Continuity Directives (FCD) 1 and 2 in February 2008. We have updated the references in §§ 1223.1 and 1223.14.

One agency suggested adding to the definition of *legal and financial rights records* in § 1223.2 such examples as memorandums of understanding and host tenant agreements. We believe that the additional examples are not required.

One agency noted confusion with the statement in § 1223.16 that the information content determines which records series and electronic systems are vital records, and that only the most recent and complete sources of the information are vital records. Vital records are a subset of the agency's records that are needed for the agency to be able to operate in an emergency or under COOP conditions.

One agency recommended providing more explicit detail in § 1223.22 for the requirement that vital records dispersal sites must be ''a sufficient distance away so as not to be subject to the same emergency.'' It is not feasible for NARA to establish more specific criteria, such as ''close enough for staff to access and retrieve records within 12 hours'' which the agency suggested. Agencies must determine what dispersal distances and retrieval requirements will address their needs, as identified in their continuity plans.

*Comments on Part 1224—Records Disposition Programs*

Two agencies commented on § 1224.10. One agency suggested that records management program promotion activities should be given more emphasis, either here or in § 1220.34; we did not adopt this suggestion. We note that § 1224.10(e) and § 1220.34(f) require agencies to provide training and guidance to all employees on records management responsibilities. Another agency asked that § 1224.10(b) state the time frame for dissemination of records schedules and General Records Schedules (GRS), noting that § 1226.12(a) gives a time limit of six months. We have added a reference to that section.

*Comments on Part 1225—Scheduling Records*

We received comments from three agencies and an editorial comment from an individual on § 1225.12. One agency asked where additional NARA guidance could be found; we added the URL for the NARA Web site. One agency asked for additional step by step guidance for scheduling and how GRS 20, Electronic Records, applies; such guidance is available in the *Disposition of Federal Records* handbook and other NARA guidance referenced in the introductory paragraph. A third agency asked for clarification of the phrase ''flexible retention period'' in paragraph (d); the details of this are provided in the NARA guidance described in the introductory paragraph to the section. This agency also asked for clarification of the wording for media neutral schedules; in response to that comment we have made a minor edit. We also made a minor edit to paragraph (i) in response to an individual's comment.

We made two changes to § 1225.14(b)(2) in response to agency comments. To reflect that new schedules are media neutral, unless the agency proposes otherwise, we modified § 1225.14(b)(2)(ii) to read ''Physical type, if appropriate;'' and clarified what we meant by arrangement statement in § 1225.14(b)(2)(iv).

We modified § 1225.14(b)(3)(i) to add ''if appropriate, the time period for retiring inactive records to an approved records storage facility'' at the suggestion of an agency records officer. A similar statement is already provided for temporary records in § 1225.16. The records officer also suggested adding the statement where a permanent records series is nonrecurring; we believe that the existing choices of immediate transfer to the National Archives of the United States or transfer at a set date in the future are sufficient.

We clarified the language in § 1225.14(c) after reviewing a comment on the wording of subparagraph (c)(2). We did not adopt the comment to require submission of a revised Standard Form (SF) 115 within one year after an SF 115 item is withdrawn.

One agency expressed concern with the requirement to schedule agency Web sites in § 1225.22(h), noting that the requirement creates a burden on NARA and agencies. We note that this requirement is consistent with both the Managing Web Records guidance issued in January 2005 and the NARA Bulletin 2006–02, which implemented section 207(e) of the E-Government Act. Another agency asked how paragraph (h)(4) differs from the guidelines in GRS 20 regarding the applicability of GRS to electronic records and when an SF 115 must be submitted. Paragraph (h)(4) is the NARA policy. The revised GRS 20 is the specific disposition authority for agencies to use for specific types of records described in the individual GRS items.

Two agencies raised questions about the application of the notification requirement in § 1225.24(a) for permanent records. One agency asked when the agency is required to notify NARA if only some electronic case files are permanent. The requirement is to notify NARA in writing that the series is now maintained electronically; we have clarified the wording. Another agency interpreted the requirement to notify NARA within 90 days of when an electronic recordkeeping system for permanent records becomes operational as being contrary to the guidance in NARA Bulletin 2006–02, which requires agencies to schedule previously unscheduled electronic systems and records by October 1, 2009. We have clarified with the agency that if the conditions in paragraph (a)(1) apply, the agency may notify NARA in accordance with that paragraph rather than submit a new SF 115.

An agency records officer suggested that we explicitly state in § 1225.26 that a new SF 115 is not required as the form of written request to extend the time period that permanent record remain in agency custody. We have added a sentence to that effect. He also questioned the need to submit an SF 115 if the agency needs to increase the retention period for a series of temporary records, suggesting that a notification should be sufficient. While NARA has relaxed the requirements for NARA approval of temporary increases in retention to meet special circumstances (see § 1226.18), we believe that ongoing application of a different retention period than what NARA approved on the SF 115 requires NARA review.

*Comments on Part 1226—Implementing Disposition*

An agency records officer asked that we modify the time limit in § 1226.12

for issuing new approved disposition authorities to allow 1 year for dissemination; we did not adopt this comment. The current 6 month requirement has been in effect for a number of years. Because the new disposition authorities go into effect on NARA approval, we believe that prompt dissemination to agency staff is necessary.

Two comments asked why an agency must inform NARA about the need to maintain records longer than the retention period in the case of legal holds. We have removed this notification requirement from § 1226.20. We remind agencies that they must ensure that records in records storage facilities, including any NARA Federal records centers, are retained for the duration of the legal hold, as paragraph (c) of this section states.

Two comments addressed the requirements in § 1226.24 for destroying temporary records through sale as waste paper or salvage. One comment asked that we explicitly identify the actions in paragraphs (a)(1) and (a)(2) as recycling; we do not believe this is necessary. One agency noted that this may not be feasible for overseas bases and that an agency may want its personnel to destroy security classified records. We have modified paragraph (b)(1) to clarify that the agency or its wastepaper contractor may be the responsible party.

We did not adopt a comment on § 1226.26 to reduce the information required to request approval to donate disposable temporary records to appropriate recipients. NARA needs this information to make its determination. We note that the provisions of this section have been in place for more than 10 years.

*Comments on Part 1227—General Records Schedules*

We received two comments on this part. One comment concerned whether NARA issues General Records Schedules (GRS) covering permanent records; we do. The other comment suggested that the time period for notifying NARA that an agency wishes to continue to use an agency-specific records schedule in lieu of the GRS be changed from 90 days to 1 year. We extended the notification period to 4 months; the revised time frame will still enable the agency to disseminate the newly issued GRS to agency staff within the time limits specified in § 1226.12 should a decision be made to no longer use the agency-specific schedule item.

*Comments on Part 1228—Loan of Permanent and Unscheduled Records*

One agency suggested that we specifically address loan of temporary records. We have added a new *§ 1228.8, Do loans of temporary records require NARA approval?* with a clear statement that NARA approval is not required for loan of temporary records, but that agencies must maintain their own controls over such loans.

We received two comments on § 1228.14 regarding the time frames in which NARA will act on requests to loan permanent records. One agency suggested that NARA should be able to act on a request within 15 days; an individual suggested that we provide a time frame for denying requests. In this final rule, the time frames for approving or denying loans of original permanent or unscheduled records are set as within 30 days. Where NARA can act more quickly, we will.

One agency noted that it must loan medical records routinely to another agency; while these records are currently scheduled as temporary records, we recognize that there may be a few instances where agencies cannot provide copies in lieu of original permanent records. Therefore, we have modified this section by adding a new paragraph (b) to allow an agency to prepare an annual loan agreement covering multiple transfers from the same series of records to another single Federal agency.

*Comments on Part 1229—Emergency Authorization To Destroy Records*

We received three comments on this part. We made two editorial revisions to § 1229.10 in response to comments—''the Archivist'' has been replaced by ''NARA'' and we made the references to ''continuing menace to human health or life, or to property'' consistent in the section title, introductory paragraph, and paragraph (a) of § 1229.10. One agency non-concurred with the introductory paragraph, which is taken directly from 44 U.S.C. 3310; the agency also asked that NARA impose a 72-hour limit on responding to an agency request. NARA will respond quickly to urgent requests, as we have demonstrated with Hurricane Katrina records in the past, and we do not believe that the rule needs to include a specific short timeframe. We also did not adopt the suggestion from another agency that the wording of § 1229.12 should specify ''scientific records'' as a category of records lacking sufficient value to warrant continued preservation when the space they occupy is urgently needed for military purposes. We believe that the current wording, taken from 44 U.S.C. 3311, would cover such scientific records under the category of ''other value.''

*Comments on Part 1230—Unlawful or Accidental Removal, Defacing, Alteration, or Destruction of Records*

One agency noted that the language in § 1230.10 more closely tracked 44 U.S.C. 3106 and asked if the new wording increased liability for agency heads and records officers. The regulation now more clearly states what have always been the agency responsibilities under 44 U.S.C. 3106. Another agency claimed that § 1230.14 should require NARA Federal Records Center staff to report loss of records in Federal Records Center space to NARA (NWM). We did not modify the section. It is the responsibility of the agency to report all instances of accidental or unlawful removal, defacing, alteration or destruction of its records. If records are damaged (e.g., water leaks or fire) while in NARA Federal Records Center space, the records center will notify the customer agency which will in turn notify NWM.

*Comments on Part 1232—Transfer of Records to Records Storage Facilities*

One agency raised concerns with § 1232.18(h), which requires agencies to provide access to appropriate NARA staff to records in records storage facilities in order to conduct inspections or process SF 115s. Their concerns center on access to security classified records. No change is required in the regulation. The NARA staff would have the appropriate clearances and access would be requested and conducted in accordance with all regulations governing access to national security classified information or other restricted information (*e.g.,* IRS or Census records). This is an existing requirement in 36 CFR 1228.154(e) and is based on the statutory authority in 44 U.S.C. 2906.

*Comments on Part 1233—Transfer, Use, and Disposition of Records in a NARA Federal Records Center*

We have deleted a paragraph from § 1233.10 in this final rule as unnecessary and potentially confusing. The paragraph in the proposed rule stated that NARA Federal Records Centers may accept contaminated records. Any decision on whether specific contaminated records may be transferred to a Federal Records Center will be addressed in the agency agreement with NARA.

One agency commented on § 1233.14(b) that all active duty

outpatient records are transferred to the VA Records Center at the time of the discharge of the member from active duty. We have modified paragraph (b) to reflect this exception.

One agency requested that § 1233.16 provide additional detailed guidance on transferring Official Personnel Folders (OPFs) to the National Personnel Records Center (NPRC). The Office of Personnel Management is the agency responsible for OPFs and their transfer requirements. We updated the URL for the Guide to Personnel Recordkeeping. Another agency objected to the statement in § 1233.20(a) that NPRC does not send a disposal notice to the transferring agency before destroying records covered in General Records Schedules (GRS) 1 and 2. The records addressed by paragraph (a) and GRS 1 and 2 belong to the Office of Personnel Management, not the transferring agency.

*Comments on Part 1235—Transfer of Records to the National Archives of the United States*

One agency suggested that we add a section concerning pre-accessioning (early physical transfer to NARA) of permanent electronic records. We did not adopt this comment because the cases where pre-accessioning can be considered is currently limited and the nature of the program may change as the Electronic Records Archives (ERA) matures and the NARA Federal Records Center Program adds to its electronic records storage services.

Another agency expressed concerns that the proposed § 1235.16 would lessen the ability of agencies with national security classified information to exempt particularly sensitive classified information from transfer to NARA. The conditions for agency retention of records that are more than 30 years old have been in place since 1992 and remain unchanged. We did, however, add a section with timeframes for NARA action on agency requests. An individual recommended that we add a timeframe to § 1235.22 for acting on submitted SF 258s; we did not adopt this comment because the timeframes needed will depend on the types and volumes of records transferred and whether we must clarify information with the transferring agency.

Another agency asked that we add to § 1235.32(b)(1) examples of the restrictions on records; we did not adopt this comment because paragraph (c) of that section directs readers to 36 CFR part 1256, which covers restrictions that NARA imposes.

Several comments addressed the Subpart C provisions for transfer of records in electronic and other special media formats. We made editorial edits to refer consistently to ''digital geospatial data.'' We have clarified the use of DVDs for transfer of electronic sound recordings (§ 1235.42(e)) and when Tape Archive (TAR) utility can be used for transferring electronic records (§§ 1235.46 and 1235.50). We also restored to § 1235.46(b)(3) a table for the standards to be used in conjunction with DLT tape cartridges that was inadvertently omitted from the proposed rule. The table is the same as in the previous regulation at § 1228.270(c)(1)(iii). We also added to § 1235.50(d) the use of XML markup language.

One agency objected to the specifications in § 1235.50 for electronic records, stating that this goes against NARA's ERA vision. The ERA vision statement accurately reflects NARA's view of the functionality of the system when ERA is fully deployed. This CFR provision reflects the reality of what NARA can accept today. As ERA is able to accept additional record formats in future increments, we will further revise this section.

*Comments on Part 1236—Electronic Records Management*

One comment from the former agency records management official recommended that most of part 1236 should be combined with part 1222. He argued that this would provide the media-neutral approach that ISO 15489–1 has adopted and that most of the requirements of part 1236 apply to all recordkeeping systems. While we agree that the fundamental concepts applicable to managing records are the same regardless of media, we believe that specifying the requirements for electronic records management in a separate part is still helpful to agencies. We note that § 1236.6 clearly requires agencies to incorporate management of electronic records into the records management activities required by parts 1220–1235.

Two agencies asked whether the requirements in §§ 1236.10, 1236.20, 1236.22 and 1236.24 are applicable to all systems that maintain electronic records, including transitory e-mail records. We have clarified § 1236.24 to state that transitory e-mail may be managed as specified in § 1236.22(c). The agencies also asked about the difference between structured and unstructured records and whether a record created using an e-mail system is always considered an unstructured record. Structured records, such as database records, have predetermined data types and understood relationships. The definition of ''unstructured record'' specifies that records created using electronic mail and other messaging applications are considered unstructured records; this is because e-mail records may contain attachments that are unstructured in format. Finally, they asked how to manage transitory e-mail records in accordance with § 1236.22(c)(2). This provision has not changed since it was established in 2006 and allows agencies to maintain and delete transitory (*i.e.,* with a retention period of 180-day or less retention) e-mail records from their live e-mail systems without transferring these records to a recordkeeping system if certain conditions are met. The agency would use GRS 23, item 7 or a NARA-approved agency schedule that covers such e-mail records as the disposition authority.

In response to one agency's concern that agencies may not consider the need to migrate electronic records that have been sent to off-line or off-site storage areas, we have added a new § 1236.14(c) to emphasize that this section applies to such records. Another agency expressed a view that it is not feasible for all agencies to continuously migrate electronic media to current formats. The section requires agencies to plan and take actions to ensure their electronic records are usable for their full agency retention period; agencies are given flexibility as to how they do this.

One agency suggested that NARA provide a list of metadata elements in both §§ 1236.12 and 1237.28 pertaining to content, context, and structure of electronic information. We did not adopt this suggestion. While § 1236.22(a)(1) specifies certain minimum metadata that must be preserved for e-mail records, each agency must identify for itself what metadata is needed to meet agency business needs.

One agency argued that the print-and-file method of recordkeeping cannot always capture a complete record; we agree and § 1236.24(b) requires agencies to establish policies and issue instructions to ensure capture of any pertinent hidden text or structure relationships that the agency identifies as required for its business needs. We disagree with the agency's view that part 1236 should not apply to temporary records if an agency risk analysis supports using a method for managing electronic records that best meets its business needs even though it might not meet every records management requirement.

*Comments on Part 1237—Audiovisual, Cartographic, and Related Records Management*

One agency suggested adding ''orthophoto images'' to the list of cartographic records in § 1237.3 and expanding paragraph (b) of that section to address aerial observations that are not film-based. We adopted the first suggestion; we will consider specific coverage of other aerial observation records in a future rulemaking. Another agency asked if § 1237.12 applies to only records created in the future. We note that the previous NARA regulations on permanent audiovisual records (36 CFR 1232.20(a) and 1228.266) already require agencies to be able to transfer the same record elements that are cited in this section. We added the elements to part 1237 so that agencies are aware of what they eventually will need to transfer to the National Archives of the United States.

In response to comments from two agencies, we corrected the wording in § 1237.14 to state that disposition instructions should provide for early transfer of permanent audiovisual, cartographic, and related records. One agency asked for more guidance in §§ 1237.22(f) and 1237.28(b); those sections advise agencies to contact specific NARA organizations for additional assistance.

*Comments on Part 1239—Program Assistance and Inspections*

As noted earlier in this Supplementary Information, we added a new final sentence to § 1239.20 addressing reporting to Congress and the Office of Management and Budget on inspections.

*Other Changes in This Final Rule From the Proposed Rule*

In addition to the changes to the proposed rule discussed in previous sections of this **SUPPLEMENTARY INFORMATION**, we have revised language relating to the incorporation by reference (IBR) of standards throughout to meet the Office of the Federal Register's requirements; corrected erroneous cross references to other sections; and, as announced in the proposed rule, added as part 1234, Facility Standards for Records Storage Facilities, the regulatory text of the previous 36 CFR part 1228, subpart K and the two appendixes to the previous 36 CFR part 1228. We also made other minor, nonsubstantive editorial corrections.

**Regulatory Impact**

This rule is a significant regulatory action for the purposes of Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB). As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities because this regulation will affect Federal agencies. This regulation does not have any federalism implications. This rule is not a major rule as defined in 5 U.S.C. Chapter 8, Congressional Review of Agency Rulemaking.

**Appendix to the Preamble—Derivation Table**

The following derivation table is provided as a convenience to readers to assist them in locating where each piece of the revised material in this final rule comes from. This table will not be published in the Code of Federal Regulations. It will be available on NARA's Web site at *http://www.archives.gov/about/regulations/subchapter/b.html.*

| New section | Old section | Notes on significant policy changes |
|---|---|---|
| **Part 1220** | **Part 1220** | |
| 1220.1 | 1220.1. | |
| 1220.2 | 1220.10. | |
| 1220.3. | | |
| 1220.10 | 1220.2. | |
| 1220.12 | | New summary of NARA responsibilities. |
| 1220.14 | 1220.12. | |
| 1220.16 | | New explicit statement that the regulations cover Federal records. |
| 1220.18 | 1220.14 | Terms that were added:<br>*Disposition authority.*<br>*Electronic record.*<br>*Information system.*<br>*Personal files.*<br>*Retention period.*<br>Terms that were substantively revised:<br>*Documentary materials.*<br>*Records schedule.* |
| 1220.30 | 1220.30; 1222.10 (b) and (c). | |
| 1220.32 | 1220.34–1220.38 | Added reference to continuity of operations. |
| 1220.34 | | Comprehensive high level list of responsibilities across the records lifecycle drawn from old §§ 1220.40, 1228.42, 1222.20, and 1228.12. |
| **Part 1222** | **Part 1222** | |
| 1222.1 | 1222.10. | |
| 1222.2. | | |
| 1222.3. | | |
| 1222.10 | 1222.12. | |
| 1222.12 | 1222.34(a)–(d). | |
| 1222.14 | 1222.34(f). | |
| 1222.16(a) | 1222.30(b). | |
| 1222.16(b) | | New; previous covered in NARA guidance. |
| 1222.18 | 1222.42 | Substantive change in policy. |
| 1222.20 | 1222.36. | |
| 1222.22 | 1222.38. | |
| 1222.24 | 1222.32. | |

| New section | Old section | Notes on significant policy changes |
|---|---|---|
| 1222.26 | | New; previous covered in NARA guidance. |
| 1222.28 | | New; previous covered in NARA guidance. |
| 1222.30 | 1222.46. | |
| 1222.32 | 1222.48 | Substantively expanded. |
| 1222.34 | 1222.50. | |
| **Part 1223** | **Part 1236** | |
| 1223.1 | 1236.12 | Updated references. |
| 1223.2 | 1236.14. | |
| 1223.3. | | |
| 1223.10 | 1236.10. | |
| 1223.12 | 1236.20 Introductory paragraph. | |
| 1223.14 | 1236.20(a)–(d). | |
| 1223.16 | 1236.22. | |
| 1223.18. | | |
| 1223.20 | 1236.24. | |
| 1223.22 | 1236.26. | |
| 1223.24 | 1236.28. | |
| **Part 1224** | **Part 1228 Subpart A** | |
| 1224.1 | 1228.10. | |
| 1224.2. | | |
| 1224.3. | | |
| 1224.10 | 1228.12. | |
| **Part 1225** | **Part 1228 Subpart B** | |
| 1225.1. | | |
| 1225.2. | | |
| 1225.3. | | |
| 1225.10 | | New statement of long-standing policy that all records must be scheduled. |
| 1225.12 | 1228.22 | Updated with NARA guidance on conducting functional or work process analysis and flexible scheduling. |
| 1225.14 | 1228.28. | |
| 1225.16 | 1228.30. | |
| 1225.18 | 1228.22 and 1228.24. | |
| 1225.20 | 1228.22(f). | |
| 1225.22 | 1228.31(a) | Comprehensive listing of situations when new SF 115 is needed drawn from multiple other sections. |
| 1225.24 | 1228.31(b). | |
| 1225.26 | 1228.32. | |
| **Part 1226** | **Part 1228 Subpart B** | |
| 1226.1. | | |
| 1226.2. | | |
| 1226.3. | | |
| 1226.10 | 1228.50 introductory paragraph. | |
| 1226.12 | 1228.50(a)(1)–(4) and (d) | Substantive change in policy. |
| 1226.14 | 1228.50 (c) | Substantive change in policy. |
| 1226.16 | 1228.52. | |
| 1226.18 | 1228.54(a). | |
| 1226.20 | 1228.54(c). | |
| 1226.22 | 1228.56. | |
| 1226.24 | 1228.58 (b) and (c). | |
| 1226.26 | 1228.60. | |
| **Part 1227** | **Part 1228, Subpart C** | |
| 1227.1. | | |
| 1227.2. | | |
| 1227.3. | | |
| 1227.10 | 1228.40. | |
| 1227.12 | 1228.42 | Deadlines changed. |
| 1227.14 | 1228.46. | |
| **Part 1228** | **Part 1228, Subpart E** | |
| 1228.1. | | |
| 1228.2. | | |
| 1228.10 | 1228.72 | Substantive change in policy. |
| 1228.12 | 1228.74. | |

| New section | Old section | Notes on significant policy changes |
|---|---|---|
| 1228.14 | 1228.76. | |
| 1228.16 | 1228.78. | |
| **Part 1229** | **Part 1228, Subpart F** | |
| 1229.1. | | |
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| 1229.10 | 1228.92(a). | |
| 1229.20 | 1228.94. | |
| **Part 1230** | **Part 1228, Subpart G** | |
| 1230.1. | | |
| 1230.2. | | |
| 1230.3 | | Added definitions *Alteration, Deface, Removal and Unlawful or Accidental Destruction.* |
| 1230.10 | 1228.100. | |
| 1230.12 | 1228.102. | |
| 1230.14 | 1228.104(a). | |
| 1230.16 | | New section on NARA actions. |
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| **Part 1231** | **Part 1228, Subpart H** | |
| 1231.1 | 1228.120. | |
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| 1231.12 | 1228.124 and 1228.126. | |
| 1231.14 | 1228.128. | |
| 1231.16 | 1228.134. | |
| 1231.18 | 1228.136. | |
| **Part 1232** | **Part 1228, Subpart I** | |
| 1232.1. | | |
| 1232.2. | | |
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| 1232.10 | 1228.150. | |
| 1232.12 | 1228.152. | |
| 1232.14(a) | 1228.154(a). | |
| 1232.14(b) | 1228.154(b). | |
| 1232.14(c) | 1228.154(c) introductory paragraph. | |
| 1232.14(d) | 1228.154(d) introductory paragraph. | |
| 1232.16 | 1228.154(c)(1)–(c)(2) and (d)(1)–(d)(2). | |
| 1232.18 | 1228.154(e)–(f) and 1228.156. | |
| **Part 1232** | **Part 1228, Subpart J** | |
| 1233.1. | | |
| 1233.2. | | |
| 1233.3. | | |
| 1233.10 | 1228.160(a), (d), (e). | |
| 1233.12 | 1228.162. | |
| 1233.14 | 1228.164 | Added military medical treatment files. |
| 1233.16 | 1228.166 | Added military medical treatment files. |
| 1233.18 | 1228.168 | Significant updates. |
| 1233.20 | 1228.170. | |
| **Part 1234** | **Part 1228, Subpart K** | **Note:** The only changes between the old and new sections are the section numbers and revised IBR language for § 1234.3. |
| 1234.1 | 1228.220. | |
| 1234.2 | 1228.222. | |
| 1234.3 | 1228.224. | |
| 1234.4 | 1228.226. | |
| 1234.10 | 1228.228. | |
| 1234.12 | 1228.230. | |
| 1234.14 | 1228.232. | |
| 1234.20 | 1228.234. | |
| 1234.22 | 1228.236. | |
| 1234.24 | 1228.238. | |

| New section | Old section | Notes on significant policy changes |
|---|---|---|
| 1234.30 | 1228.240. | |
| 1234.32 | 1228.242. | |
| 1234.34 | 1228.244. | |
| Appendix A to Part 1234 | Appendix A to Part 1228. | |
| Appendix B to Part 1234 | Appendix B to Part 1228. | |
| **Part 1235** | **Part 1228. Subpart L** | |
| 1235.1 | 1228.260. | |
| 1235.2. | | |
| 1235.3. | | |
| 1235.4. | | |
| 1235.10 | 1228.262(a) introductory text. | |
| 1235.12 | 1228.262 (a)(1)–(a)(2). | |
| 1235.14 | 1228.264(a) and(c)(1)–(c)(6) | NARA approval requirement added. |
| 1235.16 | 1228.264(d) | NARA approval requirement added. |
| 1235.18 | 1228.272(a). | |
| 1235.20 | 1228.274(a). | |
| 1235.22 | 1228.272(c). | |
| 1235.30 | 1228.280(a). | |
| 1235.32 | Tracks current 1228.274(b) and (c). | |
| 1235.34 | 1228.282. | |
| 1235.40. | | |
| 1235.42 | 1228.266 and 1228.268 | Added digital photographic and geospatial data records. |
| 1235.44 | 1228.270(b). | |
| 1235.46 | 1228.270(c). | |
| 1235.48 | 1228.270(e). | |
| 1235.50 | 1228.270(d) | Significant updates. |
| **Part 1236** | **Part 1234** | |
| 1236.1. | | |
| 1236.2 | | Added definitions *Unstructured electronic records, metadata.* |
| 1236.6 | 1234.10. | |
| 1236.10. | | |
| 1236.12. | | |
| 1236.14. | | |
| 1236.20. | | |
| 1236.22 | 1234.24. | |
| 1236.24. | | |
| 1236.20(a) | 1234.10(m). | |
| 1236.26(b) | 1234.20(b). | |
| 1236.28 | 1234.30 | Significant updates. |
| **Part 1237** | **Part 1232** | |
| 1237.1 | | Includes cartographic records management. |
| 1237.2. | | |
| 1237.3 | | Added definitions:<br>*Aerial photographic records*<br>*Architectural and engineering records*<br>*Cartographic records.* |
| 1237.4. | | |
| 1237.10 | 1232.20(a) and (d) | Added cartographic records management. |
| 1237.12 | | Reflects transfer requirements from 1228.266. |
| 1237.14. | | |
| 1237.16 | 1232.26(a), (c)–(e) | Significant updates. |
| 1237.18 | 1232.26(b) | Significant updates. |
| 1237.20 | 1232.28. | |
| 1237.22. | | |
| 1237.24. | | |
| 1237.26 | 1232.30. | |
| 1237.28. | | |
| 1237.30 | 1232.22 and 1232.24. | |
| **Part 1238** | **Part 1230** | |
| 1238.1 | 1230.1. | |
| 1238.2 | 1230.2. | |
| 1238.3 | 1230.4. | |
| 1238.4. | | |
| 1238.5 | 1230.3. | |
| 1238.10 | 1230.2(d). | |
| 1238.12 | 1230.12(a)–(b). | |
| 1238.14 | 1230.14. | |

| New section | Old section | Notes on significant policy changes |
|---|---|---|
| 1238.16 | 1230.16. | |
| 1238.20 | 1230.20. | |
| 1238.22 | 1230.22. | |
| 1238.24 | 1230.24. | |
| 1238.26 | 1230.26. | |
| 1238.28 | 1230.28. | |
| 1238.30 | 1230.30. | |
| 1238.32 | 1230.10. | |
| **Part 1239** | **Part 138 and Part 1220, Subpart C** | |
| 1239.1 | 1220.50. | |
| 1239.2. | | |
| 1239.3 | | Added definition of *Inspection.* |
| 1239.4. | | |
| 1239.10 | 1238.1. | |
| 1239.12 | 1238.2. | |
| 1239.20 | 1220.5. | |
| 1239.22 | 1220.54 | Substantive change in policy and procedures for conducting inspections. |
| 1239.24 | 1220.56. | |
| 1239.26 | 1220.58 | Substantive change in policy and procedures. |

## List of Subjects in 36 CFR Chapter XII, Subchapter B

Archives and records, Incorporation by reference.

■ For the reasons set forth in the preamble, NARA revises Subchapter B of chapter XII, title 36, Code of Federal Regulations, to read as follows:

### Chapter XII—National Archives and Records Administration

### Subchapter B—Records Management

Part
1220 Federal Records; General
1222 Creation and Maintenance of Federal Records
1223 Managing Vital Records
1224 Records Disposition Program
1225 Scheduling Records
1226 Implementing Disposition
1227 General Records Schedules
1228 Loan of Permanent and Unscheduled Records
1229 Emergency Authorization To Destroy Records
1230 Unlawful or Accidental Removal, Defacing, Alteration, or Destruction of Records
1231 Transfer of Records from the Custody of One Executive Agency to Another
1232 Transfer of Records to Records Storage Facilities
1233 Transfer, Use, and Disposition of Records in a NARA Federal Records Center
1234 Facility Standards for Records Storage Facilities
1235 Transfer of Records to the National Archives of the United States
1236 Electronic Records Management
1237 Audiovisual, Cartographic, and Related Records Management
1238 Microform Records Management
1239 Program Assistance and Inspections
1240–1249 [Reserved]

### Subchapter B—Records Management

## PART 1220—FEDERAL RECORDS; GENERAL

### Subpart A—General Provisions of Subchapter B

Sec.
1220.1 What is the scope of Subchapter B?
1220.2 What are the authorities for Subchapter B?
1220.3 What standards are used as guidelines for Subchapter B?
1220.10 Who is responsible for records management?
1220.12 What are NARA's records management responsibilities?
1220.14 Who must follow the regulations in Subchapter B?
1220.16 What recorded information must be managed in accordance with the regulations in Subchapter B?
1220.18 What definitions apply to the regulations in Subchapter B?
1220.20 What NARA acronyms are used throughout Subchapter B?

### Subpart B—Agency Records Management Program Responsibilities

1220.30 What are an agency's records management responsibilities?
1220.32 What records management principles must agencies implement?
1220.34 What must an agency do to carry out its records management responsibilities?

**Authority:** 44 U.S.C. Chapters 21, 29, 31, and 33.

#### § 1220.1 What is the scope of Subchapter B?

Subchapter B specifies policies for Federal agencies' records management programs relating to proper records creation and maintenance, adequate documentation, and records disposition.

#### § 1220.2 What are the authorities for Subchapter B?

The regulations in this subchapter implement the provisions of 44 U.S.C. Chapters 21, 29, 31, and 33.

#### § 1220.3 What standards are used as guidelines for Subchapter B?

These regulations are in conformance with ISO 15489–1:2001, Information and documentation—Records management. Other standards relating to specific sections of the regulations are cited where appropriate.

#### § 1220.10 Who is responsible for records management?

(a) The National Archives and Records Administration (NARA) is responsible for overseeing agencies' adequacy of documentation and records disposition programs and practices, and the General Services Administration (GSA) is responsible for overseeing economy and efficiency in records management. The Archivist of the United States and the Administrator of GSA issue regulations and provide guidance and assistance to Federal agencies on records management programs. NARA regulations are in this subchapter. GSA regulations are in 41 CFR parts 102–193.

(b) Federal agencies are responsible for establishing and maintaining a records management program that complies with NARA and GSA regulations and guidance. Subpart B of this part sets forth basic agency records management requirements.

**§ 1220.12 What are NARA's records management responsibilities?**

(a) The Archivist of the United States issues regulations and provides guidance and assistance to Federal agencies on ensuring adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the Federal Government and ensuring proper records disposition, including standards for improving the management of records.

(b) NARA establishes standards for the retention of records having continuing value (permanent records), and assists Federal agencies in applying the standards to records in their custody.

(c) Through a records scheduling and appraisal process, the Archivist of the United States determines which Federal records have temporary value and may be destroyed and which Federal records have permanent value and must be preserved and transferred to the National Archives of the United States. The Archivist's determination constitutes mandatory authority for the final disposition of all Federal records.

(d) The Archivist of the United States issues General Records Schedules (GRS) authorizing disposition, after specified periods of time, of records common to several or all Federal agencies.

**§ 1220.14 Who must follow the regulations in Subchapter B?**

The regulations in Subchapter B apply to Federal agencies as defined in § 1220.18.

**§ 1220.16 What recorded information must be managed in accordance with the regulations in Subchapter B?**

The requirements in Subchapter B apply to documentary materials that meet the definition of Federal records. See also Part 1222 of this subchapter.

**§ 1220.18 What definitions apply to the regulations in Subchapter B?**

As used in subchapter B—

*Adequate and proper documentation* means a record of the conduct of Government business that is complete and accurate to the extent required to document the organization, functions, policies, decisions, procedures, and essential transactions of the agency and that is designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency's activities.

*Agency (see Executive agency and Federal agency).*

*Appraisal* is the process by which the NARA determines the value and the final disposition of Federal records, designating them either temporary or permanent.

*Commercial records storage facility* is a private sector commercial facility that offers records storage, retrieval, and disposition services.

*Comprehensive schedule* is an agency manual or directive containing descriptions of and disposition instructions for documentary materials in all physical forms, record and nonrecord, created by a Federal agency or major component of an Executive department. Unless taken from General Records Schedules (GRS) issued by NARA, the disposition instructions for records must be approved by NARA on one or more Standard Form(s) 115, Request for Records Disposition Authority, prior to issuance by the agency. The disposition instructions for nonrecord materials are established by the agency and do not require NARA approval. See also *records schedule.*

*Contingent records* are records whose final disposition is dependent on an action or event, such as sale of property or destruction of a facility, which will take place at some unspecified time in the future.

*Disposition* means those actions taken regarding records no longer needed for the conduct of the regular current business of the agency.

*Disposition authority* means the legal authorization for the retention and disposal of records. For Federal records it is found on SF 115s, Request for Records Disposition Authority, which have been approved by the Archivist of the United States. For nonrecord materials, the disposition is established by the creating or custodial agency. See also *records schedule.*

*Documentary materials* is a collective term that refers to recorded information, regardless of the medium or the method or circumstances of recording.

*Electronic record* means any information that is recorded in a form that only a computer can process and that satisfies the definition of a Federal record under the Federal Records Act. The term includes both record content and associated metadata that the agency determines is required to meet agency business needs.

*Evaluation* means the selective or comprehensive inspection, audit, or review of one or more Federal agency records management programs for effectiveness and for compliance with applicable laws and regulations. It includes recommendations for correcting or improving records management policies and procedures, and follow-up activities, including reporting on and implementing the recommendations.

*Executive agency* means any executive department or independent establishment in the Executive branch of the U.S. Government, including any wholly owned Government corporation.

*Federal agency* means any executive agency or any establishment in the Legislative or Judicial branches of the Government (except the Supreme Court, Senate, the House of Representatives, and the Architect of the Capitol and any activities under his direction). (44 U.S.C. 2901(14)).

*Federal records (see records).*

*File* means an arrangement of records. The term denotes papers, photographs, maps, electronic information, or other recorded information regardless of physical form or characteristics, accumulated or maintained in filing equipment, boxes, on electronic media, or on shelves, and occupying office or storage space.

*Information system* means the organized collection, processing, transmission, and dissemination of information in accordance with defined procedures, whether automated or manual.

*Metadata* consists of preserved contextual information describing the history, tracking, and/or management of an electronic document.

*National Archives of the United States* is the collection of all records selected by the Archivist of the United States because they have sufficient historical or other value to warrant their continued preservation by the Federal Government and that have been transferred to the legal custody of the Archivist of the United States, currently through execution of a Standard Form (SF) 258 (Agreement to Transfer Records to the National Archives of the United States). See also *permanent record.*

*Nonrecord materials* are those Federally owned informational materials that do not meet the statutory definition of records (44 U.S.C. 3301) or that have been excluded from coverage by the definition. Excluded materials are extra copies of documents kept only for reference, stocks of publications and processed documents, and library or museum materials intended solely for reference or exhibit.

*Permanent record* means any Federal record that has been determined by NARA to have sufficient value to warrant its preservation in the National Archives of the United States, even while it remains in agency custody. Permanent records are those for which the disposition is permanent on SF 115, Request for Records Disposition Authority, approved by NARA on or after May 14, 1973. The term also includes all records accessioned by

NARA into the National Archives of the United States.

*Personal files* (also called *personal papers*) are documentary materials belonging to an individual that are not used to conduct agency business. Personal files are excluded from the definition of Federal records and are not owned by the Government.

*Recordkeeping requirements* means all statements in statutes, regulations, and agency directives or other authoritative issuances, that provide general or specific requirements for Federal agency personnel on particular records to be created and maintained by the agency.

*Recordkeeping system* is a manual or electronic system that captures, organizes, and categorizes records to facilitate their preservation, retrieval, use, and disposition.

*Records* or *Federal records* is defined in 44 U.S.C. 3301 as including ''all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the Government or because of the informational value of the data in them (44 U.S.C. 3301).'' (See also § 1222.10 of this part for an explanation of this definition).

*Records center* is defined in 44 U.S.C. 2901(6) as an establishment maintained and operated by the Archivist (NARA Federal Records Center) or by another Federal agency primarily for the storage, servicing, security, and processing of records which need to be preserved for varying periods of time and need not be retained in office equipment or space. See also *records storage facility.*

*Records management,* as used in subchapter B, means the planning, controlling, directing, organizing, training, promoting, and other managerial activities involved with respect to records creation, records maintenance and use, and records disposition in order to achieve adequate and proper documentation of the policies and transactions of the Federal Government and effective and economical management of agency operations.

*Records schedule or schedule* means any of the following:

(1) A Standard Form 115, Request for Records Disposition Authority that has been approved by NARA to authorize the disposition of Federal records;

(2) A General Records Schedule (GRS) issued by NARA; or

(3) A published agency manual or directive containing the records descriptions and disposition instructions approved by NARA on one or more SF 115s or issued by NARA in the GRS. See also *comprehensive schedule.*

*Records storage facility* is a records center or a commercial records storage facility, as defined in this section, i.e., a facility used by a Federal agency to store Federal records, whether that facility is operated and maintained by the agency, by NARA, by another Federal agency, or by a private commercial entity.

*Retention period* is the length of time that records must be kept.

*Series* means file units or documents arranged according to a filing or classification system or kept together because they relate to a particular subject or function, result from the same activity, document a specific kind of transaction, take a particular physical form, or have some other relationship arising out of their creation, receipt, or use, such as restrictions on access and use. Also called a *records series.*

*Temporary record* means any Federal record that has been determined by the Archivist of the United States to have insufficient value (on the basis of current standards) to warrant its preservation by the National Archives and Records Administration. This determination may take the form of:

(1) Records designated as disposable in an agency records disposition schedule approved by NARA (SF 115, Request for Records Disposition Authority); or

(2) Records designated as disposable in a General Records Schedule.

*Unscheduled records* are Federal records whose final disposition has not been approved by NARA on a SF 115, Request for Records Disposition Authority. Such records must be treated as permanent until a final disposition is approved.

### § 1220.20 What NARA acronyms are used throughout Subchapter B?

As used in Subchapter B—

*NARA* means the National Archives and Records Administration.

*NAS* means the Space and Security Management Division.

*NR* means the Office of Regional Record Services.

*NWCS* means the Special Media Archives Services Division.

*NWM* means Modern Records Programs, which includes NARA records management staff nationwide.

*NWME* means the Electronic and Special Media Records Services Division.

*NWML* means the Lifecycle Management Division.

*NWMW* means the Washington National Records Center.

*NWT* means Preservation Programs.

## Subpart B—Agency Records Management Responsibilities

### § 1220.30 What are an agency's records management responsibilities?

(a) Under 44 U.S.C. 3101, the head of each Federal agency must make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency. These records must be designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency's activities.

(b) Under 44 U.S.C. 3102, the head of each Federal agency must establish and maintain an active, continuing program for the economical and efficient management of the records of the agency.

(c) Agency records management programs must provide for:

(1) Effective controls over the creation, maintenance, and use of records in the conduct of current business; and

(2) Cooperation with the Archivist and the Administrator of GSA in applying standards, procedures, and techniques designed to improve the management of records, promote the maintenance and security of records deemed appropriate for preservation, and facilitate the segregation and destruction of records of temporary value.

### § 1220.32 What records management principles must agencies implement?

Agencies must create and maintain authentic, reliable, and usable records and ensure that they remain so for the length of their authorized retention period. A comprehensive records management program provides policies and procedures for ensuring that:

(a) Records documenting agency business are created or captured;

(b) Records are organized and maintained to facilitate their use and ensure integrity throughout their authorized retention periods;

(c) Records are available when needed, where needed, and in a usable format to conduct agency business;

(d) Legal and regulatory requirements, relevant standards, and agency policies are followed;

(e) Records, regardless of format, are protected in a safe and secure environment and removal or destruction is carried out only as authorized in records schedules; and

(f) Continuity of operations is supported by a vital records program (see part 1223 of this subchapter).

### § 1220.34 What must an agency do to carry out its records management responsibilities?

To carry out the responsibilities specified in 44 U.S.C. 3101 and 3102, agencies must:

(a) Assign records management responsibility to a person and office with appropriate authority within the agency to coordinate and oversee implementation of the agency comprehensive records management program principles in § 1220.32;

(b) Advise NARA and agency managers of the name(s) of the individual(s) assigned operational responsibility for the agency records management program. To notify NARA, send the name(s), e-mail and postal addresses, phone and fax numbers of the individual(s) to NARA (NWM), 8601 Adelphi Road, College Park, MD 20740–6001 or to *RM.Communications@nara.gov.* The name, title, and phone number of the official or officials authorized by the head of the agency to sign records disposition schedules and requests for transfer of records to the custody of the National Archives must also be submitted to NARA (NWM) or *RM.Communications@nara.gov;*

(c) Issue a directive(s) establishing program objectives, responsibilities, and authorities for the creation, maintenance, and disposition of agency records. Copies of the directive(s) (including subsequent amendments or supplements) must be disseminated throughout the agency, as appropriate, and a copy must be sent to NARA (NWM);

(d) Assign records management responsibilities in each program (mission) and administrative area to ensure incorporation of recordkeeping requirements and records maintenance, storage, and disposition practices into agency programs, processes, systems, and procedures;

(e) Integrate records management and archival requirements into the design, development, and implementation of electronic information systems as specified in § 1236.12 of this subchapter;

(f) Provide guidance and training to all agency personnel on their records management responsibilities, including identification of Federal records, in all formats and media;

(g) Develop records schedules for all records created and received by the agency and obtain NARA approval of the schedules prior to implementation, in accordance with 36 CFR parts 1225 and 1226 of this subchapter;

(h) Comply with applicable policies, procedures, and standards relating to records management and recordkeeping requirements issued by the Office of Management and Budget, NARA, GSA, or other agencies, as appropriate (see § 1222.22 of this subchapter);

(i) Institute controls ensuring that all records, regardless of format or medium, are properly organized, classified or indexed, and described, and made available for use by all appropriate agency staff; and

(j) Conduct formal evaluations to measure the effectiveness of records management programs and practices, and to ensure that they comply with NARA regulations in this subchapter.

## PART 1222—CREATION AND MAINTENANCE OF FEDERAL RECORDS

### Subpart A—Identifying Federal Records

Sec.
1222.1 What are the authorities for Part 1222?
1222.2 What definitions apply to this part?
1222.3 What standards are used as guidance for this part?
1222.10 How should agencies apply the statutory definition of Federal records?
1222.12 What types of documentary materials are Federal records?
1222.14 What are nonrecord materials?
1222.16 How are nonrecord materials managed?
1222.18 Under what conditions may nonrecord materials be removed from government agencies?
1222.20 How are personal files defined and managed?

### Subpart B—Agency Recordkeeping Requirements

1222.22 What records are required to provide for adequate documentation of agency business?
1222.24 How do agencies establish recordkeeping requirements?
1222.26 What are the general recordkeeping requirements for agency programs?
1222.28 What are the series level recordkeeping requirements?
1222.30 When must agencies comply with the recordkeeping requirements of other agencies?
1222.32 How do agencies manage data and records created or received by contractors?
1222.34 How must agencies maintain records?

**Authority:** 44 U.S.C. 2904, 3101, 3102, and 3301.

### Subpart A—Identifying Federal Records

#### § 1222.1 What are the authorities for Part 1222?

The statutory authorities for this part are 44 U.S.C. 2904, 3101, 3102, and 3301.

#### § 1222.2 What definitions apply to this part?

See § 1220.18 of this subchapter for definitions of terms used in part 1222.

#### § 1222.3 What standards are used as guidance for this part?

These regulations conform with guidance provided in ISO 15489–1:2001, Information and documentation—Records management. Paragraphs 7.1 (Principles of records management programmes), 7.2 (Characteristics of a record), 8.3.5 (Conversion and migration), 8.3.6 (Access, retrieval and use), and 9.6 (Storage and handling) apply to records creation and maintenance.

#### § 1222.10 How should agencies apply the statutory definition of Federal records?

(a) The statutory definition of Federal records is contained in 44 U.S.C. 3301 and provided in § 1220.18 of this subchapter.

(b) Several key terms, phrases, and concepts in the statutory definition of a Federal record are further explained as follows:

(1) *Documentary materials* has the meaning provided in § 1220.18 of this subchapter.

(2) *Regardless of physical form or characteristics* means that the medium may be paper, film, disk, or other physical type or form; and that the method of recording may be manual, mechanical, photographic, electronic, or any other combination of these or other technologies.

(3) *Made* means the act of creating and recording information by agency personnel in the course of their official duties, regardless of the method(s) or the medium involved.

(4) *Received* means the acceptance or collection of documentary materials by or on behalf of an agency or agency personnel in the course of their official duties regardless of their origin (for example, other units of their agency, private citizens, public officials, other agencies, contractors, Government grantees) and regardless of how transmitted (in person or by messenger, mail, electronic means, or by any other method). In this context, the term does not refer to misdirected materials. It may or may not refer to loaned or seized materials depending on the conditions under which such materials came into

agency custody or were used by the agency. Advice of legal counsel should be sought regarding the ''record'' status of loaned or seized materials.

(5) *Preserved* means the filing, storing, or any other method of systematically maintaining documentary materials in any medium by the agency. This term covers materials not only actually filed or otherwise systematically maintained but also those temporarily removed from existing filing systems.

(6) *Appropriate for preservation* means documentary materials made or received which, in the judgment of the agency, should be filed, stored, or otherwise systematically maintained by an agency because of the evidence of agency activities or information they contain, even if the materials are not covered by its current filing or maintenance procedures.

### § 1222.12 What types of documentary materials are Federal records?

(a) *General.* To ensure that complete and accurate records are made and retained in the Federal Government, agencies must distinguish between records and nonrecord materials by applying the definition of records (see 44 U.S.C. 3301 and 36 CFR 1220.18 and 1222.10 of this subchapter) to agency documentary materials in all formats and media.

(b) *Record status.* Documentary materials are records when they meet the conditions specified in § 1222.10(b).

(c) *Working files and similar materials.* Working files, such as preliminary drafts and rough notes, and other similar materials, are records that must be maintained to ensure adequate and proper documentation if:

(1) They were circulated or made available to employees, other than the creator, for official purposes such as approval, comment, action, recommendation, follow-up, or to communicate with agency staff about agency business; and

(2) They contain unique information, such as substantive annotations or comments that adds to a proper understanding of the agency's formulation and execution of basic policies, decisions, actions, or responsibilities.

(d) *Record status of copies.* The determination as to whether a particular document is a record does not depend upon whether it contains unique information. Multiple copies of the same document and documents containing duplicative information may each have record status depending on how they are used in conducting agency business.

### § 1222.14 What are nonrecord materials?

Nonrecord materials are U.S. Government-owned documentary materials that do not meet the conditions of records status (see § 1222.12(b)) or that are specifically excluded from the statutory definition of records (see 44 U.S.C. 3301). An agency's records management program also needs to include managing nonrecord materials. There are three specific categories of materials excluded from the statutory definition of records:

(a) Library and museum material (but only if such material is made or acquired and preserved solely for reference or exhibition purposes), including physical exhibits, artifacts, and other material objects lacking evidential value.

(b) Extra copies of documents (but only if the sole reason such copies are preserved is for convenience of reference).

(c) Stocks of publications and of processed documents. Catalogs, trade journals, and other publications that are received from other Government agencies, commercial firms, or private institutions and that require no action and are not part of a case on which action is taken. (Stocks do not include serial or record sets of agency publications and processed documents, including annual reports, brochures, pamphlets, books, handbooks, posters and maps.)

### § 1222.16 How are nonrecord materials managed?

(a) Agencies must develop recordkeeping requirements to distinguish records from nonrecord materials.

(b) The following guidelines should be used in managing nonrecord materials:

(1) If a clear determination cannot be made, the materials should be treated as records. Agencies may consult with NARA for guidance.

(2) Nonrecord materials must be physically segregated from records or, for electronic non-record materials, readily identified and segregable from records;

(3) Nonrecord materials should be purged when no longer needed for reference. NARA's approval is not required to destroy such materials.

### § 1222.18 Under what conditions may nonrecord materials be removed from Government agencies?

(a) Nonrecord materials, including extra copies of unclassified or formally declassified agency records kept only for convenience of reference, may be removed by departing employees from Government agency custody only with the approval of the head of the agency or the individual(s) authorized to act for the agency on records issues.

(b) National security classified information may not be removed from Government custody, except for a removal of custody taken in accordance with the requirements of the National Industrial Security Program established under Executive Order 12829, as amended, or a successor Order.

(c) Information which is restricted from release under the Privacy Act of 1974 (5 U.S.C. 552a), as amended, or other statutes may not be removed from Government custody except as permitted under those statutes.

(d) This section does not apply to use of records and nonrecord materials in the course of conducting official agency business, including telework and authorized dissemination of information.

### § 1222.20 How are personal files defined and managed?

(a) Personal files are defined in § 1220.18 of this subchapter. This section does not apply to agencies and positions that are covered by the Presidential Records Act of 1978 (44 U.S.C. 2201–2207) (see 36 CFR part 1270 of this chapter).

(b) Personal files must be clearly designated as such and must be maintained separately from the office's official records.

(1) Information about private (non-agency) matters and agency business must not be mixed in outgoing agency documents, such as correspondence and messages.

(2) If information about private matters and agency business appears in a received document, the document is a Federal record. Agencies may make a copy of the document with the personal information deleted or redacted, and treat the copy as the Federal record.

(3) Materials labeled ''personal,'' ''confidential,'' or ''private,'' or similarly designated, and used in the transaction of public business, are Federal records. The use of a label such as ''personal'' does not affect the status of documentary materials in a Federal agency.

## Subpart B—Agency Recordkeeping Requirements

### § 1222.22 What records are required to provide for adequate documentation of agency business?

To meet their obligation for adequate and proper documentation, agencies must prescribe the creation and maintenance of records that:

(a) Document the persons, places, things, or matters dealt with by the agency.

(b) Facilitate action by agency officials and their successors in office.

(c) Make possible a proper scrutiny by the Congress or other duly authorized agencies of the Government.

(d) Protect the financial, legal, and other rights of the Government and of persons directly affected by the Government's actions.

(e) Document the formulation and execution of basic policies and decisions and the taking of necessary actions, including all substantive decisions and commitments reached orally (person-to-person, by telecommunications, or in conference) or electronically.

(f) Document important board, committee, or staff meetings.

**§ 1222.24 How do agencies establish recordkeeping requirements?**

(a) Agencies must ensure that procedures, directives and other issuances; systems planning and development documentation; and other relevant records include recordkeeping requirements for records in all media, including those records created or received on electronic mail systems. Recordkeeping requirements must:

(1) Identify and prescribe specific categories of records to be systematically created or received and maintained by agency personnel in the course of their official duties;

(2) Specify the use of materials and recording techniques that ensure the preservation of records as long as they are needed by the Government;

(3) Specify the manner in which these materials must be maintained wherever held;

(4) Propose how long records must be maintained for agency business through the scheduling process in part 1225 of this subchapter;

(5) Distinguish records from nonrecord materials and comply with the provisions in Subchapter B concerning records scheduling and disposition;

(6) Include procedures to ensure that departing officials and employees do not remove Federal records from agency custody and remove nonrecord materials only in accordance with § 1222.18;

(7) Define the special recordkeeping responsibilities of program managers, information technology staff, systems administrators, and the general recordkeeping responsibilities of all agency employees.

(b) Agencies must provide the training described in § 1220.34(f) of this subchapter and inform all employees that they are responsible and accountable for keeping accurate and complete records of their activities.

**§ 1222.26 What are the general recordkeeping requirements for agency programs?**

To ensure the adequate and proper documentation of agency programs, each program must develop recordkeeping requirements that identify:

(a) The record series and systems that must be created and maintained to document program policies, procedures, functions, activities, and transactions;

(b) The office responsible for maintaining the record copies of those series and systems, and the applicable system administrator responsible for ensuring authenticity, protection, and ready retrieval of electronic records;

(c) Related records series and systems;

(d) The relationship between paper and electronic files in the same series; and

(e) Policies, procedures, and strategies for ensuring that records are retained long enough to meet programmatic, administrative, fiscal, legal, and historical needs as authorized in a NARA-approved disposition schedule.

**§ 1222.28 What are the series level recordkeeping requirements?**

To ensure that record series and systems adequately document agency policies, transactions, and activities, each program must develop recordkeeping requirements for records series and systems that include:

(a) Identification of information and documentation that must be included in the series and/or system;

(b) Arrangement of each series and the records within the series and/or system;

(c) Identification of the location of the records and the staff responsible for maintaining the records;

(d) Policies and procedures for maintaining the documentation of phone calls, meetings, instant messages, and electronic mail exchanges that include substantive information about agency policies and activities;

(e) Policies and procedures for identifying working files and for determining the record status of working files in paper and electronic form; and

(f) Policies and procedures for maintaining series consisting of different media.

**§ 1222.30 When must agencies comply with the recordkeeping requirements of other agencies?**

Agencies must comply with recordkeeping requirements that are imposed government-wide by another agency with jurisdiction over the program or activity being conducted, e.g., requirements for records concerning hazardous waste. Affected agencies must include these requirements in appropriate directives or other official issuances prescribing the agency's organization, functions, or activities.

**§ 1222.32 How do agencies manage records created or received by contractors?**

(a) Agency officials responsible for administering contracts must safeguard records created, processed, or in the possession of a contractor or a non-Federal entity by taking the following steps:

(1) Agencies must ensure that contractors performing Federal government agency functions create and maintain records that document these activities. Agencies must specify in the contract Government ownership and the delivery to the Government of all records necessary for the adequate and proper documentation of contractor-operated agency activities and programs in accordance with requirements of the Federal Acquisition Regulation (FAR) (Office of Federal Procurement Policy Act of 1974 (Pub. L. 93–400), as amended by Pub. L. 96–83 41 U.S.C.), and, where applicable, the Defense Federal Acquisition Regulation Supplement (DFARS) (48 CFR parts 200–299).

(2) Records management oversight of contract records is necessary to ensure that all recordkeeping needs are met. All records created for Government use and delivered to, or under the legal control of, the Government must be managed in accordance with Federal law. In addition, electronic records and background electronic data specified for delivery to the contracting agency must be accompanied by sufficient technical documentation to permit understanding and use of the records and data.

(3) Contracts that require the creation of data for the Government's use must specify, in addition to the final product, delivery of background supporting data or other records that may have reuse value to the Government. To determine what background supporting data or other records that contractors must deliver, program and contracting officials must consult with agency records and information managers and historians and, when appropriate, with other Government agencies to ensure that all Government needs are met, especially when the data deliverables support a new agency mission or a new Government program.

(4) Deferred ordering and delivery-of-data clauses and rights-in-data clauses must be included in contracts whenever necessary to ensure adequate and proper documentation or because the data have reuse value to the Government.

(b) All data created for Government use and delivered to, or falling under the legal control of, the Government are Federal records subject to the provisions of 44 U.S.C. chapters 21, 29, 31, and 33, the Freedom of Information Act (FOIA) (5 U.S.C. 552), as amended, and the Privacy Act of 1974 (5 U.S.C. 552a), as amended, and must be managed and scheduled for disposition only as provided in Subchapter B.

(c) Agencies must ensure that appropriate authority for retention of classified materials has been granted to contractors or non-Government entities participating in the National Industrial Security Program (NISP), established under Executive order 12829, as amended, or a successor Order.

### § 1222.34 How must agencies maintain records?

Agencies must implement a records maintenance program so that complete records are filed or otherwise identified and preserved, records can be readily found when needed, and permanent and temporary records are physically segregated from each other or, for electronic records, segregable. Agency records maintenance programs must:

(a) Institute procedures for organizing and storing records;

(b) Maintain electronic, audiovisual and cartographic, and microform records in accordance with 36 CFR parts 1236, 1237, and 1238 of this subchapter, respectively;

(c) Assign responsibilities for maintenance of records in all formats within each agency component, including designation of the officials that are responsible for maintenance and disposition of electronic records and management of automated systems used for recordkeeping;

(d) Institute reference and retrieval procedures and controls that:

(1) Facilitate the finding, charging out, and refiling of records, including safeguards against loss during transit; and

(2) Ensure that access to electronic records minimizes the risk of unauthorized additions, deletions, or alterations;

(e) Issue appropriate instructions to all agency employees on handling and protecting records;

(f) Maintain records and nonrecord materials separately, in accordance with § 1222.16;

(g) Maintain personal files separately from records in accordance with § 1222.20; and

(h) Comply with 36 CFR parts 1232 and 1234 of this subchapter when storing records in a records facility.

## PART 1223—MANAGING VITAL RECORDS

Sec.

1223.1 What are the authorities for Part 1223?
1223.2 What definitions apply to this part?
1223.3 What standards are used as guidance for Part 1223?
1223.4 What publications are incorporated by reference in this part?
1223.10 What is the purpose of Part 1223?
1223.12 What are the objectives of a vital records program?
1223.14 What elements must a vital records program include?
1223.16 How are vital records identified?
1223.18 Must vital records be in a particular form or format?
1223.20 What are the requirements for accessing vital records during an emergency?
1223.22 How must agencies protect vital records?
1223.24 When can vital records be destroyed?

**Authority:** 44 U.S.C. 3101; E.O. 12656, 53 FR 47491; E.O. 13231, 66 FR 53063.

### § 1223.1 What are the authorities for Part 1223?

(a) The authorities for this part are 44 U.S.C. 3101; Executive Orders 12656, Assignment of Emergency Preparedness Responsibilities, and 13231, Critical Infrastructure Protection in the Information Age; and National Security Presidential Directive (NSPD 51)/Homeland Security Presidential Directive (HSPD–20) or applicable successor directives. These authorities require the head of each agency to make and preserve records that contain adequate and proper documentation of the organization and to perform national security emergency preparedness functions.

(b) These regulations are in conformance with guidance provided in Federal Continuity Directive (FCD) 1, Federal Executive Branch National Continuity Program and Requirements, and FCD 2, Federal Executive Branch Mission Essential Function and Primary Mission Essential Function Identification and Submission Process.

### § 1223.2 What definitions apply to this part?

(a) See § 1220.18 of this subchapter for definitions of terms used throughout Subchapter B, including part 1223.

(b) As used in part 1223—

*Cycle* means the periodic removal of obsolete copies of vital records and their replacement with copies of current vital records. This may occur daily, weekly, quarterly, annually or at other designated intervals.

*Disaster* means an unexpected occurrence inflicting widespread destruction and distress and having long-term adverse effects on agency operations. Each agency defines what a long-term adverse effect is in relation to its most critical program activities.

*Emergency* means a situation or an occurrence of a serious nature, developing suddenly and unexpectedly, and demanding immediate action. This is generally of short duration, for example, an interruption of normal agency operations for a week or less. It may involve electrical failure or minor flooding caused by broken pipes.

*Emergency operating records* are those types of vital records essential to the continued functioning or reconstitution of an organization during and after an emergency. Included are emergency plans and directive(s), orders of succession, delegations of authority, staffing assignments, selected program records needed to continue the most critical agency operations, as well as related policy or procedural records that assist agency staff in conducting operations under emergency conditions and for resuming normal operations after an emergency.

*Legal and financial rights records* are that type of vital records essential to protect the legal and financial rights of the Government and of the individuals directly affected by its activities. Examples include accounts receivable records, social security records, payroll records, retirement records, and insurance records. These records were formerly defined as ''rights-and-interests'' records.

*National security emergency* means any occurrence, including natural disaster, military attack, technological emergency, or other emergency, that seriously degrades or threatens the national security of the United States, as defined in Executive Order 12656.

*Off-site storage* means a facility other than an agency's normal place of business where records are kept until eligible for final disposition. Vital records may be kept at off-site storage to ensure that they are not damaged or destroyed should an emergency occur in an agency's normal place of business.

*Vital records* means essential agency records that are needed to meet operational responsibilities under national security emergencies or other emergency conditions (emergency operating records) or to protect the legal and financial rights of the Government and those affected by Government

activities (legal and financial rights records).

*Vital records program* means the policies, plans, and procedures developed and implemented and the resources needed to identify, use, and protect the essential records needed to meet operational responsibilities under national security emergencies or other emergency conditions or to protect the Government's rights or those of its citizens. This is a program element of an agency's emergency management function.

**§ 1223.3 What standards are used as guidance for Part 1223?**

These regulations conform with guidance provided in ISO 15489–1:2001. Paragraphs 4 (Benefits of records management), Paragraphs 7.1 (Principles of records management programmes) and 9.6 (Storage and handling) apply to vital records.

**§ 1223.4 What publications are incorporated by reference in this part?**

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, NARA must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the Office of the Federal Register. For information on the availability of this material at the Office of the Federal Register, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

(b) The material incorporated by reference is also available for inspection at NARA's Archives Library Information Center (NWCCA), Room 2380, 8601 Adelphi Road, College Park, MD 20740–6001, phone number (301) 837–3415, and is available from the sources listed below.

(c) The following Web publication is available on-line at *http://www.fema.gov/pdf/about/offices/fcd1.pdf*; it is published by the Department of Homeland Security (DHS), 245 Murray Lane, Washington, DC, 20528, phone number, (202) 245–2499.

(1) Federal Continuity Directive 1 (''FCD 1''): Federal Executive Branch National Continuity Program and Requirements, February 2008, IBR approved for § 1223.14.

(2) [Reserved]

**§ 1223.10 What is the purpose of Part 1223?**

Part 1223 specifies policies and procedures needed to establish a program to identify, protect, and manage vital records as part of an agency's continuity of operation plan designed to meet emergency management responsibilities.

**§ 1223.12 What are the objectives of a vital records program?**

A vital records program has two objectives:

(a) It provides an agency with the information it needs to conduct its business under other than normal operating conditions and to resume normal business afterward; and

(b) It enables agency officials to identify and protect the most important records dealing with the legal and financial rights of the agency and of persons directly affected by the agency's actions.

**§ 1223.14 What elements must a vital records program include?**

To achieve compliance with this section, an agency's vital records program must contain all elements listed in FCD 1, Annex I (incorporated by reference, see § 1223.4). In carrying out a vital records program, agencies must:

(a) Specify agency staff responsibilities;

(b) Appropriately inform all staff about vital records;

(c) Ensure that the designation of vital records is current and complete; and

(d) Ensure that vital records are adequately protected, accessible, and immediately usable.

**§ 1223.16 How are vital records identified?**

Agencies identify vital records in the context of the emergency management function. Vital records are those that are needed to perform the most critical functions of the agency and those needed to protect legal and financial rights of the Government and of the persons affected by its actions. Vital records also include emergency plans and related records that specify how an agency will respond to an emergency. The informational content of records series and electronic records systems determines which are vital records. Only the most recent and complete sources of the information are vital records.

**§ 1223.18 Must vital records be in a particular form or format?**

(a) Vital records can be original records or copies of records. Consult NARA records management guidance on vital records at *http://www.archives.gov/records-mgmt/vital-records/index.html* for further information.

(b) Records may be maintained on a variety of media including paper, magnetic tape, optical disk, photographic film, and microform. In selecting the media, agencies must ensure that equipment needed to read the specific media will be available following an emergency or disaster.

**§ 1223.20 What are the requirements for accessing vital records during an emergency?**

Agencies must establish retrieval procedures for vital records that are easily implemented, especially since individuals unfamiliar with the records may need to use them in an emergency. For electronic records systems, agencies must also ensure that appropriate hardware, software, and system documentation adequate to operate the system and access the records will be available in case of an emergency.

**§ 1223.22 How must agencies protect vital records?**

Agencies must take appropriate measures to ensure the survival of the vital records or copies of vital records in case of an emergency.

(a) *Duplication*. Agencies may choose to duplicate vital records as the primary protection method. Duplication can be to the same medium as the original record or to a different medium. When agencies choose duplication as a protection method, the copy of the vital record stored off-site is normally a duplicate of the original record. The agency may store the original records off-site if their protection is necessary, or if it does not need to keep the original records at its normal place of business.

(b) *Dispersal*. Once records are duplicated, they must be dispersed to sites a sufficient distance away to avoid being subject to the same emergency. Dispersal sites may be other office locations of the same agency or some other site.

(c) *Storage considerations*. Copies of emergency operating vital records must be accessible in a very short period of time for use in the event of an emergency. Copies of legal and financial rights records may not be needed as quickly. In deciding where to store vital record copies, agencies must treat records that have the properties of both categories, that is, emergency operating and legal and financial rights records, as emergency operating records.

(1) The off-site copy of legal and financial rights vital records may be stored at an off-site agency location or, in accordance with § 1233.12 of this subchapter, at a records storage facility.

(2) When using a NARA records storage facility for storing vital records that are duplicate copies of original records, the agency must specify on the SF 135, Records Transmittal and Receipt, that they are vital records (duplicate copies) and the medium on which they are maintained. The agency must also periodically cycle (update) them by removing obsolete items and replacing them with the most recent version.

### § 1223.24 When can vital records be destroyed?

The disposition of vital records that are original records is governed by records schedules approved by NARA (see part 1225, Scheduling Records, of this subchapter). Agencies must not destroy original records that are not scheduled. Duplicate copies created and maintained for vital records purposes only may be destroyed when superseded or obsolete during the routine vital records cycle process.

## PART 1224—RECORDS DISPOSITION PROGRAMS

Sec.
1224.1 What are the authorities for Part 1224?
1224.2 What definitions apply to this part?
1224.3 What standards are used as guidance for this part?
1224.10 What must agencies do to implement an effective records disposition program?

**Authority:** 44 U.S.C. 2111, 2904, 3102, and 3301.

### § 1224.1 What are the authorities for Part 1224?

The statutory authorities for this part are 44 U.S.C. 2111, 2904, 3102, and 3301.

### § 1224.2 What definitions apply to this part?

See § 1220.18 of this subchapter for definitions of terms used in part 1224.

### § 1224.3 What standards are used as guidance for this part?

These regulations conform with guidance provided in ISO 15489–1:2001, Information and documentation—Records management. Paragraphs 7.1 (Principles of records management programmes), 8.3.7 (Retention and disposition), 8.5 (Discontinuing records systems), and 9.9 (Implementing disposition) apply to records disposition.

### § 1224.10 What must agencies do to implement an effective records disposition program?

In order to properly implement the provisions of §§ 1220.30(c)(2), 1220.32(e), and 1220.34(c), (f), and (g) of this subchapter agencies must:

(a) Ensure that all records are scheduled in accordance with part 1225 of this subchapter, schedules are implemented in accordance with part 1226 of this subchapter, and permanent records are transferred to the National Archives of the United States.

(b) Promptly disseminate and implement NARA-approved agency schedules and additions and changes to the General Records Schedules (GRS) in accordance with § 1226.12(a) of this subchapter.

(c) Regularly review agency-generated schedules, and, if necessary, update them.

(d) Incorporate records retention and disposition functionality during the design, development, and implementation of new or revised recordkeeping systems (whether paper or electronic). See § 1236.6 of this subchapter.

(e) Provide training and guidance to all employees on agency records disposition requirements and procedures and other significant aspects of the records disposition program. When a new or revised records schedule is issued, provide specific guidance to employees responsible for applying the schedule.

## PART 1225—SCHEDULING RECORDS

Sec.
1225.1 What are the authorities for this part?
1225.2 What definitions apply to this part?
1225.3 What standards are used as guidance for this part?
1225.10 What Federal records must be scheduled?
1225.12 How are records schedules developed?
1225.14 How do agencies schedule permanent records?
1225.16 How do agencies schedule temporary records?
1225.18 How do agencies request records disposition authority?
1225.20 When do agencies have to get GAO approval for schedules?
1225.22 When must scheduled records be rescheduled?
1225.24 When can an agency apply previously approved schedules to electronic records?
1225.26 How do agencies change a disposition authority?

**Authority:** 44 U.S.C. 2111, 2904, 2905, 3102, and Chapter 33.

### § 1225.1 What are the authorities for this part?

The statutory authorities for this part are 44 U.S.C. 2111, 2904, 2905, 3102, and Chapter 33.

### § 1225.2 What definitions apply to this part?

See § 1220.18 of this subchapter for definitions of terms used throughout Subchapter B, including part 1225.

### § 1225.3 What standards are used as guidance for this part?

These regulations conform with guidance provided in ISO 15489–1:2001, Information and documentation—Records management. Paragraphs 4 (Benefits of records management), 6.3 (Responsibilities), 7.1 (Principles of records management programmes), 8.3.7 (Retention and disposition), 9.2 (Determining how long to retain records), 9.10 (Documenting records management processes), 10 (Records management processes and controls), and 11 (Monitoring and auditing) apply to records scheduling.

### § 1225.10 What Federal records must be scheduled?

All Federal records, including those created or maintained for the Government by a contractor, must be covered by a NARA-approved agency disposition authority, SF 115, Request for Records Disposition Authority, or the NARA General Records Schedules.

### § 1225.12 How are records schedules developed?

The principal steps in developing agency records schedules are listed below. Additional details that may be helpful are provided in the NARA records management handbook, *Disposition of Federal Records* at *http://www.archives.gov/records-mgmt/publications/disposition-of-federal-records/index.html*.

(a) Conduct a functional or work process analysis to identify the functions or activities performed by each organization or unit. Identify the recordkeeping requirements for each.

(b) Prepare an inventory for each function or activity to identify records series, systems, and nonrecord materials.

(c) Determine the appropriate scope of the records schedule items, *e.g.*, individual series/system component, work process, group of related work processes, or broad program area.

(d) Evaluate the period of time the agency needs each records series or system based on use, value to agency operations and oversight agencies, and legal obligations. Determine whether a fixed or flexible retention period is more appropriate. For records proposed as temporary, specify a retention period that meets agency business needs and legal requirements. For records proposed as permanent records, identify how long the records are needed by the

agency before they are transferred to NARA.

(e) Determine whether the proposed disposition should be limited to records in a specific medium. Records schedules submitted to NARA for approval on or after December 17, 2007, are media neutral, *i.e.*, the disposition instructions apply to the described records in any medium, unless the schedule identifies a specific medium for a specific series.

(f) Compile a schedule for records, including descriptions and disposition instructions for each item, using an SF 115.

(g) Obtain internal clearances, as appropriate, from program offices and other stakeholders such as the legal counsel, chief information officer, electronic systems manager, and agency historian, as appropriate.

(h) Obtain approval from the Government Accountability Office (GAO), when required (see § 1225.20(a) for the categories that require GAO approval).

(i) Submit an SF 115 covering only new or revised record items to NARA for approval (see § 1225.18(d)).

(j) The disposition instructions on SF 115s approved by the Archivist of the United States are mandatory (44 U.S.C. 3314).

**§ 1225.14 How do agencies schedule permanent records?**

(a) *Identification*. Identify potentially permanent records. Useful guidelines in the identification of permanent Federal records may be found in the NARA records management handbook, *Disposition of Federal Records* (see § 1225.12 for the Web site address of this publication).

(b) *Requirements*. Each item proposed for permanent retention on an SF 115 must include the following:

(1) Descriptive title of the records series, component of an information system, or appropriate aggregation of series and/or information system components. The descriptive title must be meaningful to agency personnel;

(2) Complete description of the records including:

(i) Agency function;

(ii) Physical type, if appropriate;

(iii) Inclusive dates;

(iv) Statement of how records are arranged;

(v) Statement of restrictions on access under the FOIA if the records are proposed for immediate transfer;

(3) Disposition instructions developed using the following guidelines:

(i) If the records series or system is current and continuing, the SF 115 must specify the period of time after which the records will be transferred to the National Archives of the United States, and if appropriate, the time period for returning inactive records to an approved records storage facility.

(ii) If the records series or system is nonrecurring, i.e., no additional records will be created or acquired, the agency must propose either that the records be transferred to the National Archives of the United States immediately or set transfer for a fixed date in the future.

(c) *Determination.* NARA will appraise the records to determine if they have sufficient value to warrant archival permanent preservation. If NARA determines either that records are not permanent or that the transfer instructions are not appropriate:

(1) NARA will notify the agency and negotiate an appropriate disposition. The disposition instruction on the SF 115 will be modified prior to NARA approval; or

(2) If NARA and the agency cannot agree on the disposition instruction for an item(s), the items(s) will be withdrawn. In these cases, the agency must submit an SF 115 with a revised proposal for disposition; unscheduled records must be treated as permanent until a new schedule is approved.

**§ 1225.16 How do agencies schedule temporary records?**

(a) *Identification.* Federal agencies request authority to dispose of records, either immediately or on a recurring basis. Requests for immediate disposal are limited to existing records that no longer accumulate. For recurring records, approved schedules provide continuing authority to destroy the records. The retention periods approved by NARA are mandatory, and the agency must dispose of the records after expiration of the retention period, except as provided in §§ 1226.18 and 1226.20 of this subchapter.

(b) *Requirements.* Each item on an SF 115 proposed for eventual destruction must include the following:

(1) Descriptive title familiar to agency personnel;

(2) Description of the records including agency function, physical type(s) and informational content;

(3) Disposition instructions developed using the following guidelines:

(i) If the record series, component of an electronic information system, or appropriate aggregation of series and/or automated system components is current and continuing, the SF 115 must include file breaks, retention period or event after which the records will be destroyed, and, if appropriate, transfer period for retiring inactive records to an approved records storage facility.

(ii) If the records series, system, or other aggregation is nonrecurring, *i.e.,* no additional records will be created or acquired, the SF 115 must specify either immediate destruction or destruction on a future date.

(c) *Determination.* If NARA determines that the proposed disposition is not consistent with the value of the records, it will request that the agency make appropriate changes.

(1) If NARA determines that records proposed as temporary merit permanent retention and transfer to the National Archives of the United States, the agency must change the disposition instruction prior to approval of the SF 115.

(2) If NARA and the agency cannot agree on the retention period for an item(s), the items(s) will be withdrawn. In these cases, the agency must submit an SF 115 with a revised proposal for disposition; unscheduled records must be treated as permanent until a new schedule is approved.

**§ 1225.18 How do agencies request records disposition authority?**

(a) Federal agencies submit an SF 115 to NARA to request authority to schedule (establish the disposition for) permanent and temporary records, either on a recurring or one-time basis.

(b) SF 115s include only records not covered by the General Records Schedules (GRS) (see part 1227 of this subchapter), deviations from the GRS (see § 1227.12 of this subchapter), or previously scheduled records requiring changes in retention periods or substantive changes in description.

(c) SF 115s do not include nonrecord material. The disposition of nonrecord materials is determined by agencies and does not require NARA approval.

(d) The following elements are required on a SF 115:

(1) Title and description of the records covered by each item.

(2) Disposition instructions that can be readily applied. Records schedules must provide for:

(i) The destruction of records that no longer have sufficient value to justify further retention (see § 1224.10(b) of this subchapter); and

(ii) The identification of potentially permanent records and provisions for their transfer to the legal custody of NARA.

(3) Certification that the records proposed for disposition are not now needed for the business of the agency or will not be needed after the specified retention periods. The signature of the authorized agency representative on the SF 115 provides certification.

(e) NARA will return SF 115s that are improperly prepared. The agency must

make the necessary corrections and resubmit the form to NARA.

**§ 1225.20 When do agencies have to get GAO approval for schedules?**

(a), Federal agencies must obtain the approval of the Comptroller General for the disposal of the following types of records:

(1) Program records less than 3 years old,

(2) Deviations from General Records Schedule 2–10 (see § 1227.10 of this subchapter for a definition of general records schedules), and

(b) This approval must be obtained before NARA will approve the disposition request.

**§ 1225.22 When must scheduled records be rescheduled?**

Agencies must submit an SF 115, Request for Records Disposition Authority, to NARA in the following situations:

(a) If an interagency reorganization reassigns functions to an existing department or agency, the gaining organization must submit an SF 115 to NARA within one year of the reorganization. Schedules approved for one department or independent agency do not apply to records of other departments or agencies.

(b) If a new department or agency assumes functions from an existing one, the new agency must schedule records documenting the acquired functions and all other records not covered by the GRS within two years.

(c) If an agency needs to deviate from retention periods in the GRS.

(d) If an agency needs to change retention periods for records previously appraised as temporary by NARA.

(e) If an agency needs to change the approved disposition of records from permanent to temporary or vice versa.

(f) If an agency needs to modify the description of records because the informational content of the records and/or the function documented by the records changes.

(g) If an agency decides to change the scope of the records schedule items to include a greater or lesser aggregation of records (see § 1225.12(c)), unless § 1225.24 applies.

(h) Agencies must submit a new schedule to NARA for electronic versions of previously scheduled records if:

(1) The content and function of the records have changed significantly (e.g., the electronic records contain information that is substantially different from the information included in the hard copy series or are used for different purposes).

(2) The previously approved schedule explicitly excludes electronic records.

(3) The electronic records consist of program records maintained on an agency Web site.

(4) The electronic records consist of temporary program records maintained in a format other than scanned image AND the previously approved schedule is not media neutral.

**§ 1225.24 When can an agency apply previously approved schedules to electronic records?**

If the conditions specified in § 1225.22(h) do not apply, the following conditions apply:

(a) *Permanent records.*

(1) The agency may apply a previously approved schedule for hard copy records to electronic versions of the permanent records when the electronic records system replaces a single series of hard copy permanent records or the electronic records consist of information drawn from multiple previously scheduled permanent series. Agencies must notify the National Archives and Records Administration, Modern Records Programs (NWM), 8601 Adelphi Road, College Park, MD 20740–6001, phone number 301–837–1738, in writing of series of records that have been previously scheduled as permanent in hard copy form, including special media records as described in 36 CFR 1235.52 of this subchapter. An agency should send the notification to the NARA unit that processes its schedules. The notification must be submitted within 90 days of when the electronic recordkeeping system becomes operational and must contain the:

(i) Name of agency;

(ii) Name of the electronic system;

(iii) Organizational unit(s) or agency program that records support;

(iv) Current disposition authority reference; and

(v) Format of the records (*e.g.,* database, scanned images, digital photographs, *etc.*).

(2) If the electronic records include information drawn from both temporary and permanent hard copy series, an agency either may apply a previously approved permanent disposition authority, after submitting the notification required by paragraph (a)(1) of this section or may submit a new schedule if the agency believes the electronic records do not warrant permanent retention.

(b) *Temporary still pictures, sound recordings, motion picture film, and video recordings.* The agency must apply the previously approved schedule to digital versions. If changes in the approved schedule are required, follow § 1225.26.

(c) *Scanned images of temporary records, including temporary program records.* The agency must apply the previously approved schedule. If changes in the approved schedule are required, follow § 1225.26.

(d) *Other temporary records maintained in an electronic format other than scanned images.*

(1) For temporary records that are covered by an item in a General Records Schedule (other than those General Records Schedule items that exclude electronic master files and databases) or an agency-specific schedule that pertains to administrative housekeeping activities, apply the previously approved schedule. If the electronic records consist of information drawn from multiple hard copy series, apply the previously approved schedule item with the longest retention period.

(2) For temporary program records covered by a NARA-approved media neutral schedule item (*i.e.*, the item appears on a schedule submitted to NARA for approval before December 17, 2007, that is explicitly stated to be media neutral, or it appears on a schedule submitted to NARA for approval on or after December 17, 2007, that is not explicitly limited to a specific recordkeeping medium), apply the previously approved schedule.

**§ 1225.26 How do agencies change a disposition authority?**

Agencies must submit an SF 115 to permanently change the approved disposition of records. Disposition authorities are automatically superseded by approval of a later SF 115 for the same records unless the later SF 115 specifies an effective date. As provided in § 1226.20(c) of this subchapter, agencies are authorized to retain records eligible for destruction until the new schedule is approved.

(a) SF 115s that revise previously approved disposition authorities must cite all of the following, if applicable:

(1) The SF 115 and item numbers to be superseded;

(2) The General Records Schedules and item numbers that cover the records, if any; and

(3) The current published records disposition manual and item numbers; or the General Records Schedules and item numbers that cover the records.

(b) Agencies must submit with the SF 115 an explanation and justification for the change.

(c) For temporary retention of records beyond their normal retention period, see § 1226.18 of this subchapter.

(d) Agencies must secure NARA approval of a change in the period of

time that permanent records will remain in agency legal custody prior to transfer to the National Archives of the United States. To request approval, agencies send written requests to the National Archives and Records Administration, Modern Records Programs (NWM), 8601 Adelphi Road, College Park, MD 20740–6001, phone number (301) 837–1738. NARA approval is documented as an annotation to the schedule item. A new SF 115 is not required to extend the time period of agency legal custody.

## PART 1226—IMPLEMENTING DISPOSITION

Sec.

1226.1 What are the general authorities for this part?
1226.2 What definitions apply to this part?
1226.3 What standards are used as guidance for this part?
1226.10 Must agencies apply approved schedules to their records?
1226.12 How do agencies disseminate approved schedules?
1226.14 What are the limitations in applying approved records schedule?
1226.16 Does NARA ever withdraw disposition authority?
1226.18 When may agencies temporarily extend retention periods?
1226.20 How do agencies temporarily extend retention periods?
1226.22 When must agencies transfer permanent records?
1226.24 How must agencies destroy temporary records?
1226.26 How do agencies donate temporary records?

**Authority:** 44 U.S.C. 2111, 2904, 3102, and 3301.

### § 1226.1 What are the general authorities for this part?

The statutory authorities are 44 U.S.C. 2107, 2111, 2904, 3102, 3301 and 3302.

### § 1226.2 What definitions apply to this part?

See § 1220.18 of this subchapter for definitions of terms used throughout Subchapter B, including part 1226.

### § 1226.3 What standards are used as guidance for this part?

These regulations conform with guidance in ISO 15489–1:2001, Information and documentation—Records management, sections 8.3.7 (Retention and disposition), 8.5 (Discontinuing records systems), 9.2 (Determining how long to retain records), and 9.9 (Implementing disposition).

### § 1226.10 Must agencies apply approved schedules to their records?

The application of approved schedules is mandatory except as provided in §§ 1226.16 and 1226.18. Federal records must be retained as specified in the schedule to conduct Government business, protect rights, avoid waste, and preserve permanent records for transfer to the National Archives of the United States.

### § 1226.12 How do agencies disseminate approved schedules?

(a) Agencies must issue disposition authorities through their internal directives system within six months of approval of the SF 115 or GRS to ensure proper distribution and application of the schedule. The directive must cite the legal authority (GRS or SF 115 and item numbers) for each schedule item covering records.

(b) Agencies must send, via link or file, an electronic copy of each published agency schedule, directive, and other policy issuance relating to records disposition to NARA at *RM.Communications@nara.gov* when the directive, manual, or policy issuance is posted or distributed.

(c) The submission must include the name, title, agency, address, and phone number of the submitter. If the comprehensive records schedule or other policy issuance is posted on a publicly available Web site, the agency must provide the full Internet address (URL).

### § 1226.14 What are the limitations in applying approved records schedules?

Agencies must apply the approved records disposition schedules to their agency's records as follows

(a) Records described by items marked ''disposition not approved'' or ''withdrawn'' may not be destroyed until a specific disposition has been approved by NARA.

(b) Disposition authorities for items on approved SF 115s that specify an organizational component of the department or independent agency as the creator or custodian of the records may be applied to the same records after internal reorganization, but only if the nature, content, and functional importance of the records remain the same. Authority approved for items described in a functional format may be applied to any organizational component within the department or independent agency that is responsible for the relevant function.

(c) Disposition authorities approved for one department or independent agency may not be applied to records of another department or agency. Departments or agencies that acquire records from another department or agency, and/or continue creating the same series of records previously created by another department or agency through interagency reorganization must promptly submit an SF 115 to NARA for disposition authorization. Until the new records schedule is approved, the records are unscheduled. See § 1225.22 of this subchapter.

(d) Unless otherwise specified, newly approved disposition authorities apply retroactively to all existing records as described in the schedule.

(e) When required by court order (*i.e.*, order for expungement or destruction), an agency may destroy temporary records before their NARA-authorized disposition date. In accordance with § 1230.14 of this subchapter, an agency must notify the National Archives and Records Administration, Modern Records Programs (NWM), 8601 Adelphi Road, College Park, MD 20740–6001, phone number (301) 837–1738, when permanent or unscheduled records are to be destroyed in response to a court order. If the records have significant historical value, NARA will promptly advise the agency of any concerns over their destruction.

### § 1226.16 Does NARA ever withdraw disposition authority?

(a) When required to ensure the preservation of Government records, or when required by an emergency, or to maintain efficiency of Government operations, NARA will withdraw disposal authorizations in approved schedules (44 U.S.C. 2909). This withdrawal may apply to particular items on agency schedules or may apply to all existing authorizations for a specified type of record in any or all agencies.

(b) To both impose and rescind the withdrawal, NARA will notify the affected agency or agencies in writing, either by letter or NARA bulletin.

### § 1226.18 When may agencies temporarily extend retention periods?

(a) Agencies may temporarily retain records approved for destruction beyond their NARA-approved retention period if special circumstances alter the normal administrative, legal, or fiscal value of the records.

(1) Agencies must not retain records whose disposal after a specified period is required by statute, unless retention is ordered by a Court.

(2) In determining whether or not to temporarily extend the retention period of records, agencies must ensure that the extension of retention is consistent with the requirement contained in 5 U.S.C. 552a (Privacy Act of 1974, as amended) that records concerning individuals are maintained only if relevant and necessary to accomplish a purpose of

the agency that is required by law or Executive order.

(b) If the records that are to be temporarily retained beyond their approved destruction date have been transferred to records storage facilities, agencies must notify the facility.

(c) Once the special circumstances that require extended retention of records have elapsed, agencies must destroy the records in accordance with the NARA-approved disposition instructions.

(d) Agencies must submit an SF 115 to NARA to change schedule provisions on a continuing basis in accordance with § 1225.26 of this subchapter. Agencies may retain records eligible for destruction until the new schedule is approved.

### § 1226.20 How do agencies temporarily extend retention periods?

(a) Agencies must secure NARA written approval to retain records series or systems that are eligible for destruction under NARA-approved schedules except when:

(1) The agency has requested a change in the records schedule in accordance with § 1225.26 of this subchapter, in which case the agency is authorized to retain records eligible for destruction until the new SF 115 is approved;

(2) The records will be needed for less than one year; or

(3) A court order requires retention of the records.

(b) To request an extension, agencies must send a letter to the National Archives and Records Administration, Modern Records Programs (NWM), 8601 Adelphi Road, College Park, MD 20740–6001, phone number (301) 837–1738. Along with a justification, the request must include:

(1) A concise description of the records series for which the extension is requested.

(2) A citation to the agency records schedule or the GRS currently governing disposition of the records;

(3) A statement of the estimated period of time that the records will be required; and

(4) For records in the agency's custody, a statement of the current and proposed physical location of the records.

(c) Agencies must ensure that records in records storage facilities are retained for the duration of the extension.

### § 1226.22 When must agencies transfer permanent records?

All records scheduled as permanent must be transferred to the National Archives of the United States after the period specified on the SF 115 in accordance with procedures specified under § 1235.12 of this subchapter.

### § 1226.24 How must agencies destroy temporary records?

(a) *Sale or salvage of unrestricted records*—(1) *Paper records*. Paper records to be destroyed normally must be sold as wastepaper, or otherwise salvaged. All sales must follow the established procedures for the sale of surplus personal property. (See 41 CFR part 101—45, Sale, Abandonment, or Destruction of Personal Property.) The contract for sale must prohibit the resale of all records for use as records or documents.

(2) *Records on electronic and other media*. Records other than paper records (audio, visual, and electronic records on physical media data tapes, disks, and diskettes) may be salvaged and sold in the same manner and under the same conditions as paper records.

(b) *Destruction of unrestricted records*. Unrestricted records that agencies cannot sell or otherwise salvage must be destroyed by burning, pulping, shredding, macerating, or other suitable means authorized by implementing regulations issued under E.O. 12958, as amended or its successor.

(c) *Destruction of classified or otherwise restricted records*. If the records are restricted because they are national security classified or exempted from disclosure by statute, including the Privacy Act, or regulation:

(1) *Paper records*. For paper records, the agency or its wastepaper contractor must definitively destroy the information contained in the records by one of the means specified in paragraph (b) of this section and their destruction must be witnessed either by a Federal employee or, if authorized by the agency, by a contractor employee.

(2) *Electronic records*. Electronic records scheduled for destruction must be disposed of in a manner that ensures protection of any sensitive, proprietary, or national security information. Magnetic recording media previously used for electronic records containing sensitive, proprietary, or national security information must not be reused if the previously recorded information can be compromised in any way by reuse of the media.

### § 1226.26 How do agencies donate temporary records?

(a) Agencies must obtain written approval from NARA before donating records eligible for disposal to an appropriate person, organization, institution, corporation, or government (including a foreign government) that has requested them. Records that are not eligible for disposal cannot be donated.

(b) Agencies request the approval of such a donation by sending a letter to the National Archives and Records Administration, Modern Records Programs (NWM), 8601 Adelphi Road, College Park, MD 20740–6001, phone number (301) 837–1738. The request must include:

(1) The name of the department or agency, and relevant subdivisions, having custody of the records;

(2) The name and address of the proposed recipient of the records;

(3) A list containing:

(i) Description of the records to be transferred,

(ii) The inclusive dates of the records,

(iii) The SF 115 or GRS and item numbers that authorize destruction of the records;

(4) A statement providing evidence:

(i) That the proposed donation is in the best interests of the Government,

(ii) That the proposed recipient agrees not to sell the records as records or documents, and

(iii) That the donation will be made without cost to the U.S. Government;

(5) A certification that:

(i) The records contain no information the disclosure of which is prohibited by law or contrary to the public interest, and/or

(ii) The records proposed for transfer to a person or commercial business are directly pertinent to the custody or operations of properties acquired from the Government, and/or

(iii) A foreign government desiring the records has an official interest in them.

(c) NARA will determine whether the donation is in the public interest and notify the requesting agency of its decision in writing. If NARA determines such a proposed donation is contrary to the public interest, the agency must destroy the records in accordance with the appropriate disposition authority.

## PART 1227—GENERAL RECORDS SCHEDULES

Sec.

1227.1 What are the authorities for Part 1227?
1227.2 What definitions apply to this part?
1227.3 What standards are used as guidance for this part?
1227.10 What are General Records Schedules (GRS)?
1227.12 When must agencies apply the GRS?
1227.14 How do I obtain copies of the GRS?

**Authority:** 44 U.S.C. 3303a(d).

**§ 1227.1 What are the authorities for Part 1227?**

The statutory authority for this part is 44 U.S.C. 3303a(d).

**§ 1227.2 What definitions apply to this part?**

See § 1220.18 of this subchapter for definitions of terms used in part 1227.

**§ 1227.3 What standards are used as guidance for this part?**

These regulations conform with guidance provided in ISO 15489–1:2001, Information and documentation—Records management, paragraphs 9.2 (Determining how long to retain records) and 9.9 (Implementing disposition).

**§ 1227.10 What are General Records Schedules (GRS)?**

General Records Schedules (GRS) are schedules issued by the Archivist of the United States that authorize, after specified periods of time, the destruction of temporary records or the transfer to the National Archives of the United States of permanent records that are common to several or all agencies.

**§ 1227.12 When must agencies apply the GRS?**

(a) Agencies apply the disposition instructions of the GRS, as provided in the following table.

| When NARA issues a new or revised GRS, and . . . | Then . . . |
|---|---|
| (1) The new or revised GRS states that the provisions must be followed without exception. | All agencies must follow the disposition instructions of the GRS, regardless of whether or not they have existing schedules. |
| (2) Your agency does not have an existing schedule for these records. | Your agency must follow the disposition instructions of the GRS. If your agency's needs require a different retention period, then your agency must submit an SF 115 in accordance with 36 CFR part 1225 of this subchapter, and a justification for the deviation. |
| (3) When your agency has an existing schedule and the new or revised GRS permits use of existing agency-specific schedules. | Your agency may follow the disposition instructions in either the GRS or the existing agency schedule, but it must follow the same instructions throughout the agency and instruct its staff to do so. If your agency chooses to follow its own schedule, then it must notify NARA within 120 days of the issuance of the new or revised GRS. |
| (4) Your agency does not create or maintain any of the records addressed by that GRS. | No action is required. |

(b) Except as provided in the table in paragraph (a), agencies must incorporate in their disposition manual or otherwise disseminate new and revised GRS within 6 months after NARA has issued the GRS Transmittal.

(c) NARA may, at its discretion, apply the provisions of the GRS to records in its legal custody, subject to the provisions of § 1235.34 of this subchapter.

**§ 1227.14 How do I obtain copies of the GRS?**

(a) The GRS and instructions for their use are available online at *http://www.archives.gov/records-mgmt/ardor/records-schedules.html*. They are also available by writing to the National Archives and Records Administration, Modern Records Programs (NWM), 8601 Adelphi Road, College Park, MD 20740–6001, phone number (301) 837–1738.

(b) NARA distributes new and revised GRS to Federal agencies under sequentially numbered GRS transmittals.

## PART 1228—LOAN OF PERMANENT AND UNSCHEDULED RECORDS

Sec.

1228.1 What are the authorities for this part?
1228.2 What definitions apply to this part?
1228.8 Do loans of temporary records require NARA approval?
1228.10 When do loans of permanent and unscheduled records require NARA approval?
1228.12 How do agencies obtain approval to loan permanent or unscheduled records?
1228.14 How will NARA handle a loan request?
1228.16 When must agencies retrieve records that have been loaned?

**Authority:** 44 U.S.C. 2904.

**§ 1228.1 What are the authorities for this part?**

The statutory authority for this part is 44 U.S.C. 2904.

**§ 1228.2 What definitions apply to this part?**

See § 1220.18 of this subchapter for definitions of terms used in part 1228.

**§ 1228.8 Do loans of temporary records require NARA approval?**

Loans of temporary records between Federal agencies or to non-Federal recipients do not require approval from NARA. The lending agency is responsible for documenting the loan and return of the records.

**§ 1228.10 When do loans of permanent and unscheduled records require NARA approval?**

Loans of permanent or unscheduled records between Federal agencies or to non-Federal recipients require prior written approval from NARA. The loan of permanent or unscheduled records increases the likelihood of the records becoming lost, misplaced, or incorporated into other files. Agencies should consider reproducing or scanning the records in response to a loan request.

**§ 1228.12 How do agencies obtain approval to loan permanent or unscheduled records?**

(a) An agency proposing to loan permanent or unscheduled records must prepare a written loan agreement with the proposed recipient. The agreement must include:

(1) The name of the department or agency and subdivisions having custody of the records;

(2) The name and address of the proposed recipient of the records;

(3) A list containing:

(i) Identification of the records to be loaned, by series or system;

(ii) The inclusive dates for each series or system;

(iii) The volume and media of the records to be loaned; and

(iv) The NARA disposition job (SF 115) and item numbers covering the records, if any.

(4) A statement of the purpose and duration of the loan;

(5) A statement specifying any restrictions on the use of the records and how these restrictions will be imposed by the recipient;

(6) A certification that the records will be stored in areas with security and environmental controls equal to those specified in part 1234 of this subchapter; and

(7) A signature block for the Archivist of the United States. The loan must not

take place until the Archivist has signed the agreement.

(b) On request, NARA may allow an agency to prepare an annual loan agreement covering multiple transfers from the same series of records to another single Federal agency.

(c) The agency must send a written request to the National Archives and Records Administration, Modern Records Programs (NWM), 8601 Adelphi Road, College Park, MD 20740–6001, phone number (301) 837–1738, transmitting the proposed loan agreement, citing the rationale for not providing copies in place of the original records, and specifying the name, title, and phone number of an agency contact. The request must be submitted or approved by the individual authorized to sign records schedules as described in § 1220.34(b) of this subchapter.

### § 1228.14 How will NARA handle a loan request?

(a) NARA will review the request and, if it is approved, return the signed agreement to the agency within 30 days.

(b) NARA will deny the request within 30 days if the records are due or past due to be transferred to the National Archives of the United States in accordance with part 1235 of this subchapter, if the loan would endanger the records, or if the loan would otherwise violate the regulations in 36 CFR chapter XII, subchapter B. NARA will notify the agency in writing if it disapproves the loan and the reasons for the disapproval of the loan.

### § 1228.16 When must agencies retrieve records that have been loaned?

An agency must contact the recipient of loaned permanent or unscheduled records 30 days prior to the expiration of the loan period (as stated in the loan agreement) to arrange for the return of the records. If the agency extends the duration of the loan, it must notify NARA (see § 1228.12(b)) in writing, specifying the reason for the extension and providing the new expiration date of the loan.

## PART 1229—EMERGENCY AUTHORIZATION TO DESTROY RECORDS

Sec.

1229.1 What is the scope of this part?
1229.2 What are the authorities for this part?
1229.3 What definitions apply to this part?
1229.10 What steps must be taken when records are a continuing menace to health or life, or to property?
1229.12 What are the requirements during a state of war or threatened war?

**Authority:** 44 U.S.C. 3310 and 3311.

### § 1229.1 What is the scope of this part?

This part describes certain conditions under which records may be destroyed without regard to the provisions of part 1226 of this subchapter.

### § 1229.2 What are the authorities for this part?

The statutory authorities for this part are 44 U.S.C. 3310 and 3311.

### § 1229.3 What definitions apply to this part?

See § 1220.18 of this subchapter for definitions of terms used in part 1229.

### § 1229.10 What steps must be taken when records are a continuing menace to health or life, or to property?

When NARA and the agency that has custody of them jointly determine that records in the custody of an agency of the U.S. Government are a continuing menace to human health or life, or to property, NARA will authorize the agency to eliminate the menace immediately by any method necessary:

(a) When an agency identifies records that pose a continuing menace to human health or life, or to property, the records officer or other designee must immediately notify the National Archives and Records Administration, Modern Records Programs (NWM), 8601 Adelphi Road, College Park, MD 20740–6001, phone number (301) 837–1738. The notice must specify the description of the records, their location and quantity, and the nature of the menace. Notice may be given via e-mail to *RM.Communications@nara.gov,* or via phone, (301) 837–1738, or fax, (301) 837–3698, to NWM or the NARA Regional Administrator.

(b) If NARA concurs in a determination that the records must be destroyed, NARA will notify the agency to immediately destroy the records.

(c) If NARA does not concur that the menace must be eliminated by destruction of the records, NARA will advise the agency on remedial action to address the menace.

### § 1229.12 What are the requirements during a state of war or threatened war?

(a) Destruction of records outside the territorial limits of the continental United States is authorized whenever, during a state of war between the United States and any other nation or when hostile action appears imminent, the head of the agency that has custody of the records determines that their retention would be prejudicial to the interest of the United States, or that they occupy space urgently needed for military purposes and are without sufficient administrative, fiscal, legal, historical, or other value to warrant their continued preservation.

(b) Within six months after the destruction of any records under this authorization, the agency official who directed the destruction must submit to the National Archives and Records Administration, Modern Records Programs (NWM), 8601 Adelphi Road, College Park, MD 20740–6001, phone number (301) 837–1738, a written statement explaining the reasons for the destruction and a description of the records and how, when, and where the destruction was accomplished.

## PART 1230—UNLAWFUL OR ACCIDENTAL REMOVAL, DEFACING, ALTERATION, OR DESTRUCTION OF RECORDS

Sec.

1230.1 What are the authorities for part 1230?
1230.2 What standards are used as guidance for this part?
1230.3 What definitions apply to this part?
1230.10 Who is responsible for preventing the unlawful or accidental removal, defacing, alteration, or destruction of records?
1230.12 What are the penalties for unlawful or accidental removal, defacing, alteration, or destruction of records?
1230.14 How do agencies report incidents?
1230.16 How does NARA handle allegations of damage, alienation, or unauthorized destruction of records?
1230.18 What assistance is available to agencies to recover unlawfully removed records?

**Authority:** 44 U.S.C. 3105 and 3106.

### § 1230.1 What are the authorities for part 1230?

The statutory authorities for this part are 44 U.S.C. 3105 and 3106.

### § 1230.2 What standards are used as guidance for this part?

These regulations conform with guidance provided in ISO 15489–1:2001, par. 6.3 (Responsibilities), 7.2 (Characteristics of a record), 8.2 (Records systems characteristics), and 8.3 (Designing and implementing records systems).

### § 1230.3 What definitions apply to this part?

(a) See § 1220.18 of this subchapter for definitions of terms used throughout Subchapter B, including part 1230.

(b) As used in part 1230—

*Alteration* means the unauthorized annotation, addition, or deletion to a record.

*Deface* means to obliterate, mar, or spoil the appearance or surface of a record that impairs the usefulness or value of the record.

*Removal* means selling, donating, loaning, transferring, stealing, or otherwise allowing a record to leave the custody of a Federal agency without the permission of the Archivist of the United States.

*Unlawful or accidental destruction (also called unauthorized destruction)* means disposal of an unscheduled or permanent record; disposal prior to the end of the NARA-approved retention period of a temporary record (other than court-ordered disposal under § 1226.14(d) of this subchapter); and disposal of a record subject to a FOIA request, litigation hold, or any other hold requirement to retain the records.

**§ 1230.10 Who is responsible for preventing the unlawful or accidental removal, defacing, alteration, or destruction of records?**

The heads of Federal agencies must:

(a) Prevent the unlawful or accidental removal, defacing, alteration, or destruction of records. Section 1222.24(a)(6) of this subchapter prohibits removing records from the legal custody of the agency. Records must not be destroyed except under the provisions of NARA-approved agency records schedules or the General Records Schedules issued by NARA;

(b) Take adequate measures to inform all employees and contractors of the provisions of the law relating to unauthorized destruction, removal, alteration or defacement of records;

(c) Implement and disseminate policies and procedures to ensure that records are protected against unlawful or accidental removal, defacing, alteration and destruction; and

(d) Direct that any unauthorized removal, defacing, alteration or destruction be reported to NARA.

**§ 1230.12 What are the penalties for unlawful or accidental removal, defacing, alteration, or destruction of records?**

The penalties for the unlawful or accidental removal, defacing, alteration, or destruction of Federal records or the attempt to do so, include a fine, imprisonment, or both (18 U.S.C. 641 and 2071).

**§ 1230.14 How do agencies report incidents?**

The agency must report promptly any unlawful or accidental removal, defacing, alteration, or destruction of records in the custody of that agency to the National Archives and Records Administration, Modern Records Programs (NWM), 8601 Adelphi Road, College Park, MD 20740–6001, phone number 301–837–1738.

(a) The report must include:

(1) A complete description of the records with volume and dates if known;

(2) The office maintaining the records;

(3) A statement of the exact circumstances surrounding the removal, defacing, alteration, or destruction of records;

(4) A statement of the safeguards established to prevent further loss of documentation; and

(5) When appropriate, details of the actions taken to salvage, retrieve, or reconstruct the records.

(b) The report must be submitted or approved by the individual authorized to sign records schedules as described in § 1220.34(b) of this subchapter.

**§ 1230.16 How does NARA handle allegations of unlawful or accidental removal, defacing, alteration, or destruction?**

Upon receiving any credible information that records are at risk of actual, impending, or threatened damage, alienation, or unauthorized destruction, NARA will contact the agency as follows:

(a) If the threat has not yet resulted in damage, removal, or destruction, NARA will contact the agency by phone promptly and follow up in writing within five business days.

(b) If records have allegedly been damaged, removed, or destroyed, NARA will notify the agency in writing promptly with a request for a response within 30 days.

**§ 1230.18 What assistance is available to agencies to recover unlawfully removed records?**

NARA will assist the head of the agency in the recovery of any unlawfully removed records, including contacting the Attorney General, if appropriate.

## PART 1231—TRANSFER OF RECORDS FROM THE CUSTODY OF ONE EXECUTIVE AGENCY TO ANOTHER

Sec.

1231.1 What is the authority for part 1231?
1231.2 What definitions apply to this part?
1231.10 Who has the authority to approve the transfer of records from the custody of one executive agency to another?
1231.12 How do executive agencies request to transfer records to another executive agency?
1231.14 May the records of terminated agencies be transferred to another agency?
1231.16 What restrictions are there on use of transferred records?
1231.18 When are records transferred between executive agencies without NARA approval?

**Authority:** 44 U.S.C. 2908.

**§ 1231.1 What is the authority for part 1231?**

The authority for this part is 44 U.S.C. 2908.

**§ 1231.2 What definitions apply to this part?**

See § 1220.18 of this subchapter for definitions of terms used throughout Subchapter B, including this part.

**§ 1231.10 Who has the authority to approve the transfer of records from the custody of one executive agency to another?**

NARA must approve in writing the transfer of records from the custody of one executive agency to another, except as provided in § 1231.18(a).

**§ 1231.12 How do executive agencies request to transfer records to another executive agency?**

An executive agency that proposes to transfer records to another agency must request approval of the transfer of records in writing from the National Archives and Records Administration, Modern Records Programs (NWM), 8601 Adelphi Road, College Park, MD 20740–6001, phone number (301) 837–1738. The request must include:

(a) A concise description of the records to be transferred, including the volume in cubic feet;

(b) A statement of the restrictions imposed on the use of records;

(c) A statement of the agencies and persons using the records and the purpose of this use;

(d) A statement of the current and proposed physical and organizational locations of the records;

(e) A justification for the transfer including an explanation of why it is in the best interests of the Government; and

(f) Copies of the concurrence in the transfer by the heads of all agencies involved in the proposed transfer.

**§ 1231.14 May the records of terminated agencies be transferred to another agency?**

The records of executive agencies whose functions are terminated or are in process of liquidation may be transferred to another executive agency that inherits the function. All such transfers must be made in accordance with the provisions of this part.

**§ 1231.16 What restrictions are there on use of transferred records?**

Restrictions imposed under a statute or Executive order must continue to be imposed after the transfer. Restrictions imposed by agency determination must also continue, unless the restrictions are removed by agreement between the agencies concerned.

**§ 1231.18 When are records transferred between executive agencies without NARA approval?**

Records are transferred between executive agencies without NARA approval when:

(a) Records are transferred to a NARA or agency-operated records center or to the National Archives of the United States in accordance with Parts 1232, 1233, and 1235 of this subchapter;

(b) Temporary records are loaned for official use;

(c) The transfer of records or functions or both is required by statute, Executive Order, Presidential reorganization plan, or Treaty, or by specific determinations made thereunder;

(d) The records are transferred between two components of the same executive department; or

(e) Records accessioned into the National Archives of the United States are later found to lack sufficient value for continued retention in the National Archives. The disposition of such records is governed by § 1235.34 of this subchapter.

## PART 1232—TRANSFER OF RECORDS TO RECORDS STORAGE FACILITIES

Sec.

1232.1 What are the authorities for part 1232?
1232.2 What definitions apply to this part?
1232.3 What standards are used as guidance for this part?
1232.10 Where can a Federal agency transfer records for storage?
1232.12 Under what conditions may Federal records be stored in records storage facilities?
1232.14 What requirements must an agency meet before it transfers records to a records storage facility?
1232.16 What documentation must an agency create before it transfers records to a records storage facility?
1232.18 What procedures must an agency follow to transfer records to an agency records center or commercial records storage facility?

**Authority:** 44 U.S.C. 2907 and 3103.

**§ 1232.1 What are the authorities for part 1232?**

The statutory authorities for this part are 44 U.S.C. 2907 and 3103.

**§ 1232.2 What definitions apply to this part?**

See § 1220.18 of this subchapter for definitions of terms used throughout Subchapter B, including part 1232.

**§ 1232.3 What standards are used as guidance for this part?**

These regulations conform with guidance provided in ISO 15489–1:2001 Paragraphs 7.1 (Principles of records management programmes), 8.3.3 (Physical storage medium and protection), 8.3.6 (Access, retrieval and use), 8.3.7 (Retention and disposition), 9.6 (Storage and handling), and 9.8.3 (Location and tracking) apply to records creation and maintenance.

**1232.10 Where can a Federal agency transfer records for storage?**

Federal agencies may store records in the following types of records storage facilities, so long as the facilities meet the facility standards in 36 CFR part 1234. Records transferred to a records storage facility remain in the legal custody of the agency.

(a) NARA Federal Records Centers. NARA owns or operates records centers for the storage, processing, and servicing of records for Federal agencies under the authority of 44 U.S.C. 2907. These NARA records centers include a National Personnel Records Center that contains designated records of the Department of Defense and the Office of Personnel Management and other designated records pertaining to former Federal civilian employees. A list of NARA Federal Records Centers is available from the NARA Web site at *http://www.archives.gov/locations/index.html* and also in the U.S. Government Manual, which is for sale from the Superintendent of Documents, U.S. Government Printing Office, Mail Stop: SSOP, Washington, DC 20402–9328, and is available on the Internet from *http://www.access.gpo.gov/nara/index.html.*

(b) Records centers operated by or on behalf of one or more Federal agencies other than NARA.

(c) Commercial records storage facilities operated by private entities.

**§ 1232.12 Under what conditions may Federal records be stored in records storage facilities?**

The following chart shows what records can be stored in a records storage facility and the conditions that apply:

| Type of record | Conditions |
|---|---|
| (a) Permanent records | Any storage facility that meets the provisions of 36 CFR part 1234. |
| (b) Unscheduled records | (1) Any storage facility that meets the provisions of 36 CFR part 1234.<br>(2) Also requires prior notification to NARA (see § 1232.14(b)). |
| (c) Temporary records (excluding Civilian Personnel Records). | Any storage facility that meets the provisions of 36 CFR part 1234. |
| (d) Vital records | Storage facility must meet the provisions of 36 CFR parts 1223 and 1234. |
| (e) Civilian Personnel Records | May only be transferred to the National Personnel Records Center (NPRC), St. Louis, MO (see part 1233 of this subchapter). |

**§ 1232.14 What requirements must an agency meet before it transfers records to a records storage facility?**

An agency must meet the following requirements before it transfers records to a records storage facility:

(a) Ensure that the requirements of 36 CFR part 1234 are met. Special attention must be paid to ensuring appropriate storage conditions for records on non-paper based media (e.g., film, audio tape, magnetic tape), especially those that are scheduled for long-term or permanent retention, as those records typically require more stringent environmental controls (see 36 CFR parts 1236 and 1237).

(b) To transfer unscheduled records, notify the National Archives and Records Administration, Modern Records Programs (NWM), 8601 Adelphi Road, College Park, MD 20740–6001, phone number (301) 837–1738, in writing prior to the transfer. The notification must identify the records storage facility and include a copy of the information required by § 1232.16(a).

(c) For all records being transferred, create documentation sufficient to identify and locate files. (See § 1232.16.)

(d) Ensure that NARA-approved retention periods are implemented properly and that records documenting final disposition actions (destruction or transfer to the National Archives of the United States) are created and maintained.

**§ 1232.16 What documentation must an agency create before it transfers records to a records storage facility?**

(a) Documentation must include for each individual records series spanning one or more consecutive years transferred to storage:

(1) Creating office;

(2) Series title;

(3) Description (in the case of permanent or unscheduled records, the description must include a folder title list of the box contents or equivalent detailed records description);

(4) Date span;

(5) Physical form and medium of records (*e.g.,* paper, motion picture film, sound recordings, photographs, or digital images);

(6) Volume;

(7) Citation to NARA-approved records schedule or agency records disposition manual (unscheduled records must cite the date the agency notified NARA or, if available, the date the SF 115 was submitted to NARA);

(8) Restrictions on access if applicable;

(9) Disposition (''permanent,'' ''temporary,'' or ''unscheduled; SF 115 pending'');

(10) Date of disposition action (transfer to the National Archives of the United States or destruction);

(11) Physical location, including name and address of facility; and

(12) Control number or identifier used to track records.

(b) In the case of permanent and unscheduled records, provide copies of such documentation to NARA and advise NARA in writing of the new location whenever the records are moved to a new storage facility. For permanent records, the agency must transmit this documentation to the National Archives and Records Administration, Modern Records Programs (NWM), 8601 Adelphi Road, College Park, MD 20740–6001, phone number (301) 837–1738, no later than 30 days after records are transferred to the agency records center or commercial records storage facility.

(1) Retain temporary records until the expiration of their NARA-approved retention period and no longer, except as provided for in § 1226.18 of this subchapter.

(2) Transfer permanent records to the National Archives of the United States in accordance with 36 CFR part 1235.

### § 1232.18 What procedures must an agency follow to transfer records to an agency records center or commercial records storage facility?

Federal agencies must use the following procedures to transfer records to an agency records center or commercial records storage facility:

(a) Agreements with agency records centers or contracts with commercial records storage facilities must incorporate the standards in 36 CFR part 1234 and allow for inspections by the agency and NARA to ensure compliance. An agency must remove records promptly from a facility if deficiencies identified during an inspection are not corrected within six months of issuance of the report.

(b) For temporary records, the agency must make available to NARA on request the documentation specified in § 1232.16.

(c) Retain temporary records until the expiration of their NARA-approved retention period and no longer, except as provided for in § 1226.18 of this subchapter.

(d) Ensure that NARA-approved retention periods are implemented properly and that records documenting final disposition actions (destruction or transfer to the National Archives of the United States) are created and maintained as required by 36 CFR 1232.14.

(1) Agencies must establish procedures that ensure that temporary records are destroyed in accordance with NARA-approved records schedules and that NARA-approved changes to schedules, including the General Records Schedules, are applied to records in agency records centers or commercial records storage facilities in a timely fashion. Procedures must include a requirement that the agency records center or commercial records storage facility notify agency records managers or the creating office before the disposal of temporary records unless disposal of temporary records is initiated by the agency.

(2) Move temporary records that are subsequently reappraised as permanent to a facility that meets the environmental control requirements for permanent records in § 1234.14 of this subchapter within one year of their re-appraisal, if not already in such a facility. (Paper-based permanent records in an existing records storage facility that does not meet the environmental control requirements in § 1234.14 of this subchapter on October 1, 2009, must be moved from that facility no later than February 28, 2010.)

(3) Agencies must establish procedures to ensure that the agency records centers or commercial records storage facilities transfer permanent records to the National Archives of the United States as individual series spanning one or more years and in accordance with the provisions of part 1235 of this subchapter.

(e) Agencies must ensure that records that are restricted because they are security classified or exempt from disclosure by statute, including the Privacy Act of 1974 (5 U.S.C. 552a, as amended), or regulation are stored and maintained in accordance with applicable laws, Executive orders, or regulations.

(f) Agencies must ensure that temporary records, including restricted records (security classified or exempted from disclosure by statute, including the Privacy Act of 1974, or regulation), are destroyed in accordance with the requirements specified in § 1226.24 of this subchapter.

(g) Agencies must ensure that emergency operating vital records, as defined in 36 CFR part 1223, that are transferred to an agency records center or commercial records storage facility are available in accordance with 36 CFR 1223.24.

(h) Provide access to appropriate NARA staff to records wherever they are located in order to conduct an inspection in accordance with 36 CFR part 1239 or to process a request for records disposition authority.

## PART 1233—TRANSFER, USE, AND DISPOSITION OF RECORDS IN A NARA FEDERAL RECORDS CENTER

Sec.

1233.1 What are the authorities for part 1233?
1233.2 What definitions apply to this part?
1233.3 What standards are used as guidance for this part?
1233.10 How does an agency transfer records to a NARA Federal Records Center?
1233.12 How does an agency transfer vital records to a NARA Federal Records Center?
1233.14 What personnel records must be transferred to the National Personnel Records (NPRC)?
1233.16 How does an agency transfer records to the National Personnel Records Center (NPRC)?
1233.18 What reference procedures are used in NARA Federal Records Centers?
1233.20 How are disposal clearances managed for records in NARA Federal Records Centers?

**Authority:** 44 U.S.C. 2907 and 3103.

### § 1233.1 What are the authorities for part 1233?

The statutory authorities for this part are 44 U.S.C. 2907 and 3103.

### § 1233.2 What definitions apply to this part?

See § 1220.18 of this subchapter for definitions of terms used throughout Subchapter B, including part 1233.

### § 1233.3 What standards are used as guidance for this part?

These regulations conform with guidance provided in ISO 15489–1:2001. Paragraphs 7.1 (Principles of records management programmes), 8.3.3 (Physical storage medium and protection), 8.3.6 (Access, retrieval and

use), 8.3.7 (Retention and disposition), 9.6 (Storage and handling), and 9.8.3 (Location and tracking) apply to records creation and maintenance.

**§ 1233.10 How does an agency transfer records to a NARA Federal Records Center?**

An agency transfers records to a NARA Federal Records Center using the following procedures:

(a) General. NARA will ensure that its records centers meet the facilities standards in 36 CFR part 1234, which meets the agency's obligation in § 1232.14(a) of this subchapter.

(b) Agencies must use their designated NARA Federal Records Center(s) as specified in their agency agreement with NARA (Federal Records Center Program (FRCP)) for the storage of records.

(c) Transfers to NARA Federal Records Centers must be preceded by the submission of a Standard Form (SF) 135, Records Transmittal and Receipt, or an electronic equivalent. Preparation and submission of this form will meet the requirements for records description provided in § 1232.14(c) of this subchapter, except the folder title list required for permanent and unscheduled records. A folder title list is also required for records that are scheduled for sampling or selection after transfer.

(d) A separate SF 135 or electronic equivalent is required for each individual records series having the same disposition authority and disposition date.

(e) For further guidance on transfer of records to a NARA Federal Records Center, consult the NARA Federal Records Centers Program Web site (*http://www.archives.gov/frc/toolkit.html#transfer*), or current NARA publications and bulletins by contacting the National Archives and Records Administration, Office of Regional Records Services (NR), 8601 Adelphi Road, College Park, MD or phone (301) 837–2950, or individual NARA Federal Records Centers *http://www.archives.gov/frc/locations.html*.

**§ 1233.12 How does an agency transfer vital records to a NARA Federal Records Center?**

For assistance on selecting an appropriate site among NARA facilities for storage of vital records, agencies may contact National Archives and Records Administration, Office of Regional Records Services, 8601 Adelphi Road, College Park, MD or phone (301) 837–2950. The actual transfers are governed by the general requirements and procedures in this part and 36 CFR part 1223.

**§ 1233.14 What personnel records must be transferred to the National Personnel Records Center (NPRC)?**

(a) Civilian personnel files:

(1) General Records Schedules 1 and 2 specify that certain Federal civilian personnel, medical, and pay records must be centrally stored at the National Personnel Records Center headquartered in St. Louis, MO.

(2) [Reserved]

(b) The following types of medical treatment records are transferred to the NPRC:

(1) Inpatient (hospitalization) records created for all categories of patients (active duty personnel, retirees, and dependents) receiving inpatient treatment and extended ambulatory procedures; and

(2) Outpatient medical treatment records for military retirees, dependents, and other civilians treated at military health care facilities (excludes active duty military personnel at time of military discharge or retirement).

**§ 1233.16 How does an agency transfer records to the National Personnel Records Center (NPRC)?**

Agencies must use the following procedures when transferring records to the NPRC:

(a) *Civilian personnel files.*

(1) Forward the official personnel folder (OPF) and the employee medical folder (EMF) to the NPRC at the same time.

(2) Transfer EMFs and OPFs in separate folders.

(3) Retirement of individual folders is based on the date of separation and should occur within 90 to 120 days after the employee separates from Federal service.

(4) For additional guidance, consult the Office of Personnel Management (OPM) 1900 E Street, NW., Washington, DC 20415, phone number (202) 606–1800, Web site *http://www.opm.gov/feddata/recguide2008.pdf,* for the OPM publication ''The Guide to Personnel Recordkeeping'' for procedures on the transfer of OPFs and EMFs.

(b) *Military medical records.* Military health care facilities should contact their facility records managers for guidance on transferring medical records to NPRC. For additional guidance, consult the ''Transactions with the National Personnel Records Center (NPRC), St. Louis, MO'' section of the NARA Federal Records Centers Program Web site (*http://www.archives.gov/frc/toolkit.html#transactions*).

(c) *Other guidance assistance.* For further guidance assistance consult the NPRC Web site (*http://www.archives.gov/facilities/mo/st_louis.html*).

**§ 1233.18 What reference procedures are used in NARA Federal Records Centers?**

(a) Agency records transferred to a NARA Federal Records Center remain in the legal custody of the agency. NARA acts as the agency's agent in maintaining the records. NARA will not disclose the record except to the agency that maintains the record, or under rules established by that agency which are consistent with existing laws.

(b) For general reference requests agencies may use an FRCP electronic system or, the Optional Form (OF) 11, Reference Request—Federal Records Centers, a form jointly designated by that agency and NARA, or their electronic equivalents.

(c) For civilian personnel records, agencies must use the following forms:

(1) Standard Form 127, Request for Official Personnel Folder (Separated Employee), to request transmission of personnel folders of separated employees stored at the National Personnel Records Center. Additional instructions on requesting OPFs are available online at *http://www.archives.gov/st-louis/civilian-personnel/federal-agencies.html.*

(2) Standard Form 184, Request for Employee Medical Folder (Separated Employee), to request medical folders stored at the National Personnel Records Center. Additional instructions on requesting EMFs are available online at *http://www.archives.gov/st-louis/civilian-personnel/federal-agencies.html.*

(3) Optional Form 11, Reference Request—Federal Records Center to request medical records transferred to other NARA Federal Records Centers prior to September 1, 1984. The request must include the name and address of the agency's designated medical records manager

(d) For military personnel records reference requests, the following forms must be used:

(1) Federal agencies must use Standard Form (SF) 180, Request Pertaining to Military Records, to obtain information from military service records in the National Personnel Records Center (Military Personnel Records); authorized agencies requesting the loan of a military personnel record may order records using eMilrecs (electronic equivalent of the SF 180). Access to eMilrecs and additional information is available on line at: *http:www.archives.gov/st-louis/military-personnel/agencies/ompf-fed-agency.html.*

(2) A military veteran or the next of kin of a deceased, former member of the military may order military personnel records through the submission of an SF 180 or an online records request system. Additional information is available on line at: *http://www.archives.gov/veterans/evetrecs.*

(3) Members of the public and non-governmental organizations also may obtain copies of SF 180 by submitting a written request to the National Personnel Records Center (Military Personnel Records), 9700 Page Boulevard, St. Louis, MO 63132. OMB Control Number 3095–0029 has been assigned to the SF 180.

(4) Agencies may furnish copies of the SF 180 to the public to aid in inquiries. Copies of SF 180 are available at: *http://www.archives.gov/st-louis/military-personnel/standard-form-180.html#sf.*

(5) For guidance on requesting original medical treatment records, military hospitals and clinics should consult the ''Transactions with the National Personnel Records Center (NPRC), St. Louis, MO'' section of the NARA Federal Records Centers Program Web site (*http://www.archives.gov/frc/toolkit.html#transactions*).

(e) For further guidance on requesting records from a NARA Federal Records Center, consult the NARA Federal Records Centers Program Web site (*http://www.archives.gov/frc/toolkit.html#retrieval*), or current NARA publications and bulletins by contacting the Office of Regional Records Services (NR), or individual NARA Federal Records Centers (*http://www.archives.gov/frc/locations.html*), or the Washington National Records Center (NWMW).

### § 1233.20 How are disposal clearances managed for records in NARA Federal Records Centers?

(a) The National Personnel Records Center will destroy records covered by General Records Schedules 1 and 2 in accordance with those schedules without further agency clearance.

(b) NARA Federal Records Centers will destroy other eligible Federal records only with the written concurrence of the agency having legal custody of the records.

(c) NARA Federal Records Centers will maintain documentation on the final disposition of records, as required in 36 CFR 1232.14(d).

(d) When NARA approves an extension of retention period beyond the time authorized in the records schedule for records stored in NARA Federal Records Centers, NARA will notify those affected records centers to suspend disposal of the records (see § 1226.18 of this subchapter).

(e) For further guidance on records disposition, consult the NARA Federal Records Centers Program Web site (*http://www.archives.gov/frc/toolkit.html#disposition*), or current NARA publications and bulletins by contacting the Office of Regional Records Services (NR) or individual NARA Federal Records Centers (*http://www.archives.gov/frc/locations.html*), individual NARA regional facilities, or the Washington National Records Center (NWMW).

## PART 1234—FACILITY STANDARDS FOR RECORDS STORAGE FACILITIES

### Subpart A—General

Sec.
1234.1 What authorities apply to part 1234?
1234.2 What does this part cover?
1234.3 What publications are incorporated by reference?
1234.4 What definitions are used in this part?

**Subpart B—Facility Standards**

1234.10 What are the facility requirements for all records storage facilities?
1234.12 What are the fire safety requirements that apply to records storage facilities?
1234.14 What are the requirements for environmental controls for records storage facilities?

**Subpart C—Handling Deviations From NARA's Facility Standards**

1234. 20 What rules apply if there is a conflict between NARA standards and other regulatory standards that a facility must follow?
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1234. 24 How does NARA process a waiver request?

**Subpart D—Facility Approval and Inspection Requirements**

1234.30 How does an agency request authority to establish or relocate records storage facilities?
1234.32 What does an agency have to do to certify a fire-safety detection and suppression system?
1234.34 When may NARA conduct an inspection of a records storage facility?
Appendix A to Part 1234—Minimum Security Standards for Level III Federal Facilities
Appendix B to Part 1234—Alternative Certified Fire-Safety Detection and Suppression System(s)

**Authority:** 44 U.S.C. 2104(a), 2904, 2907, 3102, and 3103.

### Subpart A—General

#### § 1234.1 What authorities apply to part 1234?

NARA is authorized to establish, maintain and operate records centers for Federal agencies under 44 U.S.C. 2907. NARA is authorized, under 44 U.S.C. 3103, to approve a records center that is maintained and operated by an agency. NARA is also authorized to promulgate standards, procedures, and guidelines to Federal agencies with respect to the storage of their records in commercial records storage facilities. See 44 U.S.C. 2104(a), 2904, and 3102. The regulations in this subpart apply to all records storage facilities Federal agencies use to store, service, and dispose of their records.

#### § 1234.2 What does this part cover?

(a) This part covers the establishment, maintenance, and operation of records centers, whether Federally-owned and operated by NARA or another Federal agency, or Federally-owned and contractor operated. This part also covers an agency's use of commercial records storage facilities. Records centers and commercial records storage facilities are referred to collectively as records storage facilities. This part specifies the minimum structural, environmental, property, and life-safety standards that a records storage facility must meet when the facility is used for the storage of Federal records.

(b) Except where specifically noted, this part applies to all records storage facilities. Certain noted provisions apply only to new records storage facilities established or placed in service on or after September 28, 2005.

#### § 1234.3 What publications are incorporated by reference in this part?

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, NARA must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the Office of the Federal Register. For information on the availability of this material at the Office of the Federal Register, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) The material incorporated by reference is also available for inspection at NARA's Archives Library Information Center (NWCCA), Room 2380, 8601

Adelphi Road, College Park, MD 20740–6001, phone number (301) 837–3415, and is available for purchase from the sources listed below. If you experience difficulty obtaining the standards referenced below, contact NARA's Space and Security Management Division (NAS), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001, phone number (301) 837–1867.

(c) *American National Standards Institute (ANSI).* The following standards are available from the American National Standards Institute, 25 West 43rd St., 4th Floor, New York, NY 10036, phone number (212) 642–4900, or online at *http://webstore.ansi.org.*

(1) IAPMO/ANSI UMC 1–2003 (''IAPMO/ANSI UMC 1''), Uniform Mechanical Code, 2003, IBR approved for § 1234.12.

(2) NFPA 40 (''NFPA 40–1997''), Standard for the Storage and Handling of Cellulose Nitrate Motion Picture Film, 1997 Edition, IBR approved for § 1234.12.

(3) NFPA 42 (''NFPA 42''), Code for the Storage of Pyroxylin Plastic, 1997 Edition, IBR approved for § 1234.12.

(4) NFPA 54 (''NFPA 54''), National Fuel Gas Code, 2002 Edition, IBR approved for § 1234.12.

(5) NFPA 101 (''NFPA 101''), Life Safety Code, 1997 Edition, IBR approved for § 1234.12.

(d) *Document Center Inc.* The following standards are available from the standards reseller the Document Center Inc., 111 Industrial Road, Suite 9, Belmont, CA, 94002, phone number (650) 591–7600, or online at *http://www.document-center.com.*

(1) ANSI/NAPM IT9.18–1996 (''ANSI/NAPM IT9.18''), Imaging Materials—Processed Photographic Plates—Storage Practices, September 8, 1996, IBR approved for § 1234.14.

(2) ANSI/NAPM IT9.23–1996 (''ANSI/NAPM IT9.23''), Imaging Materials—Polyester Base Magnetic Tape—Storage, September 6, 1996, IBR approved for § 1234.14.

(e) *Document Engineering Co., Inc. (DECO).* The following standards are available from the standards reseller DECO—Document Engineering Co., Inc., 15210 Stagg Street, Van Nuys, CA, phone number (818) 782–1010, or online at *http://www.doceng.com.*

(1) ANSI/NAPM IT9.20–1996 (''ANSI/NAPM IT9.20''), Imaging Materials—Reflection Prints—Storage Practices, September 8, 1996, IBR approved for § 1234.14.

(2) NFPA 221 (''NFPA 221''), Standard for Fire Walls and Fire Barrier Walls, 1994 Edition, November 1, 1994, IBR approved for § 1234.4.

(3) ASTM E 119–98 (''ASTM E 119–98''), Standard Test Methods for Fire Tests of Building Construction and Materials, 1998, IBR approved for § 1234.12.

(4) NFPA 10 (''NFPA 10''), Portable Fire Extinguishers, 1994 Edition, November 1, 1994, IBR approved for Appendix B to part 1234.

(5) NFPA 13 (''NFPA 13''), Standard for Installation of Sprinkler Systems, 2002 Edition, October 1, 2002, IBR approved for §§ 1234.10 and 1234.12, and Appendix B to part 1234.

(6) NFPA 20 (''NFPA 20''), Standard for the Installation of Centrifugal Fire Pumps, 1996 Edition, January 1, 1996, IBR approved for Appendix B to part 1234.

(f) *Global Engineering Documents.* The following standards are available from the standards reseller Global Engineering Documents, 15 Inverness Way, East Englewood, CO 80112, phone number (800) 854–7179, or online at *http://www.global.ihs.com.*

(1) ANSI/PIMA IT9.25–1998 (''ANSI/PIMA IT9.25''), Imaging Materials—Optical Disc Media—Storage, 1998, IBR approved for § 1234.14.

(2) Reserved.

(g) *Techstreet.* The following standards are available from the standards reseller Techstreet, 3916 Ranchero Drive, Ann Arbor, MI 48108, phone number (800) 699–9277, or online at *http://www.Techstreet.com.*

(1) ANSI/PIMA IT9.11–1998 (''ANSI/PIMA IT9.11''), Imaging Materials—Processed Safety Photographic Films—Storage, January 1, 1998, IBR approved for § 1234.14.

(2) UL 827 (''UL 827''), Central-Station Alarm Services, Sixth Edition, April 23, 1999, IBR approved for Appendix B to part 1234.

(3) UL 1076 (''UL 1076''), Proprietary Burglar Alarm Units and Systems, Fifth Edition, February 1, 1999, IBR approved for § 1234.10

(h) The following standards are not available from the original publisher or a standards reseller. As indicated in paragraph (b) of this section, the standards are available for inspection at the NWCCA. In order to inspect the standards at a NARA location other than the NARA facility in College Park, MD, please contact the NWCCA, Room 2380, 8601 Adelphi Road, College Park, MD 20740–6001, phone number (301) 837–3415 or e-mail your request to *alic@nara.gov.*

(1) ANSI/ASHRAE 55–1992 (''ANSI/ASHRAE 55''), Thermal Environmental Conditions for Human Occupancy, 1992, IBR approved for § 1234.14.

(2) ANSI/ASHRAE 62–1989 (''ANSI/ASHRAE 62''), Ventilation for Acceptable Indoor Air Quality, 1989, IBR approved for § 1234.14.

(3) UL 611 (''UL 611''), Central-Station Burglar-Alarm Systems, February 22, 1996, IBR approved for § 1234.10

**§ 1234.4 What definitions are used in this part?**

The following definitions apply to this part:

*Auxiliary spaces* mean non-records storage areas such as offices, research rooms, other work and general storage areas but excluding boiler rooms or rooms containing equipment operating with a fuel supply such as generator rooms.

*Commercial records storage facility* has the meaning specified in § 1220.18 of this chapter.

*Existing records storage facility* means any records center or commercial records storage facility used to store records on September 27, 2005, and that has stored records continuously since that date.

*Fire barrier wall* means a wall, other than a fire wall, having a fire resistance rating, constructed in accordance with NFPA 221 (incorporated by reference, see § 1234.3).

*Licensed fire protection engineer* means a licensed or registered professional engineer with a recognized specialization in fire protection engineering. For those States that do not separately license or register fire protection engineers, a licensed or registered professional engineer with training and experience in fire protection engineering, operating within the scope of that licensing or registration, who is also a professional member of the Society of Fire Protection Engineers.

*Must and provide* means that a provision is mandatory.

*New records storage facility* means any records center or commercial records storage facility established or converted for use as a records center or commercial records storage facility on or after September 28, 2005.

*Permanent record* has the meaning specified in § 1220.18 of this subchapter.

*Records center* has the meaning specified in § 1220.18 of this subchapter.

*Records storage area* means the area intended for long-term storage of records that is enclosed by four fire barrier walls, the floor, and the ceiling.

*Records storage facility* has the meaning specified in § 1220.18 of this subchapter.

*Sample/Select records* means records whose final disposition requires an analytical or statistical sampling prior to final disposition authorization, in which some percentage of the original accession will be retained as permanent records.

*Should or may* means that a provision is recommended or advised but not required.

*Temporary record* has the meaning specified in § 1220.18 of this subchapter.

*Unscheduled records* has the meaning specified in § 1220.18 of this subchapter.

## Subpart B—Facility Standards

### § 1234.10 What are the facility requirements for all records storage facilities?

(a) The facility must be constructed with non-combustible materials and building elements, including walls, columns and floors. There are two exceptions to this requirement:

(1) Roof elements may be constructed with combustible materials if installed in accordance with local building codes and if roof elements are protected by a properly installed, properly maintained wet-pipe automatic sprinkler system, as specified in NFPA 13 (incorporated by reference, see § 1234.3).

(2) An agency may request a waiver of the requirement specified in paragraph (a) from NARA for an existing records storage facility with combustible building elements to continue to operate until October 1, 2009. In its request for a waiver, the agency must provide documentation that the facility has a fire suppression system specifically designed to mitigate this hazard and that the system meets the requirements of § 1234.12(s). Requests must be submitted to the Director, Space and Security Management Division (NAS), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001, phone number (301) 837–1867.

(b) A facility with two or more stories must be designed or reviewed by a licensed fire protection engineer and civil/structural engineer to avoid catastrophic failure of the structure due to an uncontrolled fire on one of the intermediate floor levels. For new buildings the seals on the construction drawings serve as proof of this review. For existing buildings, this requirement may be demonstrated by a professional letter of opinion under seal by a licensed fire protection engineer that the fire resistance of the separating floor(s) is/(are) at least four hours, and a professional letter of opinion under seal by a licensed civil/structural engineer that there are no obvious structural weaknesses that would indicate a high potential for structural catastrophic collapse under fire conditions.

(c) The building must be sited a minimum of five feet above and 100 feet from any 100 year flood plain areas, or be protected by an appropriate flood wall that conforms to local or regional building codes.

(d) The facility must be designed in accordance with the applicable national, regional, state, or local building codes (whichever is most stringent) to provide protection from building collapse or failure of essential equipment from earthquake hazards, tornadoes, hurricanes and other potential natural disasters.

(e) Roads, fire lanes and parking areas must permit unrestricted access for emergency vehicles.

(f) A floor load limit must be established for the records storage area by a licensed structural engineer. The limit must take into consideration the height and type of the shelving or storage equipment, the width of the aisles, the configuration of the space, etc. The allowable load limit must be posted in a conspicuous place and must not be exceeded.

(g) The facility must ensure that the roof membrane does not permit water to penetrate the roof. NARA strongly recommends that this requirement be met by not mounting equipment on the roof and placing nothing else on the roof that may cause damage to the roof membrane. Alternatively, a facility may meet this requirement with stringent design specifications for roof-mounted equipment in conjunction with a periodic roof inspection program performed by appropriately certified professionals.

(1) New records storage facilities must meet the requirements in this paragraph (g) beginning on September 28, 2005.

(2) Existing facilities must meet the requirements in this paragraph (g) no later than October 1, 2009.

(h) Piping (with the exception of fire protection sprinkler piping and storm water roof drainage piping) must not be run through records storage areas unless supplemental measures such as gutters or shields are used to prevent water leaks and the piping assembly is inspected for potential leaks regularly. If drainage piping from roof drains must be run though records storage areas, the piping must be run to the nearest vertical riser and must include a continuous gutter sized and installed beneath the lateral runs to prevent leakage into the storage area. Vertical pipe risers required to be installed in records storage areas must be fully enclosed by shaft construction with appropriate maintenance access panels.

(1) New records storage facilities must meet the requirements in this paragraph (h) beginning on September 28, 2005.

(2) Existing facilities must meet the requirements in this paragraph (h) no later than October 1, 2009.

(i) The following standards apply to records storage shelving and racking systems:

(1) All storage shelving and racking systems must be designed and installed to provide seismic bracing that meets the requirements of the applicable state, regional, and local building code (whichever is most stringent);

(2) Racking systems, steel shelving, or other open-shelf records storage equipment must be braced to prevent collapse under full load. Each racking system or shelving unit must be industrial style shelving rated at least 50 pounds per cubic foot supported by the shelf;

(3) Compact mobile shelving systems (if used) must be designed to permit proper air circulation and fire protection (detailed specifications that meet this requirement can be provided by NARA by writing to Director, Space and Security Management Division (NAS), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.), phone number (301) 837–1867).

(j) The area occupied by the records storage facility must be equipped with an anti-intrusion alarm system, or equivalent, meeting the requirements of UL 1076 (incorporated by reference, see § 1234.3), level AA, to protect against unlawful entry after hours and to monitor designated interior storage spaces. This intrusion alarm system must be monitored in accordance with UL 611, (incorporated by reference, see § 1234.3).

(k) The facility must comply with the requirements for a Level III facility as defined in the Department of Justice, U. S. Marshals Service report Vulnerability Assessment of Federal Facilities dated June 28, 1995. These requirements are provided in Appendix A to this part 1234. Agencies may require compliance with Level IV or Level V facility security requirements if the facility is classified at the higher level.

(l) Records contaminated by hazardous materials, such as radioactive isotopes or toxins, infiltrated by insects, or exhibiting active mold growth must be stored in separate areas having separate air handling systems from other records.

(m) To eliminate damage to records and/or loss of information due to

insects, rodents, mold and other pests that are attracted to organic materials under specific environmental conditions, the facility must have an Integrated Pest Management program as defined in the Food Protection Act of 1996 (Section 303, Pub. L. 104–170, 110 Stat. 1512). This states in part that Integrated Pest Management is a sustainable approach to managing pests by combining biological, cultural, physical, and chemical tools in a way that minimizes economic, health, and environmental risks. The IPM program emphasizes three fundamental elements:

(1) *Prevention.* IPM is a preventive maintenance process that seeks to identify and eliminate potential pest access, shelter, and nourishment. It also continually monitors for pests themselves, so that small infestations do not become large ones;

(2) *Least-toxic methods.* IPM aims to minimize both pesticide use and risk through alternate control techniques and by favoring compounds, formulations, and application methods that present the lowest potential hazard to humans and the environment; and

(3) *Systems approach.* The IPM pest control contract must be effectively coordinated with all other relevant programs that operate in and around a building, including plans and procedures involving design and construction, repairs and alterations, cleaning, waste management, food service, and other activities.

(n) For new records storage facilities only, the additional requirements in this paragraph (n) must be met:

(1) Do not install mechanical equipment, excluding material handling and conveyance equipment that have operating thermal breakers on the motor, containing motors rated in excess of 1 HP within records storage areas (either floor mounted or suspended from roof support structures).

(2) Do not install high-voltage electrical distribution equipment (*i.e.,* 13.2kv or higher switchgear and transformers) within records storage areas (either floor mounted or suspended from roof support structures).

(3) A redundant source of primary electric service such as a second primary service feeder should be provided to ensure continuous, dependable service to the facility especially to the HVAC systems, fire alarm and fire protection systems. Manual switching between sources of service is acceptable.

(4) A facility storing permanent records must be kept under positive air pressure, especially in the area of the loading dock. In addition, to prevent fumes from vehicle exhausts from entering the facility, air intake louvers must not be located in the area of the loading dock, adjacent to parking areas, or in any location where a vehicle engine may be running for any period of time. Loading docks must have an air supply and exhaust system that is separate from the remainder of the facility.

**§ 1234.12 What are the fire safety requirements that apply to records storage facilities?**

(a) The fire detection and protection systems must be designed or reviewed by a licensed fire protection engineer. If the system was not designed by a licensed fire protection engineer, the review requirement is met by furnishing a report under the seal of a licensed fire protection engineer that describes the design intent of the fire detection and suppression system, detailing the characteristics of the system, and describing the specific measures beyond the minimum features required by code that have been incorporated to minimize loss. The report should make specific reference to appropriate industry standards used in the design, such as those issued by the National Fire Protection Association, and any testing or modeling or other sources used in the design.

(b) All interior walls separating records storage areas from each other and from other storage areas in the building must be at least three-hour fire barrier walls. A records storage facility may not store more than 250,000 cubic feet total of Federal records in a single records storage area. When Federal records are combined with other records in a single records storage area, only the Federal records will apply toward this limitation.

(c) Fire barrier walls that meet the following specifications must be provided:

(1) For existing records storage facilities, at least one-hour-rated fire barrier walls must be provided between the records storage areas and other auxiliary spaces.

(2) For new records storage facilities, two-hour-rated fire barrier walls must be provided between the records storage areas and other auxiliary spaces. One exterior wall of each stack area must be designed with a maximum fire resistive rating of one hour, or, if rated more than one hour, there must be at least one knock-out panel in one exterior wall of each stack area.

(d) Penetrations in the walls must not reduce the specified fire resistance ratings. The fire resistance ratings of structural elements and construction assemblies must be in accordance with ASTM E 119–98 (incorporated by reference, see § 1234.3).

(e) The fire resistive rating of the roof must be a minimum of ½ hour for all records storage facilities, or must be protected by an automatic sprinkler system designed, installed, and maintained in accordance with NFPA 13 (incorporated by reference, see § 1234.3).

(f) Openings in fire barrier walls separating records storage areas must be avoided to the greatest extent possible. If openings are necessary, they must be protected by self-closing or automatic Class A fire doors, or equivalent doors that maintain the same rating as the wall.

(g) Roof support structures that cross or penetrate fire barrier walls must be cut and supported independently on each side of the fire barrier wall.

(h) If fire barrier walls are erected with expansion joints, the joints must be protected to their full height.

(i) Building columns in the records storage areas must be at least 1-hour fire resistant or protected in accordance with NFPA 13 (incorporated by reference, see § 1234.3).

(j) Automatic roof vents for routine ventilation purposes must not be designed into new records storage facilities. Automatic roof vents, designed solely to vent in the case of a fire, with a temperature rating at least twice that of the sprinkler heads are acceptable.

(k) Where lightweight steel roof or floor supporting members (*e.g.,* bar joists having top chords with angles 2 by 12 inches or smaller, 1/4-inch thick or smaller, and 13/16-inch or smaller Web diameters) are present, they must be protected either by applying a 10-minute fire resistive coating to the top chords of the joists, or by retrofitting the sprinkler system with large drop sprinkler heads. If a fire resistive coating is applied, it must be a product that will not release (off gas) harmful fumes into the facility. If fire resistive coating is subject to air erosion or flaking, it must be fully enclosed in a drywall containment constructed of metal studs with fire retardant drywall. Retrofitting may require modifications to the piping system to ensure that adequate water capacity and pressure are provided in the areas to be protected with these large drop sprinkler heads.

(l) Open flame (oil or gas) unit heaters or equipment, if used in records storage areas, must be installed or used in the records storage area in accordance with NFPA 54 (incorporated by reference, see § 1234.3), and the IAPMO/ANSI UMC 1,

Uniform Mechanical Code (incorporated by reference, see § 1234.3).

(m) For existing records storage facilities, boiler rooms or rooms containing equipment operating with a fuel supply (such as generator rooms) must be separated from records storage areas by 2-hour-rated fire barrier walls with no openings directly from these rooms to the records storage areas. Such areas must be vented directly to the outside to a location where fumes will not be drawn back into the facility.

(n) For new records storage facilities, boiler rooms or rooms containing equipment operating with a fuel supply (such as generator rooms) must be separated from records storage areas by 4-hour-rated fire barrier walls with no openings directly from these rooms to the records storage areas. Such areas must be vented directly to the outside to a location where fumes will not be drawn back into the facility.

(o) For new records storage facilities, fuel supply lines must not be installed in areas containing records and must be separated from such areas with 4-hour rated construction assemblies.

(p) Equipment rows running perpendicular to the wall must comply with NFPA 101 (incorporated by reference, see § 1234.3), with respect to egress requirements.

(q) No oil-type electrical transformers, regardless of size, except thermally protected devices included in fluorescent light ballasts, may be installed in the records storage areas. All electrical wiring must be in metal conduit, except that armored cable may be used where flexible wiring connections to light fixtures are required. Battery charging areas for electric forklifts must be separated from records storage areas with at least a 2-hour rated fire barrier wall.

(r) Hazardous materials, including records on cellulose nitrate film, must not be stored in records storage areas. Nitrate motion picture film and nitrate sheet film may be stored in separate areas that meet the requirements of the appropriate NFPA standards, NFPA 40–1997 (incorporated by reference, see § 1234.3), or NFPA 42 (incorporated by reference, see § 1234.3).

(s) All record storage and adjoining areas must be protected by a professionally-designed fire-safety detection and suppression system that is designed to limit the maximum anticipated loss in any single fire event involving a single ignition and no more than 8 ounces of accelerant to a maximum of 300 cubic feet of records destroyed by fire. Section 1234.32 specifies how to document compliance with this requirement.

**§ 1234.14 What are the requirements for environmental controls for records storage facilities?**

(a) *Paper-based temporary records.* Paper-based temporary records must be stored under environmental conditions that prevent the active growth of mold. Exposure to moisture through leaks or condensation, relative humidities in excess of 70%, extremes of heat combined with relative humidity in excess of 55%, and poor air circulation during periods of elevated heat and relative humidity are all factors that contribute to mold growth.

(b) *Nontextual temporary records.* Nontextual temporary records, including microforms and audiovisual and electronic records, must be stored in records storage space that is designed to preserve them for their full retention period. New records storage facilities that store nontextual temporary records must meet the requirements in this paragraph (b) beginning on September 28, 2005. Existing records storage facilities that store nontextual temporary records must meet the requirements in this paragraph (b) no later than October 1, 2009. At a minimum, nontextual temporary records must be stored in records storage space that meets the requirements for medium term storage set by the appropriate standard in this paragraph (b). In general, medium term conditions as defined by these standards are those that will ensure the preservation of the materials for at least 10 years with little information degradation or loss. Records may continue to be usable for longer than 10 years when stored under these conditions, but with an increasing risk of information loss or degradation with longer times. If temporary records require retention longer than 10 years, better storage conditions (cooler and drier) than those specified for medium term storage will be needed to maintain the usability of these records. The applicable standards are:

(1) ANSI/PIMA IT9.11 (incorporated by reference, see § 1234.3);

(2) ANSI/NAPM IT9.23 (incorporated by reference, see § 1234.3);

(3) ANSI/PIMA IT9.25 (incorporated by reference, see § 1234.3);

(4) ANSI/NAPM IT9.20 (incorporated by reference, see § 1234.3); and/or

(5) ANSI/NAPM IT9.18 (incorporated by reference, see § 1234.3).

(c) *Paper-based permanent, unscheduled and sample/select records.* Paper-based permanent, unscheduled, and sample/select records must be stored in records storage space that provides 24 hour/365 days per year air conditioning (temperature, humidity, and air exchange) equivalent to that required for office space. See ANSI/ASHRAE Standard 55 (incorporated by reference, see § 1234.3), and ASHRAE Standard 62 (incorporated by reference, see § 1234.3), for specific requirements. New records storage facilities that store paper-based permanent, unscheduled, and/or sample/select records must meet the requirement in this paragraph (c) beginning on September 28, 2005. Existing storage facilities that store paper-based permanent, unscheduled, and/or sample/select records must meet the requirement in this paragraph (c) no later than October 1, 2009.

(d) *Nontextual permanent, unscheduled, and/or sample/select records.* All records storage facilities that store microfilm, audiovisual, and/or electronic permanent, unscheduled, and/or sample/select records must comply with the storage standards for permanent and unscheduled records in parts 1238, 1237, and/or 1236 of this subchapter, respectively.

## Subpart C—Handling Deviations From NARA's Facility Standards

**§ 1234.20 What rules apply if there is a conflict between NARA standards and other regulatory standards that a facility must follow?**

(a) If any provisions of this part conflict with local or regional building codes, the following rules of precedence apply:

(1) Between differing levels of fire protection and life safety, the more stringent provision applies; and

(2) Between mandatory provisions that cannot be reconciled with a requirement of this part, the local or regional code applies.

(b) If any of the provisions of this part conflict with mandatory life safety or ventilation requirements imposed on underground storage facilities by 30 CFR chapter I, 30 CFR chapter I applies.

(c) NARA reserves the right to require documentation of the mandatory nature of the conflicting code and the inability to reconcile that provision with NARA requirements.

**§ 1234.22 How does an agency request a waiver from a requirement in this part?**

(a) *Types of waivers that may be approved.* NARA may approve exceptions to one or more of the standards in this part for:

(1) Systems, methods, or devices that are demonstrated to have equivalent or superior quality, strength, fire resistance, effectiveness, durability, and safety to those prescribed by this subpart;

(2) Existing agency records centers that met the NARA standards in effect

prior to January 3, 2000, but do not meet a new standard required to be in place on September 28, 2005; and

(3) The application of roof requirements in §§ 1234.10 and 1234.12 to underground storage facilities.

(b) *Where to submit a waiver request.* The agency submits a waiver request, containing the information specified in paragraphs (c), (d), and/or (e) of this section to the Director, Space and Security Management Division (NAS), National Archives and Records Administration, 8601 Adelphi Rd., College Park, MD 20740–6001, phone number (301) 837–1867.

(c) *Content of request for waivers for equivalent or superior alternatives.* The agency's waiver request must contain:

(1) A statement of the specific provision(s) of this part for which a waiver is requested, a description of the proposed alternative, and an explanation how it is equivalent to or superior to the NARA requirement; and

(2) Supporting documentation that the alternative does not provide less protection for Federal records than that which would be provided by compliance with the corresponding provisions contained in this subpart. Documentation may take the form of certifications from a licensed fire protection engineer or a structural or civil engineer, as appropriate; reports of independent testing; reports of computer modeling; and/or other supporting information.

(d) *Content of request for waiver for previously compliant agency records center.* The agency's waiver request must identify which requirement(s) the agency records center cannot meet and provide a plan with milestones for bringing the center into compliance.

(e) *Content of request for waiver of roof requirements for underground facility.* The agency's waiver request must identify the location of the facility and whether the facility is a drift entrance facility or a vertical access facility.

#### § 1234.24 How does NARA process a waiver request?

(a) *Waiver for equivalent or superior alternative.* NARA will review the waiver request and supporting documentation.

(1) If in NARA's judgment the supporting documentation clearly supports the claim that the alternative is equivalent or superior to the NARA requirement, NARA will grant the waiver and notify the requesting agency within 30 calendar days.

(2) If NARA questions whether supporting documentation demonstrates that the proposed alternative offers at least equal protection to Federal records, NARA will consult the appropriate industry standards body or other qualified expert before making a determination. NARA will notify the requesting agency within 30 calendar days of receipt of the request that consultation is necessary and will provide a final determination within 60 calendar days. If NARA does not grant the waiver, NARA will furnish a full explanation of the reasons for its decision.

(b) *Waiver of new requirement for existing agency records center.* NARA will review the agency's waiver request and plan to bring the facility into compliance.

(1) NARA will approve the request and plan within 30 calendar days if NARA judges the planned actions and time frames for bringing the facility into compliance are reasonable.

(2) If NARA questions the feasibility or reasonableness of the plan, NARA will work with the agency to develop a revised plan that NARA can approve and the agency can implement. NARA may grant a short-term temporary waiver, not to exceed 180 calendar days, while the revised plan is under development.

(c) *Waiver of roof requirements for underground storage facilities.* NARA will normally grant the waiver and notify the requesting agency within 10 work days if the agency has not also requested a waiver of a different requirement under § 1234.30. If the agency has another waiver request pending for the same facility, NARA will respond to all of the waiver requests at the same time and within the longest time limits.

### Subpart D—Facility Approval and Inspection Requirements

#### § 1234.30 How does an agency request authority to establish or relocate records storage facilities?

(a) *General policy.* Agencies are responsible for ensuring that records in their legal custody are stored in appropriate space as outlined in this part. Under § 1232.18(a), agencies are responsible for initiating action to remove records from space that does not meet these standards if deficiencies are not corrected within 6 months after initial discovery of the deficiencies by NARA or the agency and to complete removal of the records within 18 months after initial discovery of the deficiencies.

(1) *Agency records centers.* Agencies must obtain prior written approval from NARA before establishing or relocating an agency records center. Each separate agency records center must be specifically approved by NARA prior to the transfer of any records to that individual facility. If an agency records center has been approved for the storage of Federal records of one agency, any other agency that proposes to store its records in that facility must still obtain NARA approval to do so.

(2) *Commercial records storage facilities.* An agency may contract for commercial records storage services. However, before any agency records are transferred to a commercial records storage facility, the transferring agency must ensure that the facility meets all of the requirements for an agency records storage facility set forth in this subpart and must submit the documentation required in paragraph (e) of this section.

(b) *Exclusions.* For purposes of this section, the term ''agency records center'' excludes NARA-owned and operated records centers. For purposes of this section and § 1234.34, the term ''agency records center'' also excludes agency records staging and/or holding areas with a capacity for containing less than 25,000 cubic feet of records. However, such records centers and areas, including records centers operated and maintained by NARA, must comply with the facility standards in §§ 1234.10 through 1234.14.

(c) *Content of requests for agency records centers.* Requests for authority to establish or relocate an agency records center, or to use an agency records center operated by another agency, must be submitted in writing to the Director, Space and Security Management Division (NAS), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001, phone number (301) 837–1867. The request must identify the specific facility and, for requests to establish or relocate the agency's own records center, document compliance with the standards in this subpart. Documentation requirements for § 1234.12(s) are specified in § 1234.32.

(d) *Approval of requests for agency records centers.* NARA will review the submitted documentation to ensure the facility demonstrates full compliance with the standards in this subpart. NARA reserves the right to visit the facility, if necessary, to make the determination of compliance. NARA will inform the agency of its decision within 45 calendar days after the request is received, and will provide the agency information on the areas of noncompliance if the request is denied. Requests will be denied only if NARA determines that the facility does not demonstrate full compliance with the standards in this subpart. Approvals

will be valid for a period of 10 years, unless the facility is materially changed before then or an agency or NARA inspection finds that the facility does not meet the standards in this subpart. Material changes require submission of a new request for NARA approval.

(e) *Documentation requirements for storing Federal records in commercial records storage facilities.* At least 45 calendar days before an agency first transfers records to a commercial records storage facility, the agency must submit documentation to NARA that the facility complies with the standards in this subpart. The documentation may take the form of a copy of the agency's contract that incorporates this subpart in its provisions or a statement from the agency records officer that certifies that the facility meets the standards in this subpart. An agency must provide the documentation for each separate commercial records storage facility where its records will be stored. Documentation must be sent to the Director, Space and Security Management Division (NAS), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001, phone number (301) 837–1867. The agency must submit updated documentation to NARA every 10 years if it continues to store records in that commercial records storage facility.

**§ 1234.32 What does an agency have to do to certify a fire-safety detection and suppression system?**

(a) *Content of documentation.* The agency must submit documentation to the Director, Space and Security Management Division (NAS), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001, phone number (301) 837–1867, that describes the space being protected (*e.g.,* the type and stacking height of the storage equipment used, or how the space is designed, controlled, and operated) and the characteristics of the fire-safety detection and suppression system used. The documentation must demonstrate how that system meets the requirement in § 1234.12(s) through:

(1) A statement that the facility is using a NARA certified system as described in Appendix B to this part;

(2) A report of the results of independent live fire testing (Factory Mutual, Underwriters Laboratories or Southwest Research Institute); or

(3) A report under seal of a licensed fire protection engineer that:

(i) Describes the design intent of the fire suppression system to limit the maximum anticipated loss in any single fire event involving a single ignition and no more than 8 fluid ounces of petroleum-type hydrocarbon accelerant (such as, for example, heptanes or gasoline) to a maximum of 300 cubic feet of Federal records destroyed by fire. The report need not predict a maximum single event loss at any specific number, but rather should describe the design intent of the fire suppression system. The report may make reasonable engineering and other assumptions such as that the fire department responds within XX minutes (the local fire department's average response time) and promptly commences suppression actions. In addition, any report prepared under this paragraph should assume that the accelerant is saturated in a cotton wick that is 3 inches in diameter and 6 inches long and sealed in a plastic bag and that the fire is started in an aisle at the face of a carton at floor level. Assumptions must be noted in the report;

(ii) Details the characteristics of the system; and

(iii) Describes the specific measures beyond the minimum features required by the applicable building code that have been incorporated to limit destruction of records. The report should make specific references to industry standards used in the design, such as those issued by the National Fire Protection Association, and any testing or modeling or other sources used in the design.

(b) *NARA action.* (1) NARA will approve the fire-safety detection and suppression system within 10 work days if NARA has previously approved the system design for similarly configured space or if a report of independent testing of a new system design is furnished as documentation.

(2) If, in NARA's judgment, the supporting documentation provided in accordance with paragraph (a)(3) of this section clearly demonstrates compliance with § 1234.12(s), NARA will approve the fire-safety detection and suppression system within 30 calendar days.

(3) If NARA questions whether supporting documentation demonstrates compliance with § 1234.12(s), NARA will consult the appropriate industry standards body or other qualified expert before making a determination. Before any consultation, NARA may ask the agency for additional clarifying information. NARA will notify the requesting agency within 30 calendar days of receipt of the request that consultation is necessary and will provide a final determination within 60 calendar days. If NARA does not approve the system, NARA will furnish a full explanation of the reasons for its decision.

(4) NARA will maintain a list of approved alternative systems.

**§ 1234.34 When may NARA conduct an inspection of a records storage facility?**

(a) At the time an agency submits a request to establish an agency records center, pursuant to § 1234.30, NARA may conduct an inspection of the proposed facility to ensure that the facility complies fully with the standards in this subpart. NARA may also conduct periodic inspections of agency records centers so long as such facility is used as an agency records center. NARA will inspect its own records center facilities on a periodic basis to ensure that they are in compliance with the requirements of this subpart.

(b) Agencies must ensure, by contract or otherwise, that agency and NARA officials, or their delegates, have the right to inspect commercial records storage facilities to ensure that such facilities fully comply with the standards in this subpart. NARA may conduct periodic inspections of commercial records storage facilities so long as agencies use such facilities to store agency records. The using agency, not NARA, will be responsible for paying any fee or charge assessed by the commercial records storage facility for NARA's conducting an inspection.

(c) NARA will contact the agency operating the records center or the agency holding a contract with a commercial records storage facility in advance to set a date for the inspection.

**Appendix A to Part 1234—Minimum Security Standards for Level III Federal Facilities**

RECOMMENDED STANDARDS CHART

[Reproduced from Section 2.3 (pp. 2–6 through 2–9) of U.S. Department of Justice, United States Marshals Service report *Vulnerability Assessment of Federal Facilities*]

| | Level III |
|---|---|
| **Perimeter Security** | |
| *Parking:* | |
| Control of facility parking | Required. |
| Control of adjacent parking | Desirable. |
| Avoid leases where parking cannot be controlled | Desirable. |
| Leases should provide security control for adjacent parking | Desirable. |
| Post signs and arrange for towing unauthorized vehicles | Required. |
| ID system and procedures for authorized parking (placard, decal, card key, etc.) | Required. |
| Adequate lighting for parking areased | Required. |
| *Closed Circuit Television (CCTV) Monitoring:* | |
| CCTV surveillance cameras with time lapse video recording | Recommended. |
| Post signs advising of 24 hour video surveillance | Recommended. |
| *Lighting:* | |
| Lighting with emergency power backup | Required. |
| *Physical Barriers:* | |
| Extend physical perimeter with barriers (concrete and/or steel composition) | Desirable. |
| Parking barriers | Desirable. |
| **Entry Security** | |
| *Receiving/Shipping:* | |
| Review receiving/shipping procedures (current) | Required. |
| Implement receiving/shipping procedures (modified) | Required. |
| *Access Control:* | |
| Evaluate facility for security guard requirements | Required. |
| Security guard patrol | Recommended. |
| Intrusion detection system with central monitoring capability | Required. |
| Upgrade to current life safety standards (fire detection, fire suppression systems, etc.) | Required. |
| *Entrances/Exits:* | |
| X-ray & magnetometer at public entrances | Recommended. |
| Require x-ray screening of all mail/packages | Recommended. |
| High security locks | Required. |
| **Interior Security** | |
| *Employee/Visitor Identification:* | |
| Agency photo ID for all personnel displayed at all times | Recommended. |
| Visitor control/screening system | Required. |
| Visitor identification accountability system | Recommended. |
| Establish ID issuing authority | Recommended. |
| *Utilities:* | |
| Prevent unauthorized access to utility areas | Required. |
| Provide emergency power to critical systems (alarm systems, radio communications, computer facilities, etc.) | Required. |
| *Occupant Emergency Plans:* | |
| Examine occupant emergency plans (OEP) and contingency procedures based on threats | Required. |
| OEPs in place, updated annually, periodic testing exercise | Required. |
| Assign & train OEP officials (assignment based on largest tenant in facility) | Required. |
| Annual tenant training | Required. |
| *Daycare Centers:* | |
| Evaluate whether to locate daycare facilities in buildings with high threat activities | Required. |
| Compare feasibility of locating daycare in outside locations | Required. |
| **Security Planning** | |
| *Intelligence Sharing:* | |
| Establish law enforcement agency/security liaisons | Required. |
| Review/establish procedure for intelligence receipt/dissemination | Required. |
| Establish uniform security/threat nomenclature | Required. |
| *Training:* | |
| Conduct annual security awareness training | Required. |
| Establish standardized unarmed guard qualifications/training requirements | Required. |
| Establish standardized armed guard qualifications/training requirements | Required. |
| *Tenant Assignment:* | |
| Co-locate agencies with similar security needs | Desirable. |
| Do not co-locate high/low risk agencies | Desirable. |
| *Administrative Procedures:* | |
| Establish flexible work schedule in high threat/high risk areas to minimize employee vulnerability to criminal activity | Desirable. |
| Arrange for employee parking in/near building after normal work hours | Recommended. |
| Conduct background security checks and/or establish security control procedures for service contract personnel | Required. |

RECOMMENDED STANDARDS CHART—Continued

[Reproduced from Section 2.3 (pp. 2–6 through 2–9) of U.S. Department of Justice, United States Marshals Service report *Vulnerability Assessment of Federal Facilities*]

| | Level III |
|---|---|
| *Construction/Renovation:* | |
| Install mylar film on all exterior windows (shatter protection) | Recommended. |
| Review current projects for blast standards | Required. |
| Review/establish uniform standards for construction | Required. |
| Review/establish new design standard for blast resistance | Required. |
| Establish street set-back for new construction | Recommended. |

TERMS AND DEFINITIONS IN RECOMMENDED STANDARDS CHART

[Reproduced from Appendix B, Details of Recommended Security Standards, U.S. Department of Justice, United States Marshals Service report *Vulnerability Assessment of Federal Facilities*]

| Term | Definition/description |
|---|---|
| **B.1 Perimeter Security** | |
| **Parking** | |
| Control of Facility Parking | Access to government parking should be limited where possible to government vehicles and personnel. At a minimum, authorized parking spaces and vehicles should be assigned and identified. |
| Control of Adjacent Parking | Where feasible, parking areas adjacent to federal space should also be controlled to reduce the potential for threats against Federal facilities and employee exposure to criminal activity. |
| Avoid Leases Where Parking Cannot Be Controlled. | Avoid leasing facilities where parking cannot be controlled. If necessary, relocate offices to facilities that do provide added security through regulated parking. |
| Lease Should Provide Control for Adjacent Parking. | Endeavor to negotiate guard services as part of lease. |
| Post Signs and Arrange for Towing Unauthorized Vehicles. | Procedures should be established and implemented to alert the public to towing policies, and the removal of unauthorized vehicles. |
| ID System and Procedures for Authorized Parking. | Procedures should be established for identifying vehicles and corresponding parking spaces (placard, decal, card key, etc.) |
| Adequate Lighting for Parking Areas | Effective lighting provides added safety for employees and deters illegal or threatening activities. |
| **Closed circuit television (CCTV) monitoring** | |
| CCTV Surveillance Cameras With Time Lapse Video Recording. | Twenty-four hour CCTV surveillance and recording is desirable at all locations as a deterrent. Requirements will depend on assessment of the security level for each facility. Time-lapse video recordings are also highly valuable as a source of evidence and investigative leads. |
| Post Signs Advising of 24 Hour Video Surveillance. | Warning signs advising of twenty-four hour surveillance act as a deterrent in protecting employees and facilities. |
| **Lighting** | |
| Lighting with Emergency Power Backup | Standard safety code requirement in virtually all areas. Provides for safe evacuation of buildings in case of natural disaster, power outage, or criminal/terrorist activity. |
| **Physical Barriers** | |
| Extend Physical Perimeter, With Barriers | This security measure will only be possible in locations where the Government controls the property and where physical constraints are not present. (barriers of concrete and/or steel composition) |
| Parking Barriers | Desirable to prevent unauthorized vehicle access. |
| **B.2 Entry Security** | |
| **Receiving/Shipping** | |
| Review Receiving/Shipping Procedures (Current). | Audit current standards for package entry and suggest ways to enhance security. |
| Implement Receiving/Shipping Procedures (Modified). | After auditing procedures for receiving/shipping, implement improved procedures for security enhancements. |
| **Access Control** | |
| Evaluate Facility for Security Guard Requirements. | If security guards are required, the number of guards at any given time will depend on the size of the facility, the hours of operation, and current risk factors, etc. |
| Security Guard Patrol | Desirable for level I and II facilities and may be included as lease option. Level III, IV and V facilities will have security guard patrol based on facility evaluation. |
| Intrusion Detection System With Central Monitoring Capability. | Desirable in Level I facilities, based on evaluation for Level II facilities, and required for Levels III, IV and V. |

TERMS AND DEFINITIONS IN RECOMMENDED STANDARDS CHART—Continued

[Reproduced from Appendix B, Details of Recommended Security Standards, U.S. Department of Justice, United States Marshals Service report *Vulnerability Assessment of Federal Facilities*]

| Term | Definition/description |
|---|---|
| Upgrade to Current Life Safety Standards | Required for all facilities as part of GSA design requirements, (e.g. fire detection, fire suppression systems, etc.) |
| **Entrances/Exits** | |
| X-Ray and Magnetometer at Public Entrances | May be impractical for Level I and II facilities. Level III and IV evaluations would focus on tenant agencies, public interface, and feasibility. Required for Level V. |
| Require X-Ray Screening of all Mail/Packages | All packages entering building should be subject to x-ray screening and/or visual inspection. |
| High Security Locks | Any exterior entrance should have a high security lock as determined by GSA specifications and/or agency requirements. |
| **B.3 Interior Security** | |
| **Employee/Visitor Identification** | |
| Agency Photo ID for all Personnel Displayed At All Times. | May not be required in smaller facilities. |
| Visitor Control/Security System | Visitors should be readily apparent in Level I facilities. Other facilities may ask visitors to sign-in with a receptionist or guard, or require an escort, or formal identification/badge. |
| Visitor Id Accountability System | Stringent methods of control over visitor badges will ensure that visitors wearing badges have been screened and are authorized to be at the facility during the appropriate time frame. |
| Establish Id Issuing Authority | Develop procedures and establish authority for issuing employee and visitor IDs. |
| **Utilities** | |
| Prevent Unauthorized Access to Utility Areas | Smaller facilities may not have control over utility access, or locations of utility areas. Where possible, assure that utility areas are secure and that only authorized personnel can gain entry. |
| Provide Emergency Power To Critical Systems | Tenant agency is responsible for determining which computer and communication systems require back-up power. All alarm systems, CCTV monitoring devices, fire detection systems, entry control devices, etc. require emergency power sources. (Alarm Systems, Radio Communications, Computer Facilities, Etc.) |
| **Occupant Emergency Plans** | |
| Examine Occupant Emergency Plan (OEP) and Contingency Procedures Based on Threats. | Review and update current OEP procedures for thoroughness. OEPs should reflect the current security climate. |
| Assign and Train OEP Officials | Assignment based on GSA requirement that largest tenant in facility maintain OEP responsibility. Officials should be assigned, trained and a contingency plan established to provide for the possible absence of OEP officials in the event of emergency activation of the OEP. |
| Annual Tenant Training | All tenants should be aware of their individual responsibilities in an emergency situation. |
| **Day Care Center** | |
| Re-Evaluate Current Security and Safety Standards. | Conduct a thorough review of security and safety standards. |
| Assess Feasibility of Locating Day Care Within Federal Facility. | If a facility is being considered for a day care center, an evaluation should be made based on the risk factors associated with tenants and the location of the facility. |
| **B.4 Security Planning** | |
| **Intelligence Sharing** | |
| Establish Law Enforcement Agency/Security Liaisons. | Intelligence sharing between law enforcement agencies and security organizations should be established in order to facilitate the accurate flow of timely and relevant information between appropriate government agencies. Agencies involved in providing security must be part of the complete intelligence process. |
| Review/Establish Procedures for Intelligence Receipt/Dissemination. | Determine what procedures exist to ensure timely delivery of critical intelligence. Review and improve procedures to alert agencies and specific targets of criminal/terrorist threats. Establish standard administrative procedures for response to incoming alerts. Review flow of information for effectiveness and time critical dissemination. |
| Establish Uniform Security/Threat Nomenclature | To facilitate communication, standardized terminology for Alert Levels should be implemented. (Normal, Low, Moderate, and High—As recommended by Security Standards Committee) |
| **Training** | |
| Conduct Annual Security Awareness Training | Provide security awareness training for all tenants. At a minimum, self-study programs utilizing videos, and literature, etc. should be implemented. These materials should provide up-to-date information covering security practices, employee security awareness, and personal safety, etc. |

TERMS AND DEFINITIONS IN RECOMMENDED STANDARDS CHART—Continued

[Reproduced from Appendix B, Details of Recommended Security Standards, U.S. Department of Justice, United States Marshals Service report *Vulnerability Assessment of Federal Facilities*]

| Term | Definition/description |
|---|---|
| Establish Standardized Armed And Unarmed Guard Qualifications/Training Requirements. | Requirements for these positions should be standardized government wide. |
| **Tenant Assignment** | |
| Co-Locate Agencies With Similar Security Needs. | To capitalize on efficiencies and economies, agencies with like security requirements should be located in the same facility if possible. |
| Do Not Co-Locate High/Low Risk Agencies ..... | Low risk agencies should not take on additional risk by being located with high risk agencies. |
| **Administrative Procedures** | |
| Establish Flexible Work Schedule in High Threat/High Risk Area to Minimize Employee Vulnerability to Criminal Activity. | Flexible work schedules can enhance employee safety by staggering reporting and departure times. As an example flexible schedules might enable employees to park closer to the facility by reducing the demand for parking at peak times of the day. |
| Arrange for Employee Parking In/Near Building After Normal Work Hours. | Minimize exposure to criminal activity by allowing employees to park at or inside the building. |
| Conduct Background Security Checks and/or Establish Security Control Procedures for Service Contract Personnel. | Establish procedures to ensure security where private contract personnel are concerned. Procedures may be as simple as observation or could include sign-in/escort. Frequent visitors may necessitate a background check with contractor ID issued. |
| **Construction/Renovation** | |
| Install Mylar Film on All Exterior Windows (Shatter Protection). | Application of shatter resistant material to protect personnel and citizens from the hazards of flying glass as a result of impact or explosion. |
| Review Current Projects For Blast Standards ... | Design and construction projects should be reviewed if possible, to incorporate current technology and blast standards. Immediate review of ongoing projects may generate savings in the implementation of upgrading to higher blast standards prior to completion of construction. |
| Review/Establish Uniform Standards For Construction. | Review, establish, and implement uniform construction standards as it relates to security considerations. |
| Review/Establish New Design Standard for Blast RESISTANCE. | In smaller facilities or those that lease space, control over design standards may not be possible. However, future site selections should attempt to locate in facilities that do meet standards. New construction of government controlled facilities should review, establish, and implement new design standards for blast resistance. |
| Establish Street Set-Back for New Construction | Every foot between a potential bomb and a building will dramatically reduce damage and increase the survival rate. Street set-back is always desirable, but should be used in conjunction with barriers in Level IV and V facilities. |

(Reproduced from Appendix C, *Classification Table,* U.S. Department of Justice, United States Marshals Service report *Vulnerability Assessment of Federal Facilities*)

| Level | Typical location |
|---|---|
| III ..... | Agency Mix: Government Records. |

## Appendix B to Part 1234—Alternative Certified Fire-Safety Detection and Suppression System(s)

1. *General.* This Appendix B contains information on the Fire-safety Detection and Suppression System(s) tested by NARA through independent live fire testing that are certified to meet the requirement in § 1234.12(s) for storage of Federal Records. Use of a system specified in this appendix is optional. A facility may choose to have an alternate fire-safety detection and suppression system approved under § 1234.32).

2. *Specifications for NARA facilities using 15 foot high records storage.* NARA fire-safety systems that incorporate all components specified in paragraphs 2.a. through n. of this appendix have been tested and certified to meet the requirements in § 1234.12(s) for an acceptable fire-safety detection and suppression system for storage of Federal records.

a. The records storage height must not exceed the nominal 15 feet (+/−3 inches) records storage height.

b. All records storage and adjoining areas must be protected by automatic wet-pipe sprinklers. Automatic sprinklers are specified herein because they provide the most effective fire protection for high piled storage of paper records on open type shelving.

c. The sprinkler system must be rated at no higher than 285 degrees Fahrenheit utilizing quick response (QR) fire sprinkler heads and designed by a licensed fire protection engineer to provide the specified density for the most remote 1,500 square feet of floor area at the most remote sprinkler head in accordance with NFPA 13 (incorporated by reference, see § 1234.3). For facilities with roofs rated at 15 minutes or greater, provide ½″ QR sprinklers rated at no higher than 285 degrees Fahrenheit designed to deliver a density of 0.30 gpm per square foot. For unrated roofs, provide 0.64″ QR ''large drop'' sprinklers rated at no higher than 285 degrees Fahrenheit. For facilities using 7 or 8 shelf track files, use QR sprinklers rated at no higher than 285 degrees Fahrenheit. For new construction and replacement sprinklers, NARA recommends that the sprinklers be rated at 165 degrees Fahrenheit. Installation of the sprinkler system must be in accordance with NFPA 13 (incorporated by reference, see § 1234.3).

d. Maximum spacing of the sprinkler heads must be on a 10-foot grid and the positioning of the heads must provide complete, unobstructed coverage, with a clearance of not less than 18 inches from the top of the highest stored materials.

e. The sprinkler system must be equipped with a water-flow alarm connected to an audible alarm within the facility and to a continuously staffed fire department or an Underwriters Laboratory approved central

monitoring station (see UL 827 (incorporated by reference, see § 1234.3)) with responsibility for immediate response.

f. A manual fire alarm system must be provided with a Underwriters Laboratory approved (grade A) central monitoring station service or other automatic means of notifying the municipal fire department. A manual alarm pull station must be located adjacent to each exit. Supplemental manual alarm stations are permitted within the records storage areas.

g. All water cutoff valves in the sprinkler system must be equipped with automatic closure alarm (tamper alarm) connected to a continuously staffed station, with responsibility for immediate response. If the sprinkler water cutoff valve is located in an area used by the public, in addition to the tamper alarm, the valves must be provided with frangible (easily broken) padlocks.

h. A dependable water supply free of interruption must be provided including a continuous site fire loop connected to the water main and sized to support the facility with only one portion of the fire loop operational. This normally requires a backup supply system having sufficient pressure and capacity to meet both fire hose and sprinkler requirements for 2-hours. A fire pump connected to an emergency power source must be provided in accordance with NFPA 20 (incorporated by reference, see § 1234.3), when adequate water pressure is not assured. In the event that public water mains are not able to supply adequate volumes of water to the site, on-site water storage must be provided.

i. Interior fire hose stations equipped with a 1½ inch diameter hose may be provided in the records storage areas if required by the local fire department, enabling any point in the records storage area to be reached by a 50-foot hose stream from a 100-foot hose lay. If provided, these cabinets must be marked ''For Fire Department Use Only.''

j. Where fire hose cabinets are not required, fire department hose outlets must be provided at each floor landing in the building core or stair shaft. Hose outlets must have an easily removable adapter and cap. Threads and valves must be compatible with the local fire department's equipment. Spacing must be so that any point in the record storage area can be reached with a 50-foot hose stream from a 100-foot hose lay.

k. In addition to the designed sprinkler flow demand, 500 gpm must be provided for hose stream demand. The hose stream demand must be calculated into the system at the base of the main sprinkler riser.

l. Fire hydrants must be located within 250 feet of each exterior entrance or other access to the records storage facility that could be used by firefighters. Each required hydrant must provide a minimum flow capacity of 500 gpm at 20 psi. All hydrants must be at least 50 feet away from the building walls and adjacent to a roadway usable by fire apparatus. Fire hydrants must have at least two, 2½ inch hose outlets and a pumper connection. All threads must be compatible with local standards.

m. Portable water-type fire extinguishers (2½ gallon stored pressure type) must be provided at each fire alarm striking station. The minimum number and locations of fire extinguishers must be as required by NFPA 10 (incorporated by reference, see § 1234.3).

n. Single level catwalks without automatic sprinklers installed underneath may be provided in the service aisles if the edges of all files in the front boxes above the catwalks are stored perpendicular to the aisle (to minimize files exfoliation in a fire). Where provided, the walking surface of the catwalks must be of expanded metal at least .09-inch thickness with a 2-inch mesh length. The surface opening ratio must be equal or greater than 0.75. The sprinkler water demand for protection over bays with catwalks where records above the catwalks are not perpendicular to the aisles must be calculated hydraulically to give .30 gpm per square foot for the most remote 2,000 square feet.

## PART 1235—TRANSFER OF RECORDS TO THE NATIONAL ARCHIVES OF THE UNITED STATES

### Subpart A—General Transfer Requirements

Sec.
1235.1 What are the authorities for part 1235?
1235.2 What definitions apply to this part?
1235.3 What standards are used as guidance for this part?
1235.4 What publications are incorporated by reference in this part?
1235.10 What records do agencies transfer to the National Archives of the United States?
1235.12 When must agencies transfer records to the National Archives of the United States?
1235.14 May agencies retain records for the conduct of regular agency business after they are eligible for transfer?
1235.16 How will NARA respond to an agency's request to retain records?
1235.18 How do agencies transfer records to the National Archives of the United States?
1235.20 How do agencies indicate that transferred records contain information that is restricted from public access?
1235.22 When does legal custody of records transfer to NARA?

### Subpart B—Administration of Transferred Records

1235.30 How may records in the National Archives of the United States be used?
1235.32 How does NARA handle restrictions on transferred records?
1235.34 May NARA destroy transferred records?

### Subpart C—Transfer Specifications and Standards

1235.40 What records are covered by additional transfer requirements?
1235.42 What specifications and standards for transfer apply to audiovisual, cartographic, and related records?
1235.44 What general transfer requirements apply to electronic records?
1235.46 What electronic media may be used for transferring records to the National Archives of the United States?
1235.48 What documentation must agencies transfer with electronic records?
1235.50 What specifications and standards for transfer apply to electronic records?

**Authority:** 44 U.S.C. 2107 and 2108.

## Subpart A—General Transfer Requirements

### § 1235.1 What are the authorities for part 1235?

The statutory authorities for this part are 44 U.S.C. 2107 and 2108.

### § 1235.2 What definitions apply to this part?

See § 1220.18 of this subchapter for definitions of terms used in part 1235.

### § 1235.3 What standards are used as guidance for this part?

These regulations conform to guidance provided in ISO 15489–1:2001. Paragraphs 8.3 (Designing and implementing records systems), 9.6 (Storage and handling), and 9.7 (Access) are particularly relevant to this part.

### § 1235.4 What publications are incorporated by reference in this part?

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the NARA must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the Office of the Federal Register. For information on the availability of this material at the Office of the Federal Register, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) The material incorporated by reference is also available for inspection at NARA's Archives Library Information Center (NWCCA), Room 2380, 8601 Adelphi Road, College Park, MD 20740–6001, phone number (301) 837–3415, and is available for purchase from the sources listed below. If you experience difficulty obtaining the standards referenced below, contact National Archives and Records Administration, Electronic/Special Media Records Services Division (NWME), 8601 Adelphi Road, College Park, MD 20740, phone number (301) 837–1578.

(c) *International Organization for Standards (ISO).* The following ISO standards are available from the American National Standards Institute, 25 West 43rd St., 4th Floor, New York, NY 10036, phone number (212) 642–4900, or online at *http://webstore.ansi.org.*

(1) ISO/IEC 15896:1999 (''ISO/IEC 15896''), Information technology—Data interchange on 12,7 mm 208-track magnetic tape cartridges—DLT 5 format, First Edition, December 15, 1999, IBR approved for § 1235.46.

(2) ISO/IEC 16382:2000 (''ISO/IEC 16382''), Information technology—Data interchange on 12,7 mm 208-track magnetic tape cartridges—DLT 6 format, First Edition, May 15, 2000, IBR approved for § 1235.46.

(d) *Document Engineering Co., Inc.* The following standards are available from the standards reseller DECO—Document Engineering Co., Inc., 15210 Stagg Street, Van Nuys, CA, phone number (818) 782–1010, or online at *http://www.doceng.com:*

(1) ANSI X3.39–1986 (''ANSI X3.39''), American National Standard: Recorded Magnetic Tape for Information Interchange (1600 CPI, PE), 1986, IBR approved for § 1235.46.

(2) [Reserved]

(e) The following standards are not available from the original publisher or a standards reseller. As indicated in paragraph (b) of this section, the standards are available for inspection at the NWCCA. In order to inspect the standards at a NARA location other than the NARA facility in College Park, MD, please contact the NWCCA, Room 2380, 8601 Adelphi Road, College Park, MD 20740–6001, phone number (301) 837–3415 or e-mail your request to *alic@nara.gov.*

(1) ANSI X3.54–1986 (''ANSI X3.54''), American National Standard: Recorded Magnetic Tape for Information Interchange (6250 CPI, Group Coded Recording), 1986, IBR approved for § 1235.46.

(2) ANSI X3.180–1990 (''ANSI X3.180''), American National Standard: Magnetic Tape and Cartridge for Information Interchange—18-Track, Parallel, ½ inch (12.65 mm), 37871 cpi (1491 cpmm), Group-Coded—Requirements for Recording, 1990, IBR approved for § 1235.46.

(3) ANSI/NISO/ISO 9660–1990 (''ANSI/NISO/ISO 9660''), American National Standard for Volume and File Structure of CD–ROM for Information Exchange, 1990, IBR approved for § 1235.46.

(4) ISO/IEC 15307:1997 (''ISO/IEC 15307''), Information technology—Data interchange on 12,7 mm 128-track magnetic tape cartridges—DLT 4 format, First Edition, December 1, 1997, IBR approved for § 1235.46.

### § 1235.10 What records do agencies transfer to the National Archives of the United States?

Agencies must transfer to the National Archives of the United States records that have been scheduled as permanent on an SF 115, Request for Records Disposition Authority, records that are designated as permanent in a GRS; and, when appropriate, records that are accretions to holdings (continuations of series already accessioned.)

### § 1235.12 When must agencies transfer records to the National Archives of the United States?

Permanent records must be transferred to the National Archives of the United States when:

(a) The records are eligible for transfer based on the transfer date specified in a NARA-approved records schedule, or

(b) The records have been in existence for more than 30 years (see also § 1235.14).

### § 1235.14 May agencies retain records for the conduct of regular agency business after they are eligible for transfer?

(a) Agencies may retain records longer than specified on a records disposition schedule only with written approval from NARA.

(b) If the agency determines that the records are needed for the conduct of regular business, the records officer must submit to the National Archives and Records Administration, Modern Records Programs (NWM), 8601 Adelphi Road, College Park, MD 20740–6001, phone number (301) 837–1738, a written request certifying continuing need. This certification must:

(1) Include a comprehensive description and location of records to be retained;

(2) Cite the NARA-approved disposition authority;

(3) Describe the current business for which the records are required;

(4) Estimate the length of time the records will be needed (if no date is provided by the agency, approved certification requests will be effective for a maximum of five years);

(5) Explain why agency needs cannot be met by NARA reference services or copies of records deposited in the National Archives of the United States; and

(6) If records are retained to enable routine public reference by the agency rather than NARA, cite the statutory authority authorizing this agency activity.

### § 1235.16 How will NARA respond to an agency's request to retain records?

(a) *Approval.* NARA will provide written approval of the request to retain the records for the specified period within 30 days of receipt of the request.

(b) *Disapproval.* NARA will provide written disapproval of an agency's request within 30 days. Requests will be denied if the agency is retaining the records primarily to:

(1) Provide access services to persons outside the agency that can be provided by NARA, or

(2) Function as an agency archives, unless specifically authorized by statute or by NARA.

### § 1235.18 How do agencies transfer records to the National Archives of the United States?

Agencies transfer records by submitting a signed SF 258, Agreement to Transfer Records to the National Archives of the United States. Each SF 258 must correlate to a specific records series or other aggregation of records, as identified in an item on the SF 115 or cited on the SF 258.

### § 1235.20 How do agencies indicate that transferred records contain information that is restricted from public access?

When completing an SF 258, agencies must indicate restrictions on the use and examination of records and attach a written justification. The justification must cite the statute or Freedom of Information Act (FOIA) exemption (5 U.S.C. 552(b) as amended), that authorizes the restrictions.

### § 1235.22 When does legal custody of records transfer to NARA?

Legal custody of records passes from the agency to NARA when the appropriate NARA official signs the SF 258 acknowledging receipt of the records.

## Subpart B—Administration of Transferred Records

### § 1235.30 How may records in the National Archives of the United States be used?

(a) NARA will enforce restrictions that are consistent with FOIA (5 U.S.C. 552(b) as amended) for both official use of the records by Federal agencies and research by the public.

(b) NARA regulations in Subchapter C of this chapter apply to Federal agency personnel using transferred records for official Government purposes, and to the public at large.

### § 1235.32 How does NARA handle restrictions on transferred records?

(a) *For records less than 30 years old.* Unless required by law, NARA will remove or relax restrictions on transferred records less than 30 years old only with the written concurrence of the transferring agency or, if applicable, its successor agency. If the transferring

agency no longer exists, and there is no successor, the Archivist may relax, remove, or impose restrictions to serve the public interest.

(b) *For records more than 30 years old.*

(1) After records are more than 30 years old, most statutory and other restrictions on transferred records expire. NARA, however, after consulting with the transferring agency, may keep the restrictions in force for a longer period.

(2) See part 1256 of this chapter for restrictions on specific categories of records, including national security classified information and information that would invade the privacy of an individual that NARA restricts beyond 30 years.

### § 1235.34 May NARA destroy transferred records?

NARA will not destroy records transferred to NARA's custody except:

(a) With the written concurrence of the agency or its successor, or

(b) As authorized on an SF 258.

## Subpart C—Transfer Specifications and Standards

### § 1235.40 What records are covered by additional transfer requirements?

In addition to complying with subparts A and B of this part, agencies must follow the specifications and requirements in this subpart when transferring audiovisual, cartographic, architectural, and electronic records to the National Archives of the United States. In general, such records must be transferred to the National Archives of the United States as soon as they become inactive or whenever the agency cannot provide proper care and handling of the records, including adequate storage conditions (see parts 1236 and 1237 of this subchapter).

### § 1235.42 What specifications and standards for transfer apply to audiovisual records, cartographic, and related records?

In general the physical types described below comprise the minimum record elements that are needed for future preservation, duplication, and reference for audiovisual records, cartographic records, and related records.

(a) *Motion pictures.*

(1) Agency-sponsored or produced motion picture films (e.g., public information films) whether for public or internal use:

(i) Original negative or color original plus separate optical sound track;

(ii) Intermediate master positive or duplicate negative plus optical track sound track; and,

(iii) Sound projection print and video recording, if they exist.

(2) Agency-acquired motion picture films: Two projection prints in good condition or one projection print and one videotape.

(3) Unedited footage, outtakes, and trims (the discards of film productions) that are properly arranged, labeled, and described and show unstaged, unrehearsed events of historical interest or historically significant phenomena:

(i) Original negative or color original; and

(ii) Matching print or videotape.

(b) *Video recordings.*

(1) For videotape, the original or earliest generation videotape and a copy for reference. Agencies must comply with requirements in § 1237.12(d) of this subchapter for original videotapes, although VHS copies can be transferred as reference copies.

(2) For video discs, the premaster videotape used to manufacture the video disc and two copies of the disc. Agencies must consult the National Archives and Records Administration, Special Media Archives Services Division, (NWCS), 8601 Adelphi Road, College Park, MD 20740, phone number (301) 837–2903, before initiating transfers of video discs that depend on interactive software and nonstandard equipment.

(c) *Still pictures.*

(1) For analog black-and-white photographs, an original negative and a captioned print. The captioning information may be maintained in another file such as a database if the file number correlation is clear. If the original negative is nitrate, unstable acetate, or glass based, the agency must also transfer a duplicate negative on a polyester base.

(2) For analog color photographs, the original color negative, color transparency, or color slide; a captioned print (or captioning information maintained in another file if the file number correlation is clear); and a duplicate negative, or slide, or transparency, if they exist.

(3) For slide sets, the original and a reference set, and the related audio recording (in accordance with paragraph (e) of this section) and script.

(4) For other pictorial records such as posters, original art work, and filmstrips, the original and a reference copy.

(d) *Digital photographic records.* See 36 CFR 1235.48(e) and 1235.50(e) for transfer requirements for digital photographic records.

(e) *Sound recordings.*

(1) Disc recordings.

(i) For electronic recordings, the origination recording regardless of form and two compact discs (CDs) or digital video disks (DVDs).

(ii) For analog disc recordings, the master tape and two disc pressings of each recording, typically a vinyl copy for playback at 33⅓ revolutions per minute (rpm).

(2) For analog audio recordings on magnetic tape (open reel, cassette, or cartridge), the original tape, or the earliest available generation of the recording, and a subsequent generation copy for reference. Agencies must comply with the requirements in 36 CFR 1237.12(c) of this subchapter for audio recordings.

(f) *Finding aids and production documentation.* The following records must be transferred to the National Archives of the United States with the audiovisual records to which they pertain:

(1) Existing finding aids such as data sheets, shot lists, continuities, review sheets, catalogs, indexes, list of captions, and other documentation that are needed or useful to identify or retrieve audiovisual records. Agencies must consult the National Archives and Records Administration, Special Media Archives Services Division (NWCS), 8601 Adelphi Road, College Park, MD 20740, phone number (301) 837–2903, concerning transfer of finding aids that do not meet the requirements of this part for electronic records.

(2) Production case files or similar files that include copies of production contracts, scripts, transcripts, and appropriate documentation bearing on the origin, acquisition, release, and ownership of the production.

(g) *Maps and charts.*

(1) Manuscript maps; printed and processed maps on which manuscript changes, additions, or annotations have been made for record purposes or which bear manuscript signatures to indicate official approval; and single printed or processed maps that have been attached to or interfiled with other documents of a record character or in any way made an integral part of a record.

(2) Master sets of printed or processed maps issued by the agency. A master set must include one copy of each edition of a printed or processed map issued.

(3) Paper copies of computer-related and computer-plotted maps that can no longer be reproduced electronically.

(4) Index maps, card indexes, lists, catalogs, or other finding aids that may be helpful in using the maps transferred.

(5) Records related to preparing, compiling, editing, or printing maps, such as manuscript field notebooks of surveys, triangulation and other geodetic computations, and project

folders containing agency specifications for creating the maps.

(h) *Aerial photography and remote sensing imagery, including:*

(1) Vertical and oblique negative aerial film created using conventional aircraft.

(2) Annotated copy negatives, internegatives, rectified negatives, and glass plate negatives from vertical and oblique aerial film created using conventional aircraft.

(3) Annotated prints from aerial film created using conventional aircraft.

(4) Infrared, ultraviolet, multispectral (multiband), video, imagery radar, and related tapes, converted to a film base.

(5) Indexes and other finding aids in the form of photo mosaics, flight line indexes, coded grids, and coordinate grids.

(i) *Architectural and related engineering drawings, including:*

(1) Design drawings, preliminary and presentation drawings, and models that document the evolution of the design of a building or structure.

(2) Master sets of drawings that document both the initial design and construction and subsequent alterations of a building or structure. This category includes final working drawings, ''as-built'' drawings, shop drawings, and repair and alteration drawings.

(3) Drawings of repetitive or standard details of one or more buildings or structures.

(4) ''Measured'' drawings of existing buildings and original or photocopies of drawings reviewed for approval.

(5) Related finding aids and specifications to be followed.

(j) *Digital geospatial data records.* See § 1235.48(c) for transfer requirements for digital geospatial data records.

**§ 1235.44 What general transfer requirements apply to electronic records?**

(a) Each agency must retain a copy of permanent electronic records that it transfers to NARA until it receives official notification that NARA has assumed responsibility for continuing preservation of the records.

(b) For guidance related to the transfer of electronic records other than those covered in this subpart, the agency must consult with the National Archives and Records Administration, Electronic/Special Media Records Services Division (NWME), 8601 Adelphi Road, College Park, MD 20740, phone number (301) 837–3420.

(c) When transferring digital photographs and their accompanying metatdata, the agency must consult with the National Archives and Records Administration, Special Media Archives Services Division (NWCS) for digital photographs, 8601 Adelphi Road, College Park, MD 20740, phone number (301) 837–2903.

**§ 1235.46 What electronic media may be used for transferring records to the National Archives of the United States?**

(a) *General.* This section specifies the media or method used to transfer permanent records to the National Archives of the United States. (See 36 CFR 1236.28 for the requirements governing the selection of electronic records storage media for current agency use.) The agency must use only media that is are sound and free from defects for transfers to the National Archives of the United States. When permanent electronic records may be disseminated through multiple electronic media (*e.g.*, magnetic tape, CD–ROM) or mechanisms (*e.g.*, FTP), the agency and NARA must agree on the most appropriate medium or method for transfer of the records into the National Archives of the United States.

(b) *Magnetic tape.* Agencies may transfer electronic records to the National Archives of the United States on magnetic tape as follows:

(1) Open-reel magnetic tape must be on ½-inch 9-track tape reels recorded at 1600 or 6250 bpi that meet ANSI X3.39 or ANSI X3.54 (both incorporated by reference, see § 1235.4), respectively.

(2) 18-track 3480-class cartridges must be recorded at 37,871 bpi that meet ANSI X3.180 (incorporated by reference see, § 1235.4). The data must be blocked at no more than 32,760 bytes per block.

(3) For DLT tape IV cartridges, the data must be blocked at no more than 32,760 bytes per block and must conform to the standards cited in the table as follows:

| If you are copying the records on . . . | . . . then, the standard below applies. |
|---|---|
| DLTtape IV with a DLT 4000 drive . . . | ISO/IEC 15307 (incorporated by reference see, § 1235.4). |
| DLTtape IV with a DLT 7000 drive . . . | ISO/IEC 15896 (incorporated by reference see, § 1235.4). |
| DLTtape IV with a DLT 8000 drive . . . | ISO/IEC 16382 (incorporated by reference see, § 1235.4). |

(c) *Compact-Disk, Read Only Memory (CD–ROM) and Digital Video Disks (DVDs).* Agencies may use CD–ROMs and DVDs to transfer permanent electronic records to the National Archives of the United States.

(1) CD–ROMs used for this purpose must conform to ANSI/NISO/ISO 9660 (incorporated by reference, see § 1235.4).

(2) Permanent electronic records must be stored in discrete files. Transferred CD–ROMs and DVDs may contain other files, such as software or temporary records, but all permanent records must be in files that contain only permanent records. Agencies must indicate at the time of transfer if a CD–ROM or DVD contains temporary records and where those records are located on the CD–ROM or DVD. The agency must also specify whether NARA should return the CD–ROM or DVD to the agency or dispose of it after copying the permanent records to an archival medium.

(3) If permanent electronic records are stored on both CD–ROM (or DVD) and other media, such as magnetic tape, the agency and NARA must agree on the medium that will be used to transfer the records into the National Archives of the United States.

(d) *File Transfer Protocol.* Agencies may use File Transfer Protocol (FTP) to transfer permanent electronic records to the National Archives of the United States only with NARA's approval. Several important factors may limit the use of FTP as a transfer method, including the number of records, record file size, and available bandwidth. Agencies must contact the National Archives and Records Administration, Special Media Archives Services Division (NWCS), 8601 Adelphi Road, College Park, MD 20740, phone number (301) 837–2903, or the National Archives and Records Administration, Electronic/Special Media Records Services Division (NWME), 8601 Adelphi Road, College Park, MD 20740, phone number (301) 837–1578, to initiate the transfer discussions. Each transfer of electronic records via FTP must be preceded with a signed SF 258 sent to NWME.

(1) FTP file structure may use the 64-character Joliet extension naming convention only when letters, numbers, dashes (–), and underscores (___) are used in the file and/or directory names, with a slash (/) used to indicate

directory structures. Otherwise, FTP file structure must conform to an 8.3 file naming convention and file directory structure as cited in ANSI/NISO/ISO 9660 (incorporated by reference, see § 1235.4).

(2) Permanent electronic records must be transferred in discrete files, separate from temporary files. All permanent records must be transferred in files that contain only permanent records.

**§ 1235.48 What documentation must agencies transfer with electronic records?**

(a) *General.* Agencies must transfer documentation adequate to identify, service, and interpret the permanent electronic records This documentation must include completed NARA Form 14097, Technical Description for Transfer of Electronic Records, for magnetic tape media, and a completed NARA Form 14028, Information System Description Form, or their equivalents. Agencies must submit the required documentation, if electronic, in an electronic form that conforms to the provisions of this section.

(b) *Data files.* Documentation for data files and data bases must include record layouts, data element definitions, and code translation tables (codebooks) for coded data. Data element definitions, codes used to represent data values, and interpretations of these codes must match the actual format and codes as transferred.

(c) *Digital geospatial data files.* Digital geospatial data files must include the documentation specified in paragraph (b) of this section. In addition, documentation for digital geospatial data files can include metadata that conforms to the Federal Geographic Data Committee's Content Standards for Digital Geospatial Metadata, as specified in Executive Order 12906 of April 11, 1994 (3 CFR, 1995 Comp., p. 882) (Federal geographic data standards are available at *http://www.fgdc.gov/standards/standards_publications*).

(d) *Documents containing SGML tags.* Documentation for electronic files containing textual documents with SGML tags must include a table for interpreting the SGML tags, when appropriate.

(e) *Electronic records in other formats.*

(1) This paragraph (e) applies to the documentation for the following types of electronic records:

(i) E-mail messages with attachments;

(ii) Scanned images of textual records;

(iii) Records in portable document format (PDF);

(iv) Digital photographic records; and

(v) Web content records.

(2) Guidance on the documentation for electronic records in these formats are available on the NARA Electronic Records Management Initiative Web page at *http://www.archives.gov/records-mgmt/initiatives/transfer-to-nara.html* or from the National Archives and Records Administration, Special Media Archives Services Division (NWCS), 8601 Adelphi Road, College Park, MD 20740, phone number (301) 837–2903 for digital photographs and metadata, or the National Archives and Records Administration, Electronic/Special Media Records Services Division (NWME), 8601 Adelphi Road, College Park, MD 20740, phone number 301–837–1578, for other electronic records.

**§ 1235.50 What specifications and standards for transfer apply to electronic records?**

(a) *General.*

(1) Agencies must transfer electronic records in a format that is independent of specific hardware or software. Except as specified in paragraphs (c) through (e) of this section, the records must be written in American Standard Code for Information Interchange (ASCII) or Extended Binary Coded Decimal Interchange Code (EBCDIC) with all control characters and other non-data characters removed. Agencies must consult with the National Archives and Records Administration, Electronic/Special Media Records Services Division (NWME), 8601 Adelphi Road, College Park, MD 20740, phone number (301) 837–1578 about electronic records in other formats.

(2) Agencies must have advance approval from NARA for compression of the records, and agencies must comply with a request from NARA to provide the software to decompress the records.

(3) Agencies interested in transferring scheduled electronic records using a Tape Archive (TAR) utility must contact the National Archives and Records Administration, Electronic/Special Media Records Services Division (NWME), 8601 Adelphi Road, College Park, MD 20740, phone number (301) 837–1578 to initiate transfer discussions.

(b) *Data files and databases.* Data files and databases must be transferred to the National Archives of the United States as flat files or as rectangular tables; *i.e.*, as two-dimensional arrays, lists, or tables. All ''records'' (within the context of the computer program, as opposed to a Federal record) or ''tuples,'' *i.e.*, ordered collections of data items, within a file or table must have the same logical format. Each data element within a record must contain only one data value. A record must not contain nested repeating groups of data items. The file must not contain extraneous control characters, except record length indicators for variable length records, or marks delimiting a data element, field, record, or file. If records or data elements in different files need to be linked or combined, then each record must contain one or more data elements that constitute primary and/or foreign keys enabling valid linkages between the related records in separate files.

(c) *Digital geospatial data files.* Digital spatial data files must be transferred to the National Archives of the United States in a format that complies with a non-proprietary, published open standard maintained by or for a Federal, national, or international standards organization. Acceptable transfer formats include the Geography Markup Language (GML) as defined by the Open GIS Consortium.

(d) *Textual documents.* Electronic textual documents must be transferred as plain ASCII files; however, such files may contain standard markup language such as Standard Generalized Markup Language (SGML) or XML tags.

(e) *Electronic mail, scanned images of textual records, portable document format records, digital photographic records, and Web content records.* For guidance on the transfer of these records to NARA, agencies should consult the transfer requirements available on the NARA Electronic Records Management Initiative Web page at *http://www.archives.gov/records-mgmt/initiatives/transfer-to-nara.html* or contact the National Archives and Records Administration, Special Media Archives Services Division (NWCS), 8601 Adelphi Road, College Park, MD 20740, phone number 301–837–2903 for digital photographs and metadata, or the National Archives and Records Administration, Electronic/Special Media Records Services Division (NWME), 8601 Adelphi Road, College Park, MD 20740, phone number (301) 837–1578, for other electronic records,

## PART 1236—ELECTRONIC RECORDS MANAGEMENT

### Subpart A—General

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**Authority:** 44 U.S.C. 2904, 3101, 3102, and 3105.

## Subpart A—General

### § 1236.1 What are the authorities for part 1236?

The statutory authority for this part is 44 U.S.C. 2904, 3101, 3102, and 3105. OMB Circular A–130, Management of Federal Information Resources, applies to records and information systems containing records.

### § 1236.2 What definitions apply to this part?

(a) See § 1220.18 of this subchapter for definitions of terms used throughout Subchapter B, including part 1236.

(b) As used in part 1236—

*Electronic information system* means an information system that contains and provides access to computerized Federal records and other information.

*Electronic mail system* means a computer application used to create, receive, and transmit messages and other documents. Excluded from this definition are file transfer utilities (software that transmits files between users but does not retain any transmission data), data systems used to collect and process data that have been organized into data files or data bases on either personal computers or mainframe computers, and word processing documents not transmitted on an e-mail system.

*Metadata* consists of preserved contextual information describing the history, tracking, and/or management of an electronic document.

*Unstructured electronic records* means records created using office automation applications such as electronic mail and other messaging applications, word processing, or presentation software.

### § 1236.4 What standards are used as guidance for this part?

These regulations conform with ISO 15489–1:2001. Paragraph 9.6 (Storage and handling) is relevant to this part.

### § 1236.6 What are agency responsibilities for electronic records management?

Agencies must:

(a) Incorporate management of electronic records into the records management activities required by parts 1220–1235 of this subchapter;

(b) Integrate records management and preservation considerations into the design, development, enhancement, and implementation of electronic information systems in accordance with subpart B of this part; and

(c) Appropriately manage electronic records in accordance with subpart C of this part.

## Subpart B—Records Management and Preservation Considerations for Designing and Implementing Electronic Information Systems

### § 1236.10 What records management controls must agencies establish for records in electronic information systems?

The following types of records management controls are needed to ensure that Federal records in electronic information systems can provide adequate and proper documentation of agency business for as long as the information is needed. Agencies must incorporate controls into the electronic information system or integrate them into a recordkeeping system that is external to the information system itself (see § 1236.20 of this part).

(a) *Reliability:* Controls to ensure a full and accurate representation of the transactions, activities or facts to which they attest and can be depended upon in the course of subsequent transactions or activities.

(b) *Authenticity:* Controls to protect against unauthorized addition, deletion, alteration, use, and concealment.

(c) *Integrity:* Controls, such as audit trails, to ensure records are complete and unaltered.

(d) *Usability:* Mechanisms to ensure records can be located, retrieved, presented, and interpreted.

(e) *Content:* Mechanisms to preserve the information contained within the record itself that was produced by the creator of the record;

(f) *Context:* Mechanisms to implement cross-references to related records that show the organizational, functional, and operational circumstances about the record, which will vary depending upon the business, legal, and regulatory requirements of the business activity; and

(g) Structure: controls to ensure the maintenance of the physical and logical format of the records and the relationships between the data elements.

### § 1236.12 What other records management and preservation considerations must be incorporated into the design, development, and implementation of electronic information systems?

As part of the capital planning and systems development life cycle processes, agencies must ensure:

(a) That records management controls (see § 1236.10) are planned and implemented in the system;

(b) That all records in the system will be retrievable and usable for as long as needed to conduct agency business (i.e., for their NARA-approved retention period). Where the records will need to be retained beyond the planned life of the system, agencies must plan and budget for the migration of records and their associated metadata to new storage media or formats in order to avoid loss due to media decay or technology obsolescence. (See § 1236.14.)

(c) The transfer of permanent records to NARA in accordance with part 1235 of this subchapter.

(d) Provision of a standard interchange format (e.g., ASCII or XML) when needed to permit the exchange of electronic documents between offices using different software or operating systems.

### § 1236.14 What must agencies do to protect records against technological obsolescence?

Agencies must design and implement migration strategies to counteract hardware and software dependencies of electronic records whenever the records must be maintained and used beyond the life of the information system in which the records are originally created or captured. To successfully protect records against technological obsolescence, agencies must:

(a) Determine if the NARA-approved retention period for the records will be longer than the life of the system where they are currently stored. If so, plan for the migration of the records to a new system before the current system is retired.

(b) Carry out upgrades of hardware and software in such a way as to retain the functionality and integrity of the electronic records created in them. Retention of record functionality and integrity requires:

(1) Retaining the records in a usable format until their authorized disposition date. Where migration includes conversion of records, ensure that the authorized disposition of the records can be implemented after conversion;

(2) Any necessary conversion of storage media to provide compatibility with current hardware and software; and

(3) Maintaining a link between records and their metadata through conversion or migration, including capture of all relevant associated metadata at the point of migration (for both the records and the migration process).

(c) Ensure that migration strategies address non-active electronic records that are stored off-line.

## Subpart C—Additional Requirements for Electronic Records

### § 1236.20 What are appropriate recordkeeping systems for electronic records?

(a) *General.* Agencies must use electronic or paper recordkeeping systems or a combination of those systems, depending on their business needs, for managing their records. Transitory e-mail may be managed as specified in § 1236.22(c).

(b) *Electronic recordkeeping.* Recordkeeping functionality may be built into the electronic information system or records can be transferred to an electronic recordkeeping repository, such as a DoD–5015.2 STD-certified product. The following functionalities are necessary for electronic recordkeeping:

(1) *Declare records.* Assign unique identifiers to records.

(2) *Capture records.* Import records from other sources, manually enter records into the system, or link records to other systems.

(3) *Organize records.* Associate with an approved records schedule and disposition instruction.

(4) *Maintain records security.* Prevent the unauthorized access, modification, or deletion of declared records, and ensure that appropriate audit trails are in place to track use of the records.

(5) *Manage access and retrieval.* Establish the appropriate rights for users to access the records and facilitate the search and retrieval of records.

(6) *Preserve records.* Ensure that all records in the system are retrievable and usable for as long as needed to conduct agency business and to meet NARA-approved dispositions. Agencies must develop procedures to enable the migration of records and their associated metadata to new storage media or formats in order to avoid loss due to media decay or technology obsolescence.

(7) *Execute disposition.* Identify and effect the transfer of permanent records to NARA based on approved records schedules. Identify and delete temporary records that are eligible for disposal. Apply records hold or freeze on disposition when required.

(c) *Backup systems.* System and file backup processes and media do not provide the appropriate recordkeeping functionalities and must not be used as the agency electronic recordkeeping system.

### § 1236.22 What are the additional requirements for managing electronic mail records?

(a) Agencies must issue instructions to staff on the following retention and management requirements for electronic mail records:

(1) The names of sender and all addressee(s) and date the message was sent must be preserved for each electronic mail record in order for the context of the message to be understood. The agency may determine that other metadata is needed to meet agency business needs, *e.g.,* receipt information.

(2) Attachments to electronic mail messages that are an integral part of the record must be preserved as part of the electronic mail record or linked to the electronic mail record with other related records.

(3) If the electronic mail system identifies users by codes or nicknames or identifies addressees only by the name of a distribution list, retain the intelligent or full names on directories or distributions lists to ensure identification of the sender and addressee(s) of messages that are records.

(4) Some e-mail systems provide calendars and task lists for users. These may meet the definition of Federal record. Calendars that meet the definition of Federal records are to be managed in accordance with the provisions of GRS 23, Item 5.

(5) Draft documents that are circulated on electronic mail systems may be records if they meet the criteria specified in 36 CFR 1222.10(b) of this subchapter.

(b) Agencies that allow employees to send and receive official electronic mail messages using a system not operated by the agency must ensure that Federal records sent or received on such systems are preserved in the appropriate agency recordkeeping system.

(c) Agencies may elect to manage electronic mail records with very short-term NARA-approved retention periods (transitory records with a very short-term retention period of 180 days or less as provided by GRS 23, Item 7, or by a NARA-approved agency records schedule) on the electronic mail system itself, without the need to copy the record to a paper or electronic recordkeeping system, provided that:

(1) Users do not delete the messages before the expiration of the NARA-approved retention period, and

(2) The system's automatic deletion rules ensure preservation of the records until the expiration of the NARA-approved retention period.

(d) Except for those electronic mail records within the scope of paragraph (c) of this section:

(1) Agencies must not use an electronic mail system to store the recordkeeping copy of electronic mail messages identified as Federal records unless that system has all of the features specified in § 1236.20(b) of this part.

(2) If the electronic mail system is not designed to be a recordkeeping system, agencies must instruct staff on how to copy Federal records from the electronic mail system to a recordkeeping system.

(e) Agencies that retain permanent electronic mail records scheduled for transfer to the National Archives must either store them in a format and on a medium that conforms to the requirements concerning transfer at 36 CFR part 1235 or maintain the ability to convert the records to the required format and medium at the time transfer is scheduled.

(f) Agencies that maintain paper recordkeeping systems must print and file their electronic mail records with the related transmission and receipt data specified by the agency's electronic mail instructions.

### § 1236.24 What are the additional requirements for managing unstructured electronic records?

(a) Agencies that manage unstructured electronic records electronically must ensure that the records are filed in a recordkeeping system that meets the requirements in § 1236.10, except that transitory e-mail may be managed in accordance with § 1236.22(c).

(b) Agencies that maintain paper files as their recordkeeping systems must establish policies and issue instructions to staff to ensure that unstructured records are printed out for filing in a way that captures any pertinent hidden text (such as comment fields) or structural relationships (e.g., among worksheets in spreadsheets or other complex documents) required to meet agency business needs.

**§ 1236.26 What actions must agencies take to maintain electronic information systems?**

(a) Agencies must maintain inventories of electronic information systems and review the systems periodically for conformance to established agency procedures, standards, and policies as part of the periodic reviews required by 44 U.S.C. 3506. The review should determine if the records have been properly identified and described, and if the schedule descriptions and retention periods reflect the current informational content and use. If not, agencies must submit an SF 115, Request for Records Disposition Authority, to NARA.

(b) Agencies must maintain up-to-date documentation about electronic information systems that is adequate to:

(1) Specify all technical characteristics necessary for reading and processing the records contained in the system;

(2) Identify all inputs and outputs;

(3) Define the contents of the files and records;

(4) Determine restrictions on access and use;

(5) Understand the purpose(s) and function(s) of the system;

(6) Describe update cycles or conditions and rules for adding, changing, or deleting information in the system; and

(7) Ensure the timely, authorized disposition of the records.

**§ 1236.28 What additional requirements apply to the selection and maintenance of electronic records storage media for permanent records?**

(a) Agencies must maintain the storage and test areas for electronic records storage media containing permanent and unscheduled records within the following temperature and relative humidity ranges:

(1) Temperature—62° to 68° F.

(2) Relative humidity—35% to 45%.

(b) Electronic media storage libraries and test or evaluation areas that contain permanent or unscheduled records must be smoke-free.

(c) For additional guidance on the maintenance and storage of CDs and DVDS, agencies may consult the National Institute of Standards and Technology (NIST) Special Publication 500–252, Care and Handling of CDs and DVDs at *http://www.itl.nist.gov/iad/894.05/papers/CDandDVDCareandHandlingGuide.pdf,* contact phone number (301) 975–6478.

(d) Agencies must test magnetic computer tape media no more than 6 months prior to using them to store electronic records that are unscheduled or scheduled for permanent retention. This test should verify that the magnetic computer tape media are free of permanent errors and in compliance with NIST or industry standards.

(e) Agencies must annually read a statistical sample of all magnetic computer tape media containing permanent and unscheduled records to identify any loss of data and to discover and correct the causes of data loss. In magnetic computer tape libraries with 1800 or fewer tape media, a 20% sample or a sample size of 50 media, whichever is larger, should be read. In magnetic computer tape libraries with more than 1800 media, a sample of 384 media should be read. Magnetic computer tape media with 10 or more errors should be replaced and, when possible, lost data must be restored. All other magnetic computer tape media which might have been affected by the same cause (i.e., poor quality tape, high usage, poor environment, improper handling) must be read and corrected as appropriate.

(f) Before the media are 10 years old, agencies must copy permanent or unscheduled data on magnetic records storage media onto tested and verified new electronic media.

## PART 1237—AUDIOVISUAL, CARTOGRAPHIC, AND RELATED RECORDS MANAGEMENT

Sec.

1237.1 What is the applicability and scope of this part?
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1237.28 What special concerns apply to digital photographs?
1237.30 How do agencies manage records on nitrocellulose-base and cellulose-acetate base film?

**Authority:** 44 U.S.C. 2904 and 3101.

**§ 1237.1 What is the applicability and scope of this part?**

Agencies must manage audiovisual, cartographic, and related records in accordance with parts 1220–1235. This part prescribes additional policies and procedures for managing audiovisual, cartographic, and related records to ensure adequate and proper documentation and authorized, timely, and appropriate disposition.

**§ 1237.2 What are the authorities for part 1237?**

The authorities for this part are 44 U.S.C. 2904 and 3101.

**§ 1237.3 What standards are incorporated by reference in this part?**

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, NARA must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the Office of the Federal Register. For information on the availability of this material at the Office of the Federal Register, call (202) 741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) The material incorporated by reference is also available for inspection at NARA's Archives Library Information Center (NWCCA), Room 2380, 8601 Adelphi Road, College Park, MD 20740–6001, phone number (301) 837–3415, and is available for purchase from the sources listed below. If you experience difficulty obtaining the standards referenced below, contact NARA's Policy and Planning Staff (NPOL), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001, phone number (301) 837–1850.

(c) *American National Standards Institute (ANSI) and International Organization for Standards (ISO) standards.* The following ANSI and ISO standards are available from the American National Standards Institute, 25 West 43rd St., 4th Floor, New York, NY 10036, phone number (212) 642–4900, or online at *http://webstore.ansi.org.*

(1) ISO 18906: 2000 (''ISO 18906''), Imaging Materials—Photographic Films—Specifications for Safety Film,

First Edition, December 15, 2000, IBR approved for § 1237.26.

(2) ISO 18911: 2000 (''ISO 18911''), Imaging materials—Processed safety photographic films—Storage practices, First Edition, November 1, 2000, IBR approved for § 1238.20, IBR approved for §§ 1237.16 and 1237.18.

(3) ISO 18920: 2000 (''ISO 18920''), Imaging Materials—Processed Photographic Reflection Prints—Storage Practices, First Edition, July 15, 2000, IBR approved for § 1237.18.

(4) ANSI/AIIM TR34: 1996 (''ANSI/AIIM TR34''), Sampling Procedures for Inspection by Attributes of Images in Electronic Image Management and Micrographic Systems, May 13, 1996, IBR approved for § 1237.28.

(d) *National Fire Protection Association (NFPA).* The following standards are available from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9109, Quincy, MA 02269–9101, phone number (617) 770–3000 or online at *http://catalog.nfpa.org.*

(1) NFPA 40–2007 (''NFPA 40–2007''), Standard for the Storage and Handling of Cellulose Nitrate Film, 2007, IBR approved for § 1237.30.

(2) Reserved.

(e) *Techstreet.* The following standards are available from the standards reseller Techstreet, 3916 Ranchero Drive, Ann Arbor, MI 48108, phone number (800) 699–9277, or online at *http://www.Techstreet.com.*

(1) ISO 18902: 2001 (''ISO 18902''), Imaging Materials—Processed Photographic Films, Plates, and Papers—Filing Enclosures and Storage Containers, 2001, IBR approved for § 1237.16.

(2) ISO 18923: 2000 (''ISO 18923''), Imaging Materials—Polyester-Base Magnetic Tape—Storage Practices, First Edition, June 1, 2000, IBR approved for § 1237.18.

(3) ISO 18925: 2002 (''ISO 18925''), Imaging Materials—Optical Disc Media—Storage Practices, First Edition, June 1, 2002, IBR approved for § 1237.18.

(f) The following standards are not available from the original publisher or a standards reseller. As indicated in paragraph (b) of this section, the standards are available for inspection at the NWCCA. In order to inspect the standards at a NARA location other than the NARA facility in College Park, MD, please contact the NWCCA, Room 2380, 8601 Adelphi Road, College Park, MD 20740–6001, phone number (301) 837–3415 or e-mail your request to *alic@nara.gov.*

(1) ISO 2859–1: 1996 (''ISO 2859–1''), Sampling Procedures for Inspection by Attributes—Part 1: Sampling Plans Indexed by Acceptable Quality Level (AQL) for Lot-by-Lot Inspection, 1996, IBR approved for § 1237.28.

(2) ANSI/NAPM IT9.11–1993 (''ANSI/NAPM IT9.11–1993''), Imaging Media—Processed Safety Photographic Films—Storage, 1993, IBR approved for § 1237.16.

### § 1237.4 What definitions apply to this part?

(a) See § 1220.18 of this subchapter for definitions of terms used throughout Subchapter B, including part 1237.

(b) As used in part 1237—

*Aerial photographic records* means film-based images of the surface of the earth, of other planetary bodies, or of the atmosphere that have been taken from airborne vehicles or satellites. They include vertical and oblique aerial negative film taken from conventional aircraft as well as copy negatives, internegatives, rectified negatives, and annotated and other prints from these negatives. Also included are infrared, ultraviolet, multispectral, video, and radar imagery that has been converted to a film base. These records also include the relevant index system in whatever form it may exist such as mosaics, flight-line overlays or annotated maps, or electronic data bases capturing the latitude and longitude (or other coordinate-based location data) of individual aerial photographic center points.

*Architectural and engineering records* means graphic records that depict the proposed and actual construction of stationary structures, such as buildings, bridges, and canals as well as movable objects, such as ships, aircraft, vehicles, weapons, machinery, and equipment. These records are also known as design and construction drawings and include closely related indexes and written specifications.

*Audiovisual* means any pictorial or aural means of communicating information, *e.g.,* photographic prints, negatives, slides, digital images, sound recordings, and moving images.

*Audiovisual equipment* means equipment used for recording, producing, duplicating, processing, broadcasting, distributing, storing, or exhibiting audiovisual materials or for providing any audiovisual services.

*Audiovisual production* means an organized and unified presentation, developed according to a plan or script, containing visual imagery, sound, or both, and used to convey information. An audiovisual production generally is a self-contained presentation.

*Audiovisual records* means records in pictorial or aural form, including still photographs and motion media (*i.e.,* moving images whether on motion picture film or as video recordings), sound recordings, graphic works (*e.g.,* printed posters), mixed media, and related finding aids and production files.

*Cartographic records* means graphic representations drawn to scale of selected cultural and physical features of the surface of the earth, of other planetary bodies, and of the atmosphere. They include maps, charts, photomaps, orthophotomaps and images, atlases, cartograms, globes, and relief models. Related records are those that are integral to the map-making process, such as field survey notes, geodetic controls, map history case files, source material, indexes, and finding aids.

### § 1237.10 How must agencies manage their audiovisual, cartographic, and related records?

Each Federal agency must manage its audiovisual, cartographic and related records as required in parts 1220 through 1235. In addition, agencies must:

(a) Prescribe the types of audiovisual, cartographic, and related records to be created and maintained. (See § 1235.42 of this subchapter for transfer requirements for permanent audiovisual records.)

(b) Create and maintain current inventories showing the location of all generations of audiovisual records and all cartographic and related records, especially those not maintained centrally by the agency.

### § 1237.12 What record elements must be created and preserved for permanent audiovisual records?

For permanent audiovisual records, the following record elements must be created or acquired and preserved for transfer into the National Archives of the United States. (See § 1235.42 of this subchapter for transfer requirements for permanent audiovisual records.)

(a) *Motion pictures.*

(1) Agency-sponsored or produced motion picture films (e.g., public information films) whether for public or internal use:

(i) Original negative or color original plus separate optical sound track;

(ii) Intermediate master positive or duplicate negative plus optical track sound track; and,

(iii) Sound projection print and video recording, if both exist.

(2) Agency-acquired motion picture films: Two projection prints in good condition or one projection print and one videotape.

(3) Unedited footage, outtakes and trims (the discards of film productions)

that are properly arranged, labeled, and described and show unstaged, unrehearsed events of historical interest or historically significant phenomena:

(i) Original negative or color original; and

(ii) Matching print or videotape.

(b) *Video recordings.*

(1) For analog videotapes, the original or earliest generation videotape using industrial-quality or professional videotapes for originals and a copy for reference.

(2) For video discs, the premaster video used to manufacture the video disc and two copies of the disc.

(c) *Still pictures.*

(1) For analog black-and-white photographs, an original negative and a captioned print or the captioning information maintained in another file such as a data base if the file number correlation is clear. If the original negative is nitrate, unstable acetate, or glass based, a duplicate negative on a polyester base is needed.

(2) For analog color photographs, the original color negative, color transparency, or color slide; a captioned print of the original color negative and/or captioning information in another file such as a data base with a clear correlation to the relevant image; and a duplicate negative, or slide, or transparency.

(3) For slide sets, the original and a reference set, and the related audio recording and script.

(4) For other pictorial records such as posters, original art work, and filmstrips, the original and a reference copy.

(d) *Digital photographic records.* See § 1237.28 for requirements for digital photographs.

(e) *Sound recordings.*

(1) Disc recordings:

(i) For electronic recordings, the origination recording regardless of form and two compact discs (CDs) or digital video disks (DVDs).

(ii) For analog disc recordings, the master tape and two disc pressings of each recording, typically a vinyl copy for playback at 33⅓ revolutions per minute (rpm).

(2) For analog audio recordings on magnetic tape (open reel, cassette, or cartridge), the original tape, or the earliest available generation of the recording, and a subsequent generation copy for reference.

(f) *Finding aids and production documentation.*

(1) Existing finding aids such as data sheets, shot lists, continuities, review sheets, catalogs, indexes, list of captions, and other documentation that identifies the records.

(2) Production case files or similar files that include copies of production contracts, scripts, transcripts, and appropriate documentation bearing on the origin, acquisition, release, and ownership of the production.

### § 1237.14 What are the additional scheduling requirements for audiovisual, cartographic, and related records?

The disposition instructions should also provide that permanent records be transferred to the National Archives of the United States within 5–10 years after creation (see also 36 CFR part 1235). See § 1235.42 of this subchapter for specifications and standards for transfer to the National Archives of the United States of audiovisual, cartographic, and related records.

### § 1237.16 How do agencies store audiovisual records?

Agencies must maintain appropriate storage conditions for permanent, long-term temporary or unscheduled audiovisual records:

(a) Ensure that audiovisual records storage facilities comply with 36 CFR part 1234.

(b) For the storage of permanent, long-term temporary, or unscheduled records, use audiovisual storage containers or enclosures made of non-corroding metal, inert plastics, paper products and other safe materials recommended in ISO 18902 and ISO 18911 (both incorporated by reference, see § 1237.3);

(c) Store originals and use copies (*e.g.,* negatives and prints) separately, whenever practicable. Store distinct audiovisual record series separately from textual series (*e.g.,* store poster series separately from other kinds of agency publications, or photographic series separately from general reference files). Retain intellectual control through finding aids, annotations, or other descriptive mechanisms;

(d) Store series of permanent and unscheduled x-ray films, i.e, x-rays that are not interspersed among paper records (case files), in accordance with § 1238.20 of this subchapter. Store series of temporary x-ray films under conditions that will ensure their preservation for their full retention period, in accordance with ANSI/PIMA IT9.11–1993 (incorporated by reference, see § 1237.3);

(e) Store posters and similar graphic works in oversize formats, in map cases, hanging files, or other enclosures that are sufficiently large or flexible to accommodate the records without rolling, folding, bending, or other ways that compromise image integrity and stability; and

(f) Store optical disks in individual containers and use felt-tip, water-based markers for disk labeling.

### § 1237.18 What are the environmental standards for audiovisual records storage?

(a) *Photographic film and prints.* The requirements in this paragraph apply to permanent, long-term temporary, and unscheduled audiovisual records.

(1) *General guidance.* Keep all film in cold storage following guidance by the International Organization for Standardization in ISO 18911 (incorporated by reference, see § 1237.3). See also ISO 18920 (incorporated by reference, see § 1237.3).

(2) *Color images and acetate-based media.* Keep in an area maintained below 40 degrees Fahrenheit with 20–40% relative humidity to retard the fading of color images and the deterioration of acetate-based media.

(b) *Digital images on magnetic tape.* For digital images stored on magnetic tape, keep in an area maintained at a constant temperature range of 62 degrees Fahrenheit to 68 degrees Fahrenheit, with constant relative humidity from 35% to 45%. See also the recommendations in ISO 18923 (incorporated by reference, see § 1237.3); and the requirements for electronic records storage in 36 CFR 1236.28.

(c) *Digital images on optical media.* For permanent, long-term temporary, or unscheduled digital images maintained on optical media (e.g., CDs, DVDs), use the recommended storage temperature and humidity levels stated in ISO 18925 (incorporated by reference, see § 1237.3).

### § 1237.20 What are special considerations in the maintenance of audiovisual records?

Agencies must:

(a) Handle audiovisual records in accordance with commonly accepted industry practices.

(b) Protect audiovisual records, including those recorded on digital media or magnetic sound or video media, from accidental or deliberate alteration or erasure.

(c) If different versions of audiovisual productions (*e.g.,* short and long versions or foreign-language versions) are prepared, keep an unaltered copy of each version for record purposes.

(d) Link audiovisual records with their finding aids, including captions and published and unpublished catalogs, inventories, indexes, and production files and similar documentation created in the course of audiovisual production. Establish and communicate agency-wide, clear

captioning standards, procedures, and responsibilities.

(e) Maintain current and accessible documentation identifying creators of audiovisual products, their precise relationship to the agency, and the nature and status of copyright or other rights affecting the present and future use of items acquired from sources outside the agency. (See § 1222.32 of this subchapter for requirements to ensure agency ownership of appropriate contractor produced records.)

(f) Create unique identifiers for all audiovisual records (*e.g.,* for digital files, use file naming conventions), that clarify connections between related elements (*e.g.,* photographic prints and negatives, or original edited masters and dubbing for video and audio recordings), and that associate records with the relevant creating, sponsoring, or requesting offices.

(g) Maintain temporary and permanent audiovisual records separately.

(h) Require that personnel wear white lint-free cotton (or other approved) gloves when handling film.

**§ 1237.22 What are special considerations in the storage and maintenance of cartographic and related records?**

Agencies must:

(a) Maintain permanent and unscheduled cartographic, architectural, and engineering records in an environment that does not exceed 70 degrees Fahrenheit and with relative humidity under 50%.

(b) Create an identification scheme for each series and assign unique identification designations to each item within a series.

(c) Maintain lists or indexes for each series with cross-references to related textual records.

(d) Avoid interfiling separate series of maps, charts, or drawings, and file permanent cartographic and architectural records separately from temporary series unless hand-corrected versions have been systematically filed with other published maps in a central or master file.

(e) Avoid rolling and folding maps and drawings. Store permanent maps and drawings flat in shallow drawer map cases in acid-free folders.

(f) Do not laminate original oversize records. Consult the National Archives and Records Administration, Preservation Programs, (NWT), 8601 Adelphi Road, College Park, MD 20740, phone number (301) 837–1785 for preservation, storage, and treatment options.

**§ 1237.24 What are special considerations for storage and maintenance of aerial photographic records?**

(a) Mark each aerial film container with a unique identification code to facilitate identification and filing.

(b) Mark aerial film indexes with the unique aerial film identification codes or container codes for the aerial film that they index. Also, file and mark the aerial indexes in such a way that they can easily be retrieved by area covered.

**§ 1237.26 What materials and processes must agencies use to create audiovisual records?**

Agencies must:

(a) For picture negatives and motion picture preprints (negatives, masters, and all other copies) of permanent, long-term temporary, or unscheduled records, use polyester base media and process in accordance with industry standards as specified in ISO 18906 (incorporated by reference, see § 1237.3).

(1) Ensure that residual sodium thiosulfate (hypo) on newly processed black-and-white photographic film does not exceed 0.014 grams per square meter.

(2) Require laboratories to process film in accordance with this standard. Process color film in accordance with the manufacturer's recommendations.

(3) If using reversal type processing, require full photographic reversal; *i.e.,* develop, bleach, expose, develop, fix, and wash.

(b) Avoid using motion pictures in a final ''A & B'' format (two precisely matched reels designed to be printed together) for the reproduction of excerpts or stock footage.

(c) Use only industrial or professional video and audio recording equipment, new and previously unrecorded magnetic tape stock and blank optical media (*e.g.,* DVD and CD), for original copies of permanent, long-term temporary, or unscheduled recordings. Limit the use of consumer formats to distribution or reference copies or to subjects scheduled for destruction. Avoid using videocassettes in the VHS format for use as originals of permanent or unscheduled records.

(d) Record permanent, long-term, temporary, or unscheduled audio recordings on optical media from major manufacturers. Avoid using cassettes as originals for permanent records or unscheduled records (although they may be used as reference copies).

(e) For born-digital or scanned digital images that are scheduled as permanent or unscheduled, a record (or master) version of each image must be comparable in quality to a 35 mm film photograph or better, and must be saved in Tagged Image File Format (TIFF) or JPEG File Interchange Format (JFIF, JPEG). For more detailed requirements on image format and resolution, see § 1235.48(e) of this subchapter. For temporary digital photographs, agencies select formats that they deem most suitable for fulfillment of business needs.

**§ 1237.28 What special concerns apply to digital photographs?**

Digital photographs, either originating in digital form (''born-digital'') or scanned from photographic prints, slides, and negatives, are subject to the provisions of this part and the requirements of 36 CFR part 1236, and NARA guidance for transfer of digital photographs located on the following NARA Web page—*http://www.archives.gov/records-mgmt/initiatives/digital-photo-records.html.* In managing digital photographs, agency and contractor personnel must:

(a) Schedule digital photographs and related databases as soon as possible for the minimum time needed for agency business and transfer the records promptly according to the disposition instructions on their records schedule.

(b) Select image management software and hardware tools that will meet long-term archival requirements, including transfer to the National Archives of the United States, as well as business needs. Additional information and assistance is available from the National Archives and Records Administration, Modern Records Program (NWM), 8601 Adelphi Road, College Park, MD 20740, phone number (301) 837–1738.

(c) When developing digital image storage strategies, build redundancy into storage systems, backing up image files through on-line approaches, off-line, or combinations of the two. (See also electronic storage requirements in § 1236.28 of this subchapter).

(d) For scanned digital images of photographic prints, slides, and negatives that are scheduled as permanent or unscheduled, document the quality control inspection process employed during scanning.

(1) Visually inspect a sample of the images for defects, evaluate the accuracy of finding aids, and verify file header information and file name integrity.

(2) Conduct the sample using a volume sufficiently large to yield statistically valid results, in accordance with one of the quality sampling methods presented in ANSI/AIIM TR34 (incorporated by reference, see § 1237.3). (See also ISO 2859–1 (incorporated by reference, see § 1237.3).)

(e) For born-digital images scheduled as permanent, long-term temporary, or unscheduled, perform periodic inspections, using sampling methods or more comprehensive verification systems (*e.g.,* checksum programs), to evaluate image file stability, documentation quality, and finding aid reliability. Agencies must also establish procedures for refreshing digital data (recopying) and file migration, especially for images and databases retained for five years or more.

(f) Designate a record set of images that is maintained separately from other versions. Record sets of permanent or unscheduled images that have already been compressed once (*e.g.,* compressed TIFF or first-generation JPEG) must not be subjected to further changes in image size.

(g) Organize record images in logical series. Group permanent digital images separately from temporary digital images.

(h) Document information about digital photographic images as they are produced. For permanent or unscheduled images descriptive elements must include:

(1) An identification number;

(2) Information about image content;

(3) Identity and organizational affiliation of the photographer;

(4) Existence of any copyright or other potential restrictions on image use; and

(5) Technical data including file format and version, bit depth, image size, camera make and model, compression method and level, custom or generic color profiles (ICC/ICM profile), and, where applicable, Exchangeable Image File Format (EXIF) information embedded in the header of image files by certain digital cameras.

(i) Provide a unique file name to identify the digital image.

(j) Develop finding aids sufficiently detailed to ensure efficient and accurate retrieval. Ensure that indexes, caption lists, and assignment logs can be used to identify and chronologically cut-off block of images for transfer to the NARA.

### § 1237.30 How do agencies manage records on nitrocellulose-base and cellulose-acetate base film?

(a) The nitrocellulose base, a substance akin to gun cotton, is chemically unstable and highly flammable. Agencies must handle nitrocellulose-base film (used in the manufacture of sheet film, 35 mm motion pictures, aerial and still photography into the 1950s) as specified below:

(1) Remove nitrocellulose film materials (*e.g.,* 35mm motion picture film and large series of still pictures) from records storage areas.

(2) Notify the National Archives and Records Administration, Modern Records Program (NWM), 8601 Adelphi Road, College Park, MD 20740, phone number (301) 837–1738, about the existence of nitrocellulose film materials for a determination of whether they may be destroyed or retained after a copy is made by the agency for transfer to NARA. If NARA appraises nitrate film materials as disposable and the agency wishes to retain them, the agency must follow the standard NFPA 40–2007 (incorporated by reference, see § 1237.3).

(3) Follow the packing and shipping of nitrate film as specified in Department of Transportation regulations (49 CFR 172.101, Hazardous materials table; 172.504, Transportation; 173.24, Standard requirements for all packages; and 173.177, Motion picture film and X-ray film—nitrocellulose base).

(b) Agencies must inspect cellulose-acetate film periodically for an acetic odor, wrinkling, or the presence of crystalline deposits on the edge or surface of the film that indicate deterioration. Agencies must notify the National Archives and Records Administration, Modern Records Program (NWM), 8601 Adelphi Road, College Park, MD 20740, phone number (301) 837–1738, immediately after inspection about deteriorating permanent or unscheduled audiovisual records composed of cellulose acetate so that they can be copied by the agency prior to transfer of the original and duplicate film to NARA.

## PART 1238—MICROFORMS RECORDS MANAGEMENT

### Subpart A—General

1238.1 What is the scope of this part?
1238.2 What are the authorities for part 1238?
1238.3 What definitions apply to this part?
1238.4 What standards are used as guidance for this part?
1238.5 What publications are incorporated by reference?

### Subpart B—Microfilming Standards

1238.10 What are the format standards for microfilming records?
1238.12 What documentation is required for microfilmed records?
1238.14 What are the microfilming requirements for permanent and unscheduled records?
1238.16 What are the microfilming requirements for temporary records, duplicates, and user copies?

### Subpart C—Storage, Use, and Disposition Standards for Microform Records

1238.20 How must microform records be stored?
1238.22 What are the inspection requirements for permanent and unscheduled microform records?
1238.24 What are NARA inspection requirements for temporary microform records?
1238.26 What are the restrictions on use for permanent and unscheduled microform records?
1238.28 What must agencies do when sending permanent microform records to a records storage facility?
1238.30 What must agencies do when transferring permanent microform records to the National Archives of the United States?
1238.32 Do agencies need to request NARA approval for the disposition of all microform and source records?

**Authority:** 44 U.S.C. chapters 29 and 33.

## Subpart A—General

### § 1238.1 What is the scope of this part?

This part covers the standards and procedures for using micrographic technology in the management of Federal records.

### § 1238.2 What are the authorities for part 1238?

The statutory authorities for this part are 44 U.S.C. chapters 29 and 33.

### § 1238.3 What definitions apply to this part?

See § 1220.18 of this subchapter for definitions of terms used in part 1238.

### § 1238.4 What standards are used as guidance for this part?

These regulations conform with guidance provided in ISO15489–1:2001, part 7.1 (Principles of records management programmes), and 9.6 (storage and handling).

### § 1238.5 What publications are incorporated by reference in this part?

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, NARA must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the Office of the Federal Register. For information on the availability of this material at the Office of the Federal Register, call (202) 741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) The material incorporated by reference is also available for inspection at NARA's Archives Library Information Center (NWCCA), Room 2380, 8601 Adelphi Road, College Park, MD 20740–6001, phone number (301) 837–3415, and is available for purchase from the sources listed below. If you experience difficulty obtaining the standards referenced below, contact NARA's Policy and Planning Staff (NPOL), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001, phone number (301) 837–1850.

(c) *American National Standards Institute (ANSI) and International Organization for Standards (ISO) standards.* The following ANSI and ISO standards are available from the American National Standards Institute, 25 West 43rd St., 4th Floor, New York, NY 10036, phone number (212) 642–4900,or online at *http://webstore.ansi.org.*

(1) ANSI/AIIM MS1–1996 (''ANSI/AIIM MS1''), Standard Recommended Practice for Alphanumeric Computer-Output Microforms—Operational Practices for Inspection and Quality Control, August 8, 1996, IBR approved for § 1238.14.

(2) ANSI/AIIM MS5–R1998) (''ANSI/AIIM MS5''), Standard for Information and Image Management—Microfiche, December, 1998, IBR approved for § 1238.10.

(3) ANSI/AIIM MS14–1996 (''ANSI/AIIM MS14''), Standard Recommended Practice—Specifications for 16mm and 35mm Roll Microfilm, August 8, 1996, IBR approved for § 1238.10.

(4) ANSI/AIIM MS19–1993 (''ANSI/AIIM MS19''), Standard Recommended Practice—Identification of Microforms, August 18, 1993, IBR approved for § 1238.12.

(5) ANSI/AIIM MS32–1996 (''ANSI/AIIM MS32''), Standard Recommended Practice—Microrecording of Engineering Source Documents on 35mm Microfilm, February 16, 1996, IBR approved for § 1238.10.

(6) ANSI/AIIM MS41–1996 (''ANSI/AIIM MS41''), Dimensions of Unitized Microfilm Carriers and Apertures (Aperture, Camera, Copy and Image Cards), July 16, 1996, IBR approved for § 1238.10.

(7) ANSI/AIIM MS43–1998 (''ANSI/AIIM MS43''), Standard Recommended Practice—Operational Procedures—Inspection and Quality Control of Duplicate Microforms of Documents and From COM), June 2, 1998, IBR approved for § 1238.14,

(8) ANSI/AIIM MS45–1990 (''ANSI/AIIM MS 45''), Recommended Practice for Inspection of Stored Silver-Gelatin Microforms for Evidence of Deterioration, January 22, 1990, IBR approved for § 1238.22.

(9) ISO 18911:2000 (''ISO 18911''), Imaging materials—Processed safety photographic films—Storage practices, First Edition, November 1, 2000, IBR approved for § 1238.20.

(d) *Techstreet.* The following standards are available from the standards reseller Techstreet, 3916 Ranchero Drive, Ann Arbor, MI 48108, phone number (800) 699–9277, or online at *www.Techstreet.com.*

(1) ISO 18901:2002 (''ISO 18901''), Imaging Materials—Processed silver-gelatin type black-and-white films—Specifications for stability, February 15, 2002, IBR approved for §§ 1238.10, 1238.14, and 1238.20.

(2) Reserved

(e) *Document Center Inc.* The following are available from the standards reseller the Document Center Inc., 111 Industrial Road, Suite 9, Belmont, CA, 94002, phone number (650) 591–7600, or online at *http://www.document-center.com.*

(1) ANSI/NAPM IT2.19–1994 (''ANSI/NAPM IT2.19), American National Standard for Photography—Density Measurements—Part 2: Geometric Conditions for Transmission Density, February 20, 1995, IBR approved for § 1238.14.

(2) ANSI/PIMA IT9.2–1998 (''ANSI/PIMA IT9.2''), Photographic Processed Films, Plates, and Papers-Filing Enclosures and Storage Containers, April 15, 1998, IBR approved for §§ 1238.10 and 1238.20.

(3) ANSI/AIIM MS 23–1998 (''ANSI/AIIM MS23''), Standard Recommended Practice—Production, Inspection, and Quality Assurance of First-Generation, Silver Microforms of Documents, June 2, 1998, IBR approved for §§ 1238.10 and 1238.14.

(4) ANSI/ISO 3334–1991, ANSI/AIIM MS51–1991 (''ANSI/ISO 3334, ANSI/AIIM MS51''), Micrographics—ISO Resolution Test Chart No. 2—Description and Use, May 10, 1991, IBR approved for § 1238.14.

(5) ANSI/NAPM IT2.18–1996 (''ANSI/NAPM IT2.18''), American National Standard for Photography—Density Measurements—Part 3: Spectral Conditions, March 8, 1996, IBR approved for § 1238.14.

## Subpart B—Microfilming Standards

### § 1238.10 What are the format standards for microfilming records?

The following formats must be used when microfilming records:

(a) *Roll film*—(1) *Source documents.* The formats described in ANSI/AIIM MS14 (incorporated by reference, see § 1238.5) must be used for microfilming source documents on 16mm and 35mm roll film. A reduction ratio no greater than 1:24 is recommended for correspondence or similar typewritten documents. Use ANSI/AIIM MS23 (incorporated by reference, see § 1238.5) for the appropriate reduction ratio and format for meeting image quality requirements. When microfilming on 35mm film for aperture card applications, the format dimensions in ANSI/AIIM MS32 (incorporated by reference, see § 1238.5), Table 1 must be used, and the aperture card format ''D Aperture'' shown in ANSI/AIIM MS41 (incorporated by reference, see § 1238.5), Figure 1, must be used. The components of the aperture card, including the paper and adhesive, must conform to the requirements of ANSI/PIMA IT9.2 (incorporated by reference, see § 1238.5). The 35mm film used in the aperture card application must conform to film designated as LE 500 in ISO 18901 (incorporated by reference, see § 1238.5).

(2) *COM.* Microfilm created using computer output microfilm (COM) technology must use the simplex mode described in ANSI/AIIM MS14 (incorporated by reference, see § 1238.5) at an effective ratio of 1:24 or 1:48 depending upon the application.

(b) *Microfiche.* When creating microfiche, either by microfilming source documents or using COM technology, the formats and reduction ratios prescribed in ANSI/AIIM MS5 (incorporated by reference, see § 1238.5) must be used as specified for the size and quality of the documents being filmed. Use ANSI/AIIM MS23 (incorporated by reference, see § 1238.5) for determining the appropriate reduction ratio and format for meeting the image quality requirements.

(c) *Index placement*—(1) *Source documents.* When microfilming source documents, place indexes, registers, or other finding aids, if microfilmed, either in the first frames of the first roll of film or in the last frames of the last roll of film of a series. For microfiche, place the indexes in the last frames of the last microfiche or microfilm jacket of a series.

(2) *COM.* Place indexes on COM following the data on a roll of film, in the last frames of a single microfiche, or in the last frames of the last fiche in a series. Other locations for indexes may be used only if dictated by special system constraints.

**§ 1238.12 What documentation is required for microfilmed records?**

Agencies must ensure that the microforms capture all information contained on the source documents and that they can be used for the purposes the source documents served. Microform records must be labeled and organized to support easy retrieval and use. Agencies must:

(a) Arrange, describe, and index the filmed records to permit retrieval of any particular document or component of the records.

(b) Title each microform roll or fiche with a titling target or header. For fiche, place the titling information in the first frame if the information will not fit on the header. At a minimum, titling information must include:

(1) The title of the records;

(2) The number or identifier for each unit of microform;

(3) The security classification, if any; and

(4) The name of the agency and sub-organization, the inclusive dates, names, or other data identifying the records to be included on a unit of microform.

(c) Add an identification target showing the date of microfilming. When necessary to give the microform copy legal standing, the target must also identify the person who authorized the microfilming. Use ANSI/AIIM MS19 (incorporated by reference, see § 1238.5) for standards for identification targets.

**§ 1238.14 What are the microfilming requirements for permanent and unscheduled records?**

(a) Agencies must apply the standards in this section when microfilming:

(1) Permanent paper records where the original paper record will be destroyed (only after authorization from NARA);

(2) Unscheduled paper records where the original paper record will be destroyed (only after authorization from NARA); and

(3) Permanent and unscheduled original microform records (no paper originals) produced by automation, such as COM.

(b) Agencies must use polyester-based silver gelatin type film that conforms to ISO 18901 (incorporated by reference, see § 1238.5) for LE 500 film in all applications.

(c) Agencies must process microforms so that the residual thiosulfate ion concentration will not exceed 0.014 grams per square meter in accordance with ISO 18901 (incorporated by reference, see § 1238.5) and use the processing procedures in ANSI/AIIM MS1 and ANSI/AIIM MS23 (both incorporated by reference, see § 1238.5).

(d) Agencies must use the following standards for quality:

(1) *Resolution*—(i) *Source documents.* Agencies must determine minimum resolution on microforms of source documents using the method in the Quality Index Method for determining resolution and anticipated losses when duplicating, as described in ANSI/AIIM MS23 and ANSI/AIIM MS43 (both incorporated by reference, see § 1238.5). Agencies must perform resolution tests using an ANSI/ISO 3334 Resolution Test Chart (incorporated by reference, see § 1238.5) or a commercially available certifiable target manufactured to comply with this standard, and read the patterns following the instructions of ANSI/ISO 3334. Agencies must use the smallest character used to display information to determine the height used in the Quality Index formula. Agencies must use a Quality Index of five at the third generation level.

(ii) *COM.* COM must meet the requirements of ANSI/AIIM MS1 (incorporated by reference, see § 1238.5).

(2) *Background density of images.* Agencies must use the background ISO standard visual diffuse transmission density on microforms appropriate to the type of documents being filmed. Agencies must use the procedure for density measurement described in ANSI/AIIM MS23 (incorporated by reference, see § 1238.5). The densitometer must meet with ANSI/NAPM IT2.18 (incorporated by reference, see § 1238.5) for spectral conditions and ANSI/NAPM IT2.19 (incorporated by reference, see § 1238.5) for geometric conditions for transmission density.

(i) Recommended visual diffuse transmission background densities for images of documents are as follows:

| Classification | Description of document | Background density |
|---|---|---|
| Group 1 | High-quality, high contrast printed book, periodicals, and black typing | 1.3–1.5 |
| Group 2 | Fine-line originals, black opaque pencil writing, and documents with small high contrast printing | 1.15–1.4 |
| Group 3 | Pencil and ink drawings, faded printing, and very small printing, such as footnotes at the bottom of a printed page. | 1.0–1.2 |
| Group 4 | Low-contrast manuscripts and drawing, graph paper with pale, fine-colored lines; letters typed with a worn ribbon; and poorly printed, faint documents. | 0.8–1.0 |
| Group 5 | Poor-contrast documents (special exception). | 0.7–0.85 |

(ii) Recommended visual diffuse transmission densities for computer generated images are as follows:

| Film type | Process | Density measurement method | Min. Dmax [1] | Max. Dmin [1] | Minimum density difference |
|---|---|---|---|---|---|
| Silver gelatin | Conventional | Printing or diffuse | 0.75 | 0.15 | 0.60 |
| Silver gelatin | Full reversal | Printing | 1.50 | 0.20 | 1.30 |

[1] Character or line density, measured with a microdensitometer or by comparing the microfilm under a microscope with an image of a known density.

(3) *Base plus fog density of microfilms.* The base plus fog density of unexposed, processed microfilms must not exceed 0.10. When a tinted base film is used, the density will be increased. The difference must be added to the values given in the tables in paragraph (d)(2) of this section.

(4) *Line or stroke width.* Due to optical limitations in most micrographic systems, microfilm images of thin lines appearing in the source documents will

tend to fill in as a function of their width and density. Therefore, as the reduction ratio of a given system is increased, reduce the background density as needed to ensure that the copies will be legible.

**§ 1238.16 What are the microfilming requirements for temporary records, duplicates, and user copies?**

(a) *Temporary records with a retention period over 99 years.* Agencies must use the microfilming requirements in § 1238.14.

(b) *Temporary records to be kept for less than 99 years, duplicates, and user copies.* NARA does not require the use of specific standards for these microforms. Agencies may select a film stock that meets their needs and ensures the preservation of the microforms for their full retention period. NARA recommends that agencies consult appropriate standards, available as noted in § 1238.3, and manufacturer's instructions for processing production, and maintenance of microform to ensure that the images are accessible and usable for the entire retention period of the records.

## Subpart C—Storage, Use, and Disposition of Microform Records

**§ 1238.20 How must microform records be stored?**

(a) *Permanent and unscheduled records.* Agencies must store permanent and unscheduled microform records under the extended term storage conditions specified in ISO 18911 and ANSI/PIMA IT9.2 (both incorporated by reference, see § 1238.5), except that the relative humidity of the storage area must be a constant 35 percent RH, plus or minus 5 percent. Non-silver copies of microforms must be maintained in a different storage area than are silver gelatin originals or duplicate copies).

(b) *Temporary records.* Agencies must store temporary microform records under conditions that will ensure their preservation for their authorized retention period. NARA suggests that agencies may consult Life Expectance (LE) guidelines in ISO 18901 (incorporated by reference, see § 1238.5).

**§ 1238.22 What are the inspection requirements for permanent and unscheduled microform records?**

(a) Agencies must inspect, or arrange for a contractor or NARA to inspect master microform of permanent or unscheduled records following the inspection requirements in paragraph (b) of this section.

(b) The microforms listed in paragraph (a) of this section must be inspected initially in accordance with ANSI/AIIM MS45 (incorporated by reference, see § 1238.5). All microforms must be inspected when they are two years old. After the initial two-year inspection, unless there is a catastrophic event, the microforms must be inspected as follows until they are transferred to NARA:

(1) For microfilm produced after 1990, inspect the microfilm every 5 years.

(2) For microfilm produced prior to 1990, inspect the microfilm every 2 years.

(c) To facilitate inspection, the agency must maintain an inventory that lists each microform series or publication by production date, producer, processor, format, and results of previous inspections.

(d) The inspection must include the following elements:

(1) An inspection for aging blemishes following ANSI/AIIM MS45 (incorporated by reference, see § 1238.5);

(2) A rereading of resolution targets;

(3) A remeasurement of density; and

(4) A certification of the environmental conditions under which the microforms are stored, as specified in § 1238.20(a).

(e) The agency must prepare an inspection report, and send a copy to NARA in accordance with § 1238.28(c). The inspection report must contain:

(1) A summary of the inspection findings, including:

(i) A list of batches by year that includes the identification numbers of microfilm rolls and microfiche in each batch;

(ii) The quantity of microforms inspected;

(iii) An assessment of the overall condition of the microforms;

(iv) A summary of any defects discovered, e.g., redox blemishes or base deformation; and

(v) A summary of corrective actions taken.

(2) A detailed inspection log created during the inspection that contains the following information:

(i) A complete description of all records inspected (title; roll or fiche number or other unique identifier for each unit of film inspected; security classification, if any; and inclusive dates, names, or other data identifying the records on the unit of film);

(ii) The date of inspection;

(iii) The elements of inspection (see paragraph (d) of this section);

(iv) Any defects uncovered; and

(v) The corrective action taken.

(f) If an inspection finds that a master microform is deteriorating, the agency must make a silver duplicate in accordance with § 1238.14 to replace the deteriorating master. The duplicate microform must meet inspection requirements (see § 1238.22) before it may be transferred to a record center or NARA.

(g) Inspections must be conducted in environmentally controlled areas in accordance with ANSI/AIIM MS45 (incorporated by reference, see § 1238.5).

**§ 1238.24 What are NARA inspection requirements for temporary microform records?**

NARA recommends, but does not require, that agencies use the inspection procedures described in § 1238.22(a).

**§ 1238.26 What are the restrictions on use for permanent and unscheduled microform records?**

(a) Agencies must not use the silver gelatin master microform or duplicate silver gelatin microform of permanent or unscheduled records created in accordance with § 1238.14 of this part for reference purposes. Agencies must ensure that the master microform remains clean and undamaged during the process of making a duplicating master.

(b) Agencies must use duplicates for:

(1) Reference;

(2) Further duplication on a recurring basis;

(3) Large-scale duplication; and

(4) Distribution of records on microform.

(c) Agencies retaining the original record in accordance with an approved records disposition schedule may apply agency standards for the use of microform records.

**§ 1238.28 What must agencies do when sending permanent microform records to a records storage facility?**

Agencies must:

(a) Follow the procedures in part 1232 of this chapter and the additional requirements in this section.

(b) Package non-silver copies separately from the silver gelatin original or silver duplicate microform copy and clearly label them as non-silver copies.

(c) Include the following information on the transmittal (SF 135 for NARA Federal Records Centers), or in an attachment to the transmittal. For records sent to an agency records center or commercial records storage facility, submit this information to NARA as part of the documentation required by § 1232.14 of this subchapter:

(1) Name of the agency and program component;

(2) The title of the records and the media and format used;

(3) The number or identifier for each unit of microform;

(4) The security classification, if any;

(5) The inclusive dates, names, or other data identifying the records to be included on a unit of microform;

(6) Finding aids that are not contained in the microform; and

(7) The inspection log forms and inspection reports required by § 1238.22(e).

(d) Agencies may transfer permanent microform records to a records storage facility meeting the storage requirements in § 1232.14(a) (see § 1233.10 of this subchapter for NARA Federal Records Centers) of this subchapter only after the first inspection or with certification that the microforms will be inspected by the agency, a contractor, or a NARA Federal Records Center (on a reimbursable basis) when the microforms become 2 years old.

#### § 1238.30 What must agencies do when transferring permanent microform records to the National Archives of the United States?

Agencies must:

(a) Follow the procedures in part 1235 of this subchapter and the additional requirements in this section.

(b) If the records are not in a NARA Federal Records Center, submit the information specified in § 1232.14(c) of this subchapter.

(c) Transfer the silver gelatin original (or duplicate silver gelatin microform created in accordance with § 1238.14) plus one microform copy.

(d) Ensure that the inspections of the microforms are up-to-date. NARA will not accession permanent microform records until the first inspection has been performed (when the microforms are 2 years old).

(e) Package non-silver copies separately from the silver gelatin original or silver duplicate microform copy and clearly label them as non-silver copies.

#### § 1238.32 Do agencies need to request NARA approval for the disposition of all microform and source records?

(a) *Permanent or unscheduled records.* Agencies must schedule both source documents (originals) and microforms. NARA must approve the schedule, SF 115, Request for Records Disposition Authority, in accordance with part 1225 of this subchapter before any records, including source documents, may be destroyed.

(1) Agencies that comply with the standards in § 1238.14 must include on the SF 115 the following certification: ''This certifies that the records described on this form were (or will be) microfilmed in accordance with the standards set forth in 36 CFR part 1238.''

(2) Agencies using microfilming methods, materials, and procedures that do not meet the standards in § 1238.14(a) must include on the SF 115 a description of the system and standards used.

(3) When an agency intends to retain the silver original microforms of permanent records and destroy the original records, the agency must certify in writing on the SF 115 that the microform will be stored in compliance with the standards of § 1238.20 and inspected as required by § 1238.22.

(b) *Temporary records.* Agencies do not need to obtain additional NARA approval when destroying scheduled temporary records that have been microfilmed. The same approved retention period for temporary records is applied to microform copies of these records. The original records can be destroyed once microfilm is verified, unless legal or other requirements prevent their early destruction.

## PART 1239—PROGRAM ASSISTANCE AND INSPECTIONS

### Subpart A—General

Sec.
1239.1 What is the scope of this part?
1239.2 What are the authorities for part 1239?
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### Subpart B—Program Assistance

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### Subpart C—Inspections

1239.20 When will NARA undertake an inspection?
1239.22 How does NARA notify the agency of the inspection?
1239.24 How does NARA conduct an inspection?
1239.26 What are an agency's follow up obligations for an inspection report?

**Authority:** 44 U.S.C. 2904 and 2906.

### Subpart A—General

#### § 1239.1 What is the scope of this part?

NARA's statutory authorities include assisting agencies in carrying out their records management responsibilities and, when necessary, inspecting agency programs and reporting to Congress on those inspections. Part 1239 identifies the types of records management guidance and program assistance NARA provides to agencies under its 44 U.S.C. chapter 29 mandate; the conditions under which NARA will invoke its inspection authority, also under chapter 29; and the requirements for agencies to cooperate fully in such inspections.

#### § 1239.2 What are the authorities for part 1239?

The authorities for this part are 44 U.S.C. 2904 and 2906.

#### § 1239.3 What definitions apply to this part?

(a) See § 1220.18 of this subchapter for definitions of terms used in part 1239.

(b) As used in part 1239—

*Inspection* means a formal review and report by NARA under 44 U.S.C. 2904(c) and 2906(a) of an agency's recordkeeping processes that focus on significant records management problems affecting records at risk that meet one or more of the following criteria:

(1) Have a direct and high impact on legal rights or government accountability;

(2) Are the subject of high profile litigation, Congressional attention, or widespread media coverage;

(3) Have high research potential; or

(4) Are permanent records with a large volume, regardless of format.

#### § 1239.4 What standards are used as guidance for this part?

These regulations conform with guidance provided in ISO 15489–1:2001. Paragraphs 7.1, Principles of records management programmes, and 10, Monitoring and auditing, apply to this part.

### Subpart B—Program Assistance

#### § 1239.10 What program assistance does NARA provide?

(a) NARA publishes handbooks, conducts workshops and other training sessions, and furnishes information and guidance to Federal agencies about the creation of records, their maintenance and use, and their disposition. NARA also may conduct a targeted assistance project in cooperation with an agency to address a serious records management issue in the agency.

(b) Information on NARA handbooks and guidance is available at *http://www.archives.gov/records-mgmt/.*

(c) Information on NARA training is available at *http://www.archives.gov/records-mgmt/training/.*

#### § 1239.12 Whom may agencies contact to request program assistance?

Agencies in the Washington, DC, area desiring information or assistance related to any of the areas covered by subchapter B may contact the National Archives and Records Administration, Life Cycle Management Division

(NWML), 8601 Adelphi Rd., College Park, MD 20740–6001, phone number 301–837–1738. Agency field organizations may contact the appropriate NARA Regional Administrator regarding records management assistance, including for records in or scheduled for transfer to the records center or the archival operations within the region.

## Subpart C—Inspections

### § 1239.20 When will NARA undertake an inspection?

NARA may undertake an inspection when an agency fails to address specific records management problems involving high risk to significant records. Problems may be identified through a risk assessment or through other means, such as reports in the media, Congressional inquiries, allegations of unauthorized destruction, reports issued by the GAO or an agency's Inspector General, or observations by NARA staff members. Inspections will be undertaken when other NARA program assistance efforts (see § 1239.10) have failed to mitigate situations where there is a high risk of loss of significant records, or when NARA agrees to a request from the agency head that NARA conduct an inspection to address specific significant records management issues in the agency. NARA reports to Congress and the Office of Management and Budget on inspections in accordance with 44 U.S.C. 2904.

### § 1239.22 How does NARA notify the agency of the inspection?

(a) Once NARA identifies the need to conduct an agency inspection, the Archivist of the United States sends a letter to the head of the agency. If the agency being inspected is a component of a cabinet department, the letter will be addressed to the head of the component, with a copy sent to the head of the department. NARA will also send copies to the agency's records officer. The letter will include:

(1) Notification that NARA intends to conduct an inspection, the records that will be inspected, and the issues to be addressed;

(2) A beginning date for the inspection that is no more than 30 days after the date of the letter; and

(3) A request that the agency appoint a point of contact who will assist NARA in conducting the inspection.

(b) If the agency does not respond to NARA's notification letter, NARA will use its statutory authority under 44 U.S.C. 2904(c)(8) to report the matter to the agency's congressional oversight committee and to the Office of Management and Budget.

### § 1239.24 How does NARA conduct an inspection?

(a) The NARA inspection team leader will coordinate with the agency point of contact to arrange an initial meeting with the agency. The initial meeting will address such matters as the parameters of the inspection, any surveys or other inspection instruments, the offices to be visited, and the timing of site visits.

(b) After the inspection is complete, NARA will prepare a draft inspection report and transmit it to the agency within 45 calendar days of the last site visit. The report will include:

(1) An executive summary;

(2) Background and purpose of inspection;

(3) Inspection methodology, including offices visited;

(4) Findings;

(5) Corrective actions needed and other recommendations; and

(6) Any necessary appendixes, such as summaries of each site visit or the inspection instrument.

(c) The draft report is sent to the agency for review, with a response deadline of 45 days.

(d) NARA will incorporate any necessary corrections or revisions in the final report and issue the report to the head of the agency within 45 days.

### § 1239.26 What are an agency's follow up obligations for an inspection report?

The agency must submit a plan of corrective action that specifies how the agency will address each inspection report recommendation, including a timeline for completion, and proposed progress reporting dates. The agency must submit the plan of corrective action to NARA within 60 days of transmission of the final report. NARA may take up to 60 days to review and comment on the plan. Once the plan is agreed upon by both sides, agencies must submit progress reports to NARA until all actions are completed.

## PARTS 1240–1249—[RESERVED]

**Adrienne C. Thomas,**

*Acting Archivist of the United States.*

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Friday,
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# Part III

# Federal Deposit Insurance Corporation

## 12 CFR Part 327

## Amendment of Federal Deposit Insurance Corporation Restoration Plan; Notice; Prepaid Assessments; Proposed Rule

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Federal Deposit Insurance Corporation Amended Restoration Plan

Tuesday, September 29, 2009.

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Amendment of Federal Deposit Insurance Corporation Restoration Plan.

On October 7, 2008, the FDIC established a Restoration Plan for the Deposit Insurance Fund (the DIF or the Fund), which was implemented immediately. The Restoration Plan called for the FDIC to set assessment rates such that the reserve ratio would return to 1.15 percent within five years. On February 27, 2009, the FDIC concluded that the problems facing the financial services sector and the economy at large constituted extraordinary circumstances and amended the Restoration Plan and extended the time within which the reserve ratio would return to 1.15 percent from five to seven years (Amended Restoration Plan).

In May 2009, Congress amended the statutory provision governing establishment and implementation of a Restoration Plan to allow the FDIC eight years to bring the reserve ratio back to 1.15 percent, absent extraordinary circumstances. The FDIC has concluded that the Amended Restoration Plan should be extended from seven to eight years as is allowed under current law.

Therefore, the FDIC amends the Amended Restoration Plan adopted on February 27, 2009, as follows:

1. The period of the Amended Restoration Plan is extended to eight years.

2. The FDIC will not impose any further special assessments under the final rule adopted in May 2009.

3. The FDIC plans to maintain assessment rates at their current levels through the end of 2010. The FDIC is immediately adopting a uniform 3 basis point increase in assessment rates effective January 1, 2011, to ensure that the fund returns to 1.15 percent within the Amended Restoration Plan period of eight years.

4. At least semi-annually hereafter, the FDIC will update its loss and income projections for the Fund. If necessary to return the reserve ratio to 1.15 percent, the Board will increase assessment rates prior to the end of the eight-year period, following notice-and-comment rulemaking.

5. This Amended Restoration Plan shall be implemented immediately.

By order of the Board of Directors.

Dated at Washington, DC, this 29th of September, 2009.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. E9–23802 Filed 9–30–09; 11:15 am]

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**FEDERAL DEPOSIT INSURANCE CORPORATION**

**12 CFR Part 327**

**RIN 3064–AD49**

## Prepaid Assessments

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice of proposed rulemaking and request for comment.

**SUMMARY:** Pursuant to Section 7(b) of the Federal Deposit Insurance Act, the FDIC is proposing to amend its assessment regulations to require insured institutions to prepay, on December 30, 2009, their estimated quarterly risk-based assessments for the fourth quarter of 2009, and for all of 2010, 2011, and 2012. The FDIC would begin to offset prepaid assessments on March 30, 2010, representing payment for the fourth quarter of 2009.

**DATES:** Comments must be received on or before October 28, 2009.

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

- *Agency Web Site: http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow instructions for submitting comments on the Agency Web Site.
- *E-mail: Comments@FDIC.gov.* Include the RIN number in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

*Instructions:* All submissions received must include the agency name and RIN for this rulemaking. All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html* including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Robert C. Oshinsky, Senior Financial Economist, Division of Insurance and Research, (202) 898–3813; Donna Saulnier, Manager, Assessment Policy Section, (703) 562–6167; Christopher Bellotto, Counsel, Legal Division, (202) 898–3801; Sheikha Kapoor, Senior Attorney, Legal Division, (202) 898–3960.

**SUPPLEMENTARY INFORMATION:**

## I. Background

On September 29, 2009, the FDIC adopted an Amended Restoration Plan to allow the Deposit Insurance Fund (''Fund'' or ''DIF'') to return to its statutorily mandated minimum reserve ratio of 1.15 percent within eight years. At the same time, the FDIC adopted higher risk-based assessment rates effective beginning January 1, 2011.[1]

*Liquidity Need Projections*

While the Amended Restoration Plan and assessment rates address the need to return the DIF reserve ratio to 1.15 percent, the FDIC must also consider its need for cash to pay for projected failures. At the beginning of this crisis, in June 2008, total assets held by the DIF were approximately $55 billion and consisted almost entirely of cash and marketable securities (i.e., liquid assets). As the crisis has unfolded, liquid assets of the DIF have been used to protect depositors of failed institutions and have been exchanged for less liquid claims against the assets of failed institutions. As of June 30, 2009, while total assets had increased to almost $65 billion, cash and marketable securities had fallen to about $22 billion. The pace of resolutions continues to put downward pressure on cash balances. While the less liquid assets in the DIF have value that will eventually be converted to cash when sold, the FDIC's immediate need is for more liquid assets to fund near-term failures.

The FDIC's projections of the Fund's liquidity needs take into account recent trends in resolution methodologies, such as the increasing use of loss sharing—especially for larger institutions—which reduce the FDIC's immediate cash outlays, and the anticipated pace at which assets obtained from failed institutions can be sold. If the FDIC took no action under its existing authority to increase its liquidity, the FDIC's projected liquidity needs would exceed its liquid assets on hand beginning in the first quarter of 2010. Through 2010 and 2011, liquidity needs could significantly exceed liquid assets on hand.

These projections are subject to considerable uncertainty. Liquidity needs could exceed projected amounts if, for example, conditions affecting the national or regional economies, prove more severe than currently anticipated. Higher failure rates than projected would increase liquidity needs; lower failure rates would decrease liquidity needs. The liquidity needs projections are particularly influenced by assumptions regarding the types of resolution methods that will be employed and the rate at which retained assets can be sold and converted into liquid assets.

*Strategy To Ensure Sufficient Liquidity*

The FDIC has identified the following funding alternatives to meet its immediate liquidity needs: imposing additional special assessments; requiring prepaid assessments; or borrowing from the Treasury or Federal Financing Bank (FFB). To meet the FDIC's liquidity needs, without imposing additional burdens on the industry during a period of stress, and to ensure that the deposit insurance system remains directly industry-funded, the FDIC proposes to require all institutions to prepay, on December 30, 2009, their estimated risk-based assessments for the fourth quarter of 2009, and for all of 2010, 2011, and 2012, at the same time that institutions pay their regular quarterly deposit insurance assessments for the third quarter of 2009. An institution would initially account for the prepaid assessment as a prepaid expense (an asset); the Fund would initially account for the amount collected as both an asset (cash) and an offsetting liability (deferred revenue). An institution's quarterly risk-based deposit insurance assessments thereafter would be offset by the amount prepaid until that amount is exhausted or until December 30, 2014, when any amount remaining would be returned to the institution. The FDIC estimates that total prepaid assessments would amount to approximately $45 billion.

## II. Legal Authority

The FDIC's assessment authorities are set forth in section 7 of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1817(b) and (c).[2] Generally, the FDIC Board of Directors must establish, by regulation, a risk-based assessment system for insured depository institutions. 12 U.S.C. 1817(b)(1)(A).[3] Each insured depository institution is required to pay its risk-based assessment to the Corporation in such manner and at such time or times as the

[1] Section 7(b)(3)(E) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(3)(E)); Section 7(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(2)).

[2] The requirement for imposing systemic risk assessments is set forth at Section 13(c)(4)(G) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(4)(G)).

[3] The regulations governing the FDIC's risk-based assessment system are set out at 12 CFR part 327. Those regulations give the FDIC the authority to raise assessment rates by 3 basis points without additional rulemaking. 12 CFR 327.10(c). On September 29, 2009, the FDIC Board voted to use this authority and adopted higher assessment rates effective January 1, 2011.

Board of Directors prescribes by regulation. 12 U.S.C. 1817(c)(2)(B).

In addition, section 7(b)(5) of the FDI Act, governing special assessments, empowers the Corporation to impose one or more special assessments on insured depository institutions in an amount determined by the Corporation for any purpose that the Corporation may deem necessary. 12 U.S.C. 1817(b)(5). The FDIC exercised this authority earlier this year when it promulgated a regulation imposing a special assessment on June 30, 2009, of 5 basis points of an institution's total assets minus its Tier 1 capital as of that date, not to exceed 10 basis points of the institution's risk-based assessment base as of that date.[4] Pursuant to that rulemaking, the FDIC's Board of Directors may impose up to two additional special assessments, each at up to the same rate, at the end of the third and fourth quarters of 2009, without the need for additional notice-and-comment rulemaking.

Instead of imposing any additional special assessments when the industry is in a weakened condition, the FDIC seeks to address its upcoming liquidity needs through this notice of proposed rulemaking, by requiring institutions to prepay their regular risk-based assessments for the fourth quarter of 2009, and for all of 2010, 2011, and 2012. The FDIC is relying on its section 7 authorities set forth above.

## III. Proposed Prepaid Assessments

### *A. Calculation of Prepaid Assessment Amounts*

For purposes of calculating an institution's prepaid amount, for the fourth quarter of 2009 and for all of 2010, that institution's assessment rate would be its total base assessment rate in effect on September 30, 2009.[5] That rate would be increased by 3 basis points for all of 2011 and 2012. Again for purposes of calculating the prepaid amount, an institution's third quarter 2009 assessment base would be increased quarterly at an estimated 5 percent annual growth rate through the end of 2012. Changes to data underlying an institution's September 30, 2009, assessment rate or assessment base received by the FDIC after December 24, 2009, would not affect an institution's prepayment amount.[6] [7] However, an insured depository institution may continue to request review or revision (as appropriate) of its regular risk-based assessment each quarter under sections 327.4(c) and 327.3(f) of the FDIC regulations. The FDIC proposes to collect the prepaid assessments for the fourth quarter of 2009, and for all of 2010, 2011, and 2012 on December 30, 2009, along with the regular quarterly deposit insurance assessments for the third quarter of 2009.[8]

Requiring prepaid assessments would not preclude the FDIC from changing assessment rates or from further revising the risk-based assessment system during 2009, 2010, 2011, 2012, or thereafter, pursuant to notice-and-comment rulemaking under 12 U.S.C. 1817(b)(1). Prepaid assessments made by insured depository institutions would continue to be applied against quarterly assessments as they may be so revised.

### *B. Implementing Prepaid Assessments*

The FDIC would begin to offset prepaid assessments on March 30, 2010, representing payment of the regular quarterly risk-based deposit insurance assessment for the fourth quarter of 2009. If the prepaid assessment is not exhausted by December 30, 2014, any remaining amount would be returned to the institution.

### *C. Accounting and Risk-Weight for Prepaid Assessments*

#### 1. Accounting for Prepaid Assessments

Each institution would record the entire amount of its prepaid assessment as a prepaid expense (asset) as of December 30, 2009. Notwithstanding the prepaid assessment, each institution would have to record the estimated expense for its regular risk-based assessment each calendar quarter. However, the offsetting entry to the expense for a particular quarter would depend on the method of payment for that quarter's expense. Therefore, as of September 30, 2009, each institution should have accrued an expense (a charge to earnings) for its estimated regular quarterly risk-based assessment for the third quarter of 2009, which is a quarter for which assessments would not have been prepaid, and a corresponding accrued expense payable (a liability). On December 30, 2009, each institution would pay both its assessment for the third quarter of 2009, thereby eliminating the related accrued expense payable, and the entire amount of its prepaid assessments, which it would record as a prepaid expense (asset). As of December 31, 2009, each institution would record (1) an expense (a charge to earnings) for its estimated regular quarterly risk-based assessment for the fourth quarter of 2009, and (2) an offsetting credit to the prepaid assessment asset because the fourth quarter assessment of 2009 would have been prepaid.

Each quarter thereafter, an institution would record an expense (a charge to earnings) for its regular quarterly risk-based assessment for that quarter and an offsetting credit to the prepaid assessment asset until this asset is exhausted. Once the asset is exhausted, the institution would record an expense and an accrued expense payable each quarter for its regular assessment payment, which would be paid in arrears at the end of the following quarter. If the prepaid assessment is not exhausted by December 30, 2014, any remaining amount would be returned to the institution.

#### 2. Risk Weighting of Prepaid Assessments

The federal banking agencies' risk-based capital rules[9] permit an institution to apply a zero percent risk weight to claims on U.S. Government agencies. The FDIC believes the prepaid assessment would qualify for a zero risk weight.

Upon further consideration, for the same reasons, the FDIC believes that Temporary Liquidity Guarantee Program (TLGP) nondeposit debt obligations should also receive a zero percent risk weight consistent with the risk weight proposed for prepaid assessment assets. When the FDIC determined that a depository institution may apply a 20 percent risk weight to debt covered by the TLGP, the determination referenced the 20 percent risk weight that has traditionally been applied to assets covered by the FDIC's deposit insurance. Insofar as insured deposits are fully backed by the full faith and

[4] 74 FR 25639 (May 29, 2009).

[5] An institution's risk-based assessment rate may change during a quarter when a new CAMELS rating is transmitted, or a new long-term debt-issuer rating is assigned. 12 CFR 327.4(f). For purposes of calculating an institution's prepaid assessment, the FDIC will use the institution's CAMELS ratings and, where applicable, long-term debt-issuer ratings, and the resulting assessment rate in effect on September 30, 2009.

[6] Thus, for purposes of calculating the prepaid assessment, the FDIC would take into account mergers and consolidations that are recorded in the FDIC's computer systems as of December 24, 2009. If a merger is recorded by this date, the e assessment for the acquired institution would be paid by the acquirer at the acquirer's rate.

[7] An institution's failure to file its third quarter of 2009 report of condition would not exempt it from the requirement to prepay under this rulemaking.

[8] The amount and calculation of each insured depository institution's prepaid assessment would be included on its quarterly certified statement invoice for the third quarter of 2009, which is made available on FDIC*connect* no later than 15 days prior to the December 30, 2009, payment date.

[9] 12 CFR Part 3, Appendix A (OCC); 12 CFR Parts 208 and 225, Appendix A (Federal Reserve Board); 12 CFR Part 325, Appendix A (FDIC); and 12 CFR Part 567, Appendix C (OTS).

credit of the United States government and no insured depositor has ever or will ever take a loss, the FDIC will also review reducing the risk weight on insured deposits to zero percent consistent with the treatment of other government backed obligations. The FDIC requests commenters to provide their views on the appropriateness of a different risk weight and the effect that any change would have on risk-weighted assets.

*D. Restrictions on Use of Prepaid Assessments*

Under the proposal, prepaid assessments could only be used to offset regular quarterly risk-based deposit insurance assessments. For example, prepaid assessments could not be used for the following:

- To offset FICO assessments (which are governed by section 21(f) of the Federal Home Loan Bank Act, 12 U.S.C. 1441(f));
- To offset any future special assessments under FDI Act section 7(b)(5);
- To offset any future systemic risk assessments under FDI Act section 13(c)(4)(G)(ii);
- To offset Temporary Liquidity Guarantee Program assessments under 12 C.F.R. 370;
- To pay assessments for quarters prior to the fourth quarter of 2009;
- To pay civil money penalties; or
- To offset interest owed to the FDIC for underpayment of assessments for assessment periods prior to the fourth quarter of 2009.

The FDIC would apply an institution's remaining one-time assessment credits under Part 327 subpart B before applying its prepaid assessment to its quarterly deposit insurance assessments.[10]

*E. Exemptions for Certain Insured Depository Institutions*

Under the proposed rule, the FDIC would exercise its discretion as supervisor and insurer to exempt an institution from the prepayment requirement if the FDIC determines that the prepayment would adversely affect the safety and soundness of the institution. The FDIC would consult with the institution's primary federal regulator in making this determination, but would retain the ultimate authority to exercise such discretion. The FDIC would notify any affected institution of its exemption by December 24, 2009.

In addition, an insured depository institution could apply to the FDIC for an exemption from all or part of the prepayment requirement if the prepayment would significantly impair the institution's liquidity, or would otherwise create significant hardship. The FDIC would consider exemption requests on a case-by-case basis and expects that only a few would be necessary. Based on currently available data, the FDIC does not expect the number of exemptions to significantly affect the amount of prepaid assessments that the FDIC would receive.

Written applications for exemption from the prepayment obligation would be submitted to the Director of the Division of Supervision and Consumer Protection on or before December 1, 2009, by fax or electronic mail.[11] In order for an application to be accepted and considered by the FDIC, the application must contain a full explanation of the need for the exemption and include supporting documentation, such as current financial statements and cash flow projections, a description of management's plans to correct the circumstances that caused the inability to pay the assessment, and any other relevant information that the FDIC deems appropriate.

The FDIC would notify any insured depository institution that has made such a request by December 24, 2009, of the FDIC's determination whether the institution is eligible for exemption from the prepaid assessment. Determinations of eligibility for exemption made by the FDIC would be final and not subject to further agency review.

*F. Transfer of Prepaid Assessments*

An insured depository institution would be permitted to transfer any portion of its prepaid assessment to another insured depository institution, provided that the institutions notify the FDIC's Division of Finance and submit a written agreement signed by the legal representatives of both institutions. In their submission to the FDIC, the institutions must include documentation that each representative has the legal authority to bind the institution. Adjustments to the institutions' prepaid assessments would be made by the FDIC on the next assessment invoice that is made available via FDICconnect at least 10 days after the FDIC receives the written agreement. This aspect of the proposal is similar to the procedural requirements associated with the transfer of the one-time assessment credit provided by the Federal Deposit Insurance Reform Act of 2005, Public Law 109–171, 120 Stat. 9, and implemented by regulation. See 12 CFR 327.34(c).

In the event that an insured depository institution merged with, or consolidated into, another insured depository institution, the surviving or resulting institution would be entitled to use any unused portion of the disappearing institution's prepaid assessment not otherwise transferred.[12]

*G. Disposition in the Event of Failure or Termination of Insured Status*

In the event that an insured depository institution's insured status terminates, any amount of its prepaid assessment remaining (other than any amounts needed to satisfy assessment obligations not yet offset against the prepaid amount) would be refunded to the institution. In the event of failure of an insured depository institution, any amount of its prepaid assessment remaining (other than any amounts needed to satisfy assessment obligations not yet offset against the prepaid amount) would be refunded to the institution's receiver.[13]

## IV. Alternatives

*A. Description of Alternatives*

The FDIC has considered other alternative potential funding sources for purposes of restoring liquidity to the DIF. These alternatives include imposing additional special assessments or borrowing from Treasury or the FFB.[14] [15] These alternatives are set forth in some detail below.

1. Imposing Additional Special Assessments

The FDIC could meet its upcoming liquidity needs by imposing additional special assessments. To acquire enough cash to meet future liquidity needs, special assessments would be required in a much greater amount than the two special assessments provided for in the

[10] One-time assessment credits would not reduce an institution's prepaid assessment.

[11] The fax number and electronic mail address will be provided in the final rule.

[12] As noted above, the parties to a transfer agreement must provide notice to the FDIC.

[13] See 12 CFR 327.6 (2009).

[14] The FDIC's borrowings under 12 U.S.C. 1824 are subject to the maximum obligation limit set forth in section 15(c)(5), 12 U.S.C. 1825(c)(5).

[15] The FDIC also has the authority to borrow from insured depository institutions under section 14(d) of the FDI Act and from Federal Home Loan Banks under Section 14(e) of the FDI Act. 12 U.S.C. 1824(d) and (e). However, prepaying assessments would be simpler than borrowing from these sources because the assessment system already exists and requires only minor modifications to accommodate prepayment of assessments. Furthermore, borrowing from the industry would be voluntary and would not ensure that the DIF collects enough cash to fund future failures.

May 2009 final rule. Any special assessment would require insured depository institutions to expense immediately the amount of the assessment at the time imposed. The FDIC specifically seeks comment as to whether it should impose additional special assessments in lieu of mandatory prepaid assessments.

2. Borrowing From Treasury

Under section 14(a) of the FDI Act, the FDIC may borrow up to $100 billion from the Treasury Department, subject to approval by the Secretary of the Treasury. The statute also provides for a temporary increase in borrowing authority for up to $500 billion, which expires December 31, 2010. 12 U.S.C. 1824(a). This temporary authority would require the concurrence of the FDIC's Board, the Federal Reserve Board, and the Secretary of the Treasury in consultation with the President. Regardless of the amount actually borrowed under section 14(a), the industry must repay such borrowings through assessments (possibly including special assessments) pursuant to a repayment schedule agreed to by the Secretary and the FDIC after consultation with the Financial Services Committee of the House of Representatives and the Committee on Banking, Housing and Urban Affairs of the Senate.

3. Borrowing From the Federal Financing Bank

Section 14(b) of the FDI Act permits the FDIC to obtain financing from the FFB. 12 U.S.C. 1824(b). Lending documents in place between the FDIC and the FFB have a current stated limit of $100 billion and do not allow the FDIC to borrow until the FDIC's cash balance is below $500 million. The industry also must repay such borrowings through assessments (possibly including special assessments).

*B. Advantages of FDIC Proposal*

The FDIC is proposing prepaid assessments as a means of collecting enough cash to meet upcoming liquidity needs to fund future resolutions. The FDIC believes that this proposal has significant advantages compared to additional or higher special assessments. Additional or higher special assessments could severely reduce industry earnings and capital when the industry is under stress. In addition, the FDIC believes that most of the prepaid assessment would be drawn from available cash and excess reserves, which should not significantly affect depository institutions' current lending activities.

Requiring that institutions prepay assessments is also preferable to borrowing from the U.S. Treasury or the FFB. Prepayment of assessments ensures that the deposit insurance system remains directly industry-funded. Additionally, unlike borrowing from the Treasury or the FFB, requiring prepaid assessments would not count toward the public debt limit. Furthermore, collecting prepaid assessments would be the least costly option to the Fund for raising liquidity, as there would be no interest costs.

The FDIC has carefully weighed the available options in reaching this proposal to require prepaid assessments. It is the FDIC's view that the proposal reflects an appropriate balancing of the goal of keeping the DIF directly industry-funded, while recognizing the near-term continued weakness in overall earnings and capital of insured depository institutions. Nonetheless, the FDIC seeks comments as to whether it is striking the appropriate balance or whether it should reconsider some of the alternatives.

## V. Request for Comments

The FDIC seeks comment on every aspect of this proposed rulemaking. In particular, the FDIC seeks comment on the issues set out below, including the reasoning for their positions.

1. As an alternative to prepaid assessments, should the FDIC meet its liquidity needs by imposing one or more special assessments?

2. Should the FDIC pursue one or more of the other alternatives to the prepaid assessments, such as borrowing from Treasury or the FFB?

3. Should prepaying assessments be voluntary rather than mandatory as currently contemplated, and, if so, how would the FDIC ensure that it receives sufficient cash to fund resolutions of failed insured depository institutions? (If prepayment of assessments were optional, the FDIC believes that it would affect the accounting treatment as a prepaid expense.)

4. For purposes of calculating the prepaid assessment, should the FDIC estimate the growth in the assessment base at a rate other than 5 percent for 2009, 2010, 2011 and 2012? Should the FDIC use different assessment rate assumptions than those proposed?

5. As proposed, the FDIC would require prepayment of estimated assessments for the fourth quarter of 2009 and for all of 2010, 2011 and 2012 based on its current liquidity needs projections. Should the FDIC require prepayment of estimated assessments over a different period or in installments?

6. Should the FDIC's Amended Restoration Plan incorporate a provision requiring a special assessment or a temporarily higher assessment rate schedule that brings the reserve ratio back to a positive level within a specified time frame (one year or less) from January 1, 2011, when the FDIC projects industry earnings will have recovered?

## VI. Effective Date

The FDIC proposes that a final rule following this proposed rule would become effective immediately upon adoption.

## VII. Regulatory Analysis and Procedure

*A. Solicitation of Comments on Use of Plain Language*

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC invites your comments on how to make this proposal easier to understand. For example:

- Has the FDIC organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be more clearly stated?
- Does the proposed regulation contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?
- What else could the FDIC do to make the regulation easier to understand?

*B. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) requires that each federal agency either certify that a proposed rule would not, if adopted in final form, have a significant economic impact on a substantial number of small entities or prepare an initial regulatory flexibility analysis of the proposal and publish the analysis for comment.[16] Certain types of rules, such as rules of particular applicability relating to rates or corporate or financial structures, or practices relating to such rates or structures, are expressly excluded from

[16] See 5 U.S.C. 603, 604 and 605.

the definition of ''rule'' for purposes of the RFA.[17] The proposed rule relates directly to the rates imposed on insured depository institutions for deposit insurance. Nonetheless, the FDIC is voluntarily undertaking an initial regulatory flexibility analysis of the proposal and seeking comment on it.

As of June 30, 2009, of the 8195 insured commercial banks and savings institutions, there were 4597 small insured depository institutions as that term is defined for purposes of the RFA (i.e., those with $175 million or less in assets).[18]

The proposal has no significant effect on capital and earnings, although there could be a small loss of interest earned by some small institutions. In addition, the proposal could affect the liquidity of insured depository institutions, including small institutions. However, for 95.8 percent of small institutions, the prepayment would be less than 25 percent of their cash and cash equivalent assets. Moreover, the proposal includes a mechanism for exempting those institutions that cannot prepay their assessments without posing safety and soundness concerns or imposing undue hardship. Finally, the effect on liquidity is further mitigated by the institutions' ability to transfer their prepaid assessments. The FDIC invites comment on this analysis.

*C. Paperwork Reduction Act*

No collections of information pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in the proposed rule.

*D. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families*

The FDIC has determined that the proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Public Law 105–277, 112 Stat. 2681).

**List of Subjects in 12 CFR Part 327**

Bank deposit insurance, Banks, Banking, Savings associations.

For the reasons set forth in the preamble, the FDIC proposes to amend chapter III of title 12 of the Code of Federal Regulations as follows:

[17] 5 U.S.C. 601.

[18] Throughout this section (unlike the rest of the notice of proposed rulemaking), a ''small institution'' refers to an institution with assets of $175 million or less.

## PART 327—ASSESSMENTS

1. The authority citation for part 327 continues to read as follows:

**Authority:** 12 U.S.C. 1441, 1813, 1815, 1817–1819, 1821; Sec. 2101–2109, Public Law 109–171, 120 Stat. 9–21, and Sec. 3, Public Law 109–173, 119 Stat. 3605.

2. In part 327 add new § 327.12 to Subpart A to read as follows:

**§ 327.12 Prepayment of quarterly risk-based assessments.**

(a) *Prepaid assessment.* On December 30, 2009, each insured depository institution shall prepay to the FDIC a prepaid assessment, which shall equal its estimated quarterly risk-based assessments aggregated for the fourth quarter of 2009, and all of 2010, 2011, and 2012 (the ''prepayment period'').

(b) *Calculation of prepaid assessment*—(1) *Prepaid assessment.*

(i) An institution's estimated prepaid assessment for the fourth quarter of 2009 and for all of 2010 shall be determined by multiplying its total base assessment rate for the third quarter of 2009, calculated using the institution's CAMELS rating and, where applicable, long-term debt issuer rating(s), in effect on September 30, 2009, times the corresponding assessment base for each quarter, determined pursuant to paragraph (b)(2) of this section.

(ii) An institution's estimated prepaid assessment for all of 2011 and 2012 shall be determined by multiplying the sum of its total base assessment rate for the third quarter of 2009, calculated using the institution's CAMELS rating and, where applicable, long-term debt issuer rating(s), in effect on September 30, 2009, plus 3 basis points, times the corresponding assessment base for each quarter, determined pursuant to paragraph (b)(2) of this section.

(2) *Prepaid assessment base.* For each quarter of the prepayment period, an institution's prepaid assessment base shall be calculated by increasing its third quarter 2009 assessment base at an annual rate of 5 percent.

(3) *Finality of prepaid assessment amount.* Changes to data underlying an institution's prepaid assessment rate or base received by the FDIC after December 24, 2009, shall not affect an institution's prepayment amount.. The September 30, 2009 assessment rate and assessment base used in paragraphs (b)(1) and (2) of this section shall be determined based upon data in the FDIC's computer systems as of December 24, 2009. Changes to underlying data after that date, whether by amendment to a report of condition or otherwise, shall not affect the amount of an institution's prepaid assessment.

(4) *Prepaid assessment rates for mergers and consolidations.* For mergers and consolidations recorded in the FDIC's computer systems no later than December 24, 2009, the assessment rate used to determine an acquired institution's prepaid assessment under paragraphs (b)(1) and (2) of this section shall be the assessment rate of the acquiring institution.

(c) *Invoicing of prepaid assessment.* The FDIC shall advise each insured depository institution of the amount and calculation of its prepaid assessment amount at the same time the FDIC provides the institution's quarterly certified statement invoice for the third quarter of 2009. However, the amount will be updated through December 24, 2009, based upon any changes to data in the FDIC's computer systems used to calculate an institution's September 30, 2009, assessment rate and assessment base. Changes to data underlying an institution's prepaid assessment rate or base received by the FDIC after December 24, 2009, shall not affect an institution's prepayment amount.

(d) *Payment of prepaid assessment.* Each insured depository institution shall pay to the Corporation the amount of its prepaid assessment as provided under paragraph (a) of this section in compliance with and subject to the provisions of §§ 327.3 and 327.7 of subpart A. The FDIC will not apply an institution's one-time assessment credit under subpart B of this part 327 to reduce that institution's prepaid assessment.

(e) *Use of prepaid assessments.* Prepaid assessments shall only be used to offset regular quarterly risk-based deposit insurance assessments payable under this subpart A. The FDIC will begin offsetting regular quarterly risk-based deposit insurance assessments against prepaid assessments on March 30, 2010. The FDIC will continue to make such offsets until the earlier of the exhaustion of the institution's prepaid assessment or December 30, 2014. Any prepaid assessment remaining after December 30, 2014, shall be promptly returned to the institution. The FDIC will apply an institution's remaining one-time assessment credits under Part 327 subpart B to its quarterly deposit insurance assessments before applying its prepaid assessments.

(f) *Transfers.* An insured depository institution may enter into an agreement to transfer any portion of that institution's prepaid assessment to another insured depository institution, provided that the parties to the agreement notify the FDIC's Division of Finance and submit a written agreement, signed by legal

representatives of both institutions. The parties must include documentation stating that each representative has the legal authority to bind the institution. The adjustment to the amount of the prepaid assessment will be made in the next assessment invoice that is sent at least 10 days after the FDIC's receipt of the written agreement. In the event that an insured depository institution merges with, or consolidates into, another insured depository institution, the surviving or resulting institution will be entitled to use any unused portion of the acquired institution's prepaid assessment not otherwise transferred.

(g) *Exemptions*—(1) *Exemption without application.* The FDIC, after consultation with the primary Federal regulator, will exercise its discretion as supervisor and insurer to exempt an institution from the prepayment requirement under paragraph (a) of this section if the FDIC determines that the prepayment would adversely affect the safety and soundness of that institution. No application is required for this review and the FDIC will notify any affected institutions of its exemption by December 24, 2009.

(2) *Application for exemptions.* An institution may also apply to the FDIC for an exemption from all or part of the prepayment requirement under paragraph (a) of this section if the prepayment would significantly impair the institution's liquidity, or would otherwise create significant hardship. Written applications for exemption from the prepayment obligation must be submitted to the Director of the Division of Supervision and Consumer Protection on or before December 1, 2009, by fax ((202) XXX–XXXX) or electronic mail (XXX@XXX). The application must contain a full explanation of the need for the exemption and include supporting documentation, such as current financial statements and cash flow projections, a description of management's plans to correct the circumstances that caused the inability to pay the assessment, and any other relevant information, including any information the FDIC may request. The FDIC will notify the insured depository institution of its determination by December 24, 2009; that determination will be final and not subject to further agency review.

By order of the Board of Directors.

Dated at Washington, DC, this 29th of September, 2009.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. E9–23803 Filed 9–30–09; 11:15 am]

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**H.R. 1243/P.L. 111–65**

To provide for the award of a gold medal on behalf of Congress to Arnold Palmer in recognition of his service to the Nation in promoting excellence and good sportsmanship in golf. (Sept. 30, 2009; 123 Stat. 2003)

**H.R. 3614/P.L. 111–66**

To provide for an additional temporary extension of programs under the Small Business Act and the Small Business Investment Act of 1958, and for other purposes. (Sept. 30, 2009; 123 Stat. 2005)

**S. 1677/P.L. 111–67**

Defense Production Act Reauthorization of 2009 (Sept. 30, 2009; 123 Stat. 2006)

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