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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 900

[Docket No. AMS–FV–08–0061; FV08–900–1 FR]

Amendment of General Regulations for Fruit, Vegetable and Nut Marketing Agreements and Marketing Orders; Addition of Supplemental Rules of Practice for Amendatory Formal Rulemaking Proceedings

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the general regulations for federal fruit, vegetable and nut marketing agreements and marketing orders by establishing supplemental rules of practice for amendatory formal rulemaking proceedings in accordance with section 1504 of the Food, Conservation and Energy Act of 2008 (2008 Farm Bill). The supplemental rules of practice add procedures to the rulemaking process relating to amendments to fruit, vegetable and nut marketing agreements and marketing orders; authorize the Department of Agriculture (USDA) to impose assessments on affected industries to supplement funds necessary to improve or expedite an amendatory hearing process; and authorize the use of informal rulemaking (5 U.S.C. 553) to amend such agreements and orders. Section 1504 of the 2008 Farm Bill also applies to amendments of federal milk marketing agreements and orders. The supplemental rules of practice for federal milk marketing agreements and orders are addressed in a separate rulemaking document.

DATES: *Effective Date:* August 21, 2008.

FOR FURTHER INFORMATION CONTACT: Kathleen Finn, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Kathy.Finn@USDA.gov.*

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

SUPPLEMENTARY INFORMATION: This final rule is issued under the general regulations for federal marketing agreements and orders (7 CFR part 900), effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Act provides authority for federal marketing agreement and order programs for various fruits, vegetables and nuts. Marketing agreements and orders can contain provisions that: Maintain the high quality of produce that is on the market; standardize packages and containers; regulate the flow of product to market; establish reserve pools for storable commodities; and authorize production research, marketing research and development, and advertising.

Background

Currently, the provisions of 556 and 557 of Title 5 of the United States Code (formal rulemaking; 5 U.S.C. 556–557) are followed for initiating, as well as amending federal marketing agreements and orders. Section 557 requires that the rulemaking proceeding, including agency decisions, be conducted on the record.

Following the provisions of 5 U.S.C. 556–557 and part 900 of the general regulations, which includes the rules of practice for formal rulemaking, a request for a hearing on the proposal to initiate or amend an agreement or order is sent to the Administrator of the Agricultural Marketing Service (AMS). When an amendment is requested, a request typically comes from a marketing agreement or order committee or board and includes a statement regarding the degree of industry support for the proposal and the conditions the program or amendment to the program are intended to address. AMS reviews the request and supporting documents, as well as any alternative proposals from interested parties and, if appropriate, a notice of public hearing is issued and published in the **Federal Register**.

A USDA Administrative Law Judge presides at a public hearing and a record is compiled of the testimony of proponents, opponents, and other interested persons. Proposed findings and conclusions, and written arguments or briefs may be filed with USDA after the hearing.

A recommended decision is issued by AMS based on hearing evidence. Persons are allowed to file exceptions to the recommended decision for a set period of time.

After consideration of all exceptions to the recommended decision, USDA prepares a Secretary's (final) decision. If the decision is made to issue or amend a marketing order, a grower referendum to implement a marketing order is held on the proposal. While producers are voting, copies of a companion marketing agreement are sent to handlers for their signature, when such an agreement exists. Through their signatures on the agreement, handlers indicate their intention to abide by the terms of the program. For a stand-alone marketing agreement, a handler sign-up would be conducted in lieu of a producer referendum for promulgation or amendment of a marketing agreement.

Under a proposed marketing order or an amendment to the order, if at least two-thirds of the growers voting by number or by volume approve the proposal, a marketing order or amendment is issued, which is binding on handlers in the designated production area. For marketing agreements, only the signatory handlers are bound by the terms of the agreement.

This process typically takes 18 to 24 months to complete, depending on the complexity of the proposal and the size of the industry, and is applicable to both proposed programs and amendments to programs.

Marketing orders are locally administered by committees or boards made up of growers and/or handlers, and often a member of the public. Marketing agreements are locally

administered by a committee or board made up of signatories to the marketing agreement. Committees and boards have regularly scheduled meetings to discuss industry conditions that the agreement or order can address, as well as to conduct administrative matters, such as committee or board nominations, and development of budgets and necessary assessments to administer the programs. Also, it is during such regularly scheduled meetings that amendments to a marketing agreement or order are considered. As discussed subsequently, it is at this time a pre-hearing information session typically would be conducted.

Section 608c(17) of the Act provides that the provisions for promulgating a marketing agreement or order are also applicable to amendments to agreements or orders. Industries regulated under marketing agreements and orders may find the need to amend the agreements or orders if changes in the market or marketing problems experienced in the industries warrant such revision. In other instances, amendments can also be made to clarify and update order provisions.

When needed, the committees and boards can recommend marketing agreement and order implementing regulations, such as seasonal regulations to establish grade and size requirements or the establishment of assessment rates. Regulations must be based on the authority in the agreement or order. These regulations are implemented through informal rulemaking procedures, as provided under § 553 of Title 5 of the United States Code (5 U.S.C. 553). This section of Title 5 provides for notice and comment rulemaking. It requires, in part, that notices of proposed rulemaking be published in the **Federal Register**, and that interested parties be provided an opportunity to comment on the proposal. After consideration of the relevant matter presented, a final rule is issued. Typically, informal rulemaking is accomplished within 90 days.

There are currently 32 active fruit, vegetable and nut marketing orders, many with companion marketing agreements. Presently, there are no stand-alone marketing agreement programs.

The 2008 Farm Bill and Supplemental Rules of Practice To Amend Marketing Agreements and Orders

Section 1504 of the 2008 Farm Bill (H.R. 6124, Pub. L. 110–246) made changes to section 18c(17) of the Act, which, in turn, requires the addition of supplemental rules of practice to 7 CFR part 900. For amendments to fruit, vegetable and nut marketing agreements and orders, the supplemental rules of practice: add certain rulemaking procedures for amending marketing agreements and orders; authorize USDA to impose assessments on affected industries to supplement funds necessary to improve or expedite the amendatory hearing process; and authorize the use of informal rulemaking (5 U.S.C 553) to amend such agreements and orders, when determined appropriate.

Sections 900.1 through 900.18 of the general regulations of part 900 set forth the rules of practice and procedure governing proceedings to formulate marketing agreements and orders. As stated previously, the Act provides that provisions for initiating marketing agreements and orders are also applicable to amendments to agreements and orders. This final rule amends part 900 by adding supplemental rules of practice regarding amendments to fruit, vegetable and nut marketing agreements and orders to conform to the 2008 Farm Bill. This rule will add new sections 900.36 through 900.43.

A new § 900.36 is added to include standard language to a new subpart stating that words in the singular form will be deemed to import the plural, and vice versa, as the case may demand.

A new § 900.37 is added to set forth that the definitions in the Act and in § 900.2 of this part apply to these supplemental rules of practice.

Pre-Hearing Information Session

A new § 900.38 is added to provide that a pre-hearing information session may be held either before or after a submission to amend an agreement or order is submitted to USDA. The 2008 Farm Bill provides for the establishment of pre-hearing information session specifications. Pre-hearing information sessions may be conducted when an industry is considering amending a marketing agreement or order. Such sessions are intended to assist in the conduct of the overall amendatory formal rulemaking process. The sessions may be held by a marketing agreement or order committee or board. A pre-hearing information session may also be held by the Secretary. The sessions may be held either prior or subsequent to a submission of a proposal under § 900.3 of this part.

Currently, fruit, vegetable and nut marketing order committees and boards, with USDA representatives in attendance, conduct regularly scheduled meetings to discuss changes and challenges facing the industry and ways amendments to marketing orders can address those issues. There are currently no stand-alone marketing agreement programs under section 608b of the Act. The meetings are also conducted to discuss administrative matters, such as annual budgets and necessary assessments. When a committee or board considers amendments to a marketing order, there is usually a subcommittee selected to consider the benefit of any amendments. The subcommittee meets in a public forum to formulate proposed amendments and presents such proposed amendments to the full committee or board. The full committee or board votes on whether to pursue amendment of the order, also in a forum open to the public.

Further, any proposals received by entities not directly associated with a committee or board may be referred by the Secretary to the applicable committee or board for their consideration.

Proposal Submission Requirements

A new § 900.39 is added to specify submission requirements for proposals to amend marketing agreements and orders. Currently, Fruit and Vegetable Programs, AMS requests that any proposal to initiate a new marketing agreement or order or to amend a marketing agreement or order include detailed explanations of: the purpose of the proposal; the problem the proposal is designed to address; the current requirements or industry practices relative to the proposal; the expected impacts on producers, handlers and consumers; how the proposal would tend to improve returns to producers; the expected effects on small businesses; whether the proposal would increase or decrease costs to producers, handlers, committees and/or USDA; how the proposal would be implemented; and how compliance would be effected with the proposal.

USDA has determined over time that a proposal that includes a discussion of the above topics assists in the implementation of a new marketing agreement or order and amendments to marketing agreements or orders. To effectuate a new marketing agreement or order or an amendment to an established agreement or order, USDA is required to make a ruling on certain findings, conclusions or exceptions relating to such proposals. The proposal submission requirement in the supplemental rules of practice will assist industries in preparation of their proposals for amendments to a current marketing agreement or order.

Written Testimony and Data Request Requirements

A new § 900.40 is added to provide requirements for written testimony submitted as an exhibit at an amendatory fruit, vegetable or nut rulemaking hearing and requirements for USDA data requests to be used at such a hearing.

Currently, witnesses at hearings regarding proposed new or amended marketing agreements or orders are not required to supply written testimony prior to testifying. However, any documentation supplied during the hearing must be submitted in quadruplicate when prepared as an exhibit under current section 900.8(d)(4). Written testimony and exhibits received prior to, or at the time of, the testimony are useful for USDA participants whose role includes gathering sufficient information to make a determination as to the merits of a proposal.

However, it is not always practical to have written testimony. For example, a witness may want to testify on previous testimony by one or more witnesses. This provision should not impede witness testimony in this regard. In order to assist USDA participants, the new § 900.40 requires that testimony prepared as an exhibit and any other exhibits be made available to USDA on the day of appearance at the hearing, to the extent practicable.

The 2008 Farm Bill provides that the supplemental rules of practice establish requirements for requests for preparation of USDA data prior to a hearing. Currently, in most hearings, USDA assembles appropriate economic data and a USDA economist testifies to the sources and relevance of the data. Rarely, if ever, has data been requested of USDA from the industry prior to an amendatory hearing for fruit, vegetable and nut marketing agreements and orders. However, in the event such requests do occur, § 900.40 sets forth that any request for preparation of USDA data should be made at least 10 days before the beginning of the hearing. This period of time is reasonable considering the need to prepare such data.

Electronic Document Submission

A new § 900.41 is added to allow for the submission of electronic documents in proceedings to amend marketing agreements and orders. The current rules of practice in part 900 require that four copies of all documents related to proposed new and amended marketing agreements and orders be filed with the hearing clerk. With new technologies currently available, most documents in these proceedings are also filed electronically with AMS. The 2008 Farm Bill requires that electronic submission standards be established. Therefore, § 900.41 sets forth that when possible, all documents filed with the hearing clerk shall also be submitted electronically to the Fruit and Vegetable Programs, AMS and reference the docket number of the proceeding. The provision sets forth that instructions for electronic filing with AMS will be provided in each appropriate **Federal Register** publication regarding the proceeding. This will simplify electronic filing for all interested parties.

Industry Assessments

The 2008 Farm Bill provides for industry assessments. A new § 900.42 is added to allow USDA to assess handlers for costs associated with proceedings to amend fruit, vegetable and nut marketing agreements and orders, if it is determined necessary to improve or expedite the rulemaking proceeding. Currently, administrative costs associated with formal rulemaking are paid for by AMS. These costs include hiring a court reporter, a hearing examiner, legal counsel, and associated travel costs. Some of these costs could increase if it was determined necessary to improve or expedite the proceeding. For example, court reporting costs could increase in order to receive the transcripts at an earlier date than normal.

Section 900.42 states that if USDA determines it is necessary to improve or expedite an amendment proceeding, USDA may impose an assessment on a marketing agreement's or order's handlers affected by an amendment proceeding to supplement funds for costs associated with such, including, but not limited to, court reporters, hearing examiners, legal counsel, hearing venue and associated travel for USDA officials. The assessments would only be incurred by handlers regulated by the program being amended.

Use of Informal Rulemaking

A new § 900.43 is added to allow the use of informal rulemaking procedures (5 U.S.C. 553) to amend fruit, vegetable and nut marketing agreements and orders and to set forth parameters that USDA will consider when determining whether this process is appropriate. Prior to the 2008 Farm Bill, the Act required that all proposals to initiate a new or amend a current marketing agreement or order were to be conducted through formal rulemaking under §§ 556 and 557 of title 5 of the United States Code. However, the 2008 Farm Bill modified the authority as to how amendments to marketing agreements and orders can be conducted. It provides that authority under § 553 of the United States Code covering informal rulemaking procedures can be an option for amending a fruit, vegetable and nut agreement or order.

Currently, informal rulemaking procedures are used to establish implementing regulations authorized by marketing agreements and orders. The timeframe for completion of informal rulemaking actions is usually about 90 days, as opposed to formal rulemaking that, because of the procedural requirements including holding a public hearing and grower referenda, generally has a timeframe of 18 to 24 months.

In accordance with the 2008 Farm Bill, section 900.43 will allow the option of using informal rulemaking to amend fruit, vegetable and nut marketing agreements and orders. In considering whether informal rulemaking will be used to amend a fruit, vegetable or nut marketing agreement or order, USDA will consider: The nature and complexity of the proposal; the potential regulatory and economic impacts on affected entities; and any other relevant matters.

Final Action

In accordance with the 2008 Farm Bill, this final rule establishes supplemental rules of practice regarding amendments to fruit, vegetable and nut marketing agreements and orders.

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

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

Subtitle F of Title I of the 2008 Farm Bill provides that the promulgation of these regulations shall be made without regard to the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Statement of Policy of the Secretary of Agriculture, effective July 24, 1971 (36 FR 13804), and the notice and comment provisions

of section 553 of Title 5, United States Code.

This rule relates to internal agency management. Therefore, this rule is exempt from the provisions of Executive Orders 12866 and 12988, and for this same reason the notice of proposed rulemaking and opportunity for comment are also not required, as this rule may be effective less than 30 days after publication in the **Federal Register**. In addition, under 5 U.S.C. 804, this rule is not subject to congressional review under the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121). Finally, this rule is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA). Therefore, this rule is exempt from the requirements of the RFA.

It is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 900

Administrative practice and procedures, Freedom of information, Fruit, vegetable, and nut marketing agreements and orders, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 900 is amended as follows:

PART 900—GENERAL REGULATIONS

■ Accordingly, in part 900, a new subpart is added to read as follows:

Subpart—Supplemental Rules of Practice Governing Proceedings To Amend Fruit, Vegetable and Nut Marketing Agreements and Marketing Orders

Sec.

900.36 Words in the singular form.
900.37 Definitions.
900.38 Pre-hearing information sessions.
900.39 Proposal submission requirements.
900.40 Written testimony and USDA data request requirements.
900.41 Electronic document submission standards.
900.42 Industry assessments.
900.43 Use of informal rulemaking.

Authority: 7 U.S.C. 608c(17) and 610.

§ 900.36 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 900.37 Definitions.

As used in this subpart, the terms as defined in the Act and in § 900.2 of this part shall apply.

§ 900.38 Pre-hearing information sessions.

A pre-hearing information session concerning a proposal to amend a fruit, vegetable or nut marketing agreement or order may be held either prior or subsequent to submission of a proposal under § 900.3 of this part. Such sessions may be held by a marketing agreement or order committee or board or by the Secretary.

§ 900.39 Proposal submission requirements.

When a person other than the Secretary makes a proposal to amend a fruit, vegetable or nut marketing agreement or order under § 900.3 of this part, the proposal shall address the following, to the extent applicable:

(a) The purpose of the proposal;

(b) The problem the proposal is designed to address with explanation and quantification;

(c) The current requirements or industry practices relative to the proposal;

(d) The expected impact on the industry, including producers, handlers, and on consumers;

(e) In the case of marketing orders, an explanation, including supporting information and data, of how the proposal would tend to improve returns to producers, and in the case of marketing agreements, how the proposal impacts the signatories to the agreement;

(f) The expected effects on small businesses as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612);

(g) A description and quantification of whether the proposal would increase or decrease costs to producers, handlers, or others in the marketing chain, and to consumers, marketing order committees and boards and/or the Secretary;

(h) A description of how the proposal would be implemented; and

(i) A description, including quantification, of how compliance with the proposal would be effected.

§ 900.40 Written testimony and USDA data request requirements.

In addition to the provisions of § 900.8(b)(4), witnesses at an amendatory fruit, vegetable or nut formal rulemaking hearing shall make, to the extent practicable, at least 8 copies of their testimony, if prepared as an exhibit, and any other exhibits available to USDA before testimony is given on the day of appearance at the hearing. Industry requests for preparation of USDA data for a rulemaking hearing should be made at least 10 days prior to the beginning of the hearing.

§ 900.41 Electronic document submission standards.

To the extent practicable, all documents filed with the hearing clerk in a proceeding to amend a fruit, vegetable or nut marketing agreement or order shall also be submitted electronically to the Agricultural Marketing Service, Fruit and Vegetable Programs, USDA. All documents should reference the docket number of the proceeding. Instructions for electronic filing shall be provided at the amendatory formal rulemaking hearing and in each **Federal Register** publication regarding the amendatory proceeding.

§ 900.42 Industry assessments.

If the Secretary determines it is necessary to improve or expedite an amendatory fruit, vegetable or nut formal rulemaking proceeding, costs associated with improving or expediting the proceeding may be charged to the committees or boards. Such costs shall be paid with assessments from the handlers regulated under the marketing order to be amended or on signatories to the marketing agreement subject to amendment. Such assessments may supplement funds for costs associated with, but not limited to, court reporters, hearing examiners, legal counsel, hearing venue and associated travel for USDA officials.

§ 900.43 Use of informal rulemaking.

(a) Notwithstanding the provisions of §§ 900.1 through 900.18, and 900.36 through 900.42 of this part, the Secretary may determine that informal rulemaking procedures under § 553 of Title 5, United States Code be used to amend fruit, vegetable or nut marketing agreements and marketing orders. In making this determination, consideration shall be given to:

(1) The nature and complexity of the proposal;

(2) The potential regulatory and economic impacts on affected entities; and

(3) Any other relevant matters.

Dated: August 18, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–19399 Filed 8–19–08; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 730, 744 and 756

[Docket No. 0612243150–8535–02]

RIN 0694–AD82

Authorization To Impose License Requirements for Exports or Reexports to Entities Acting Contrary to the National Security or Foreign Policy Interests of the United States

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Entity List (Supplement No. 4 to Part 744 of the Export Administration Regulations (EAR)) provides notice to the public that certain exports and reexports to parties identified on the Entity List require a license from the Bureau of Industry and Security (BIS) and that availability of License Exceptions in such transactions is limited. This rule expands the scope of reasons for adding parties to the Entity List. This rule also amends the EAR to state explicitly that a party listed on the Entity List has a right to request that its listing be removed or modified and sets procedures for addressing such requests.

DATES: This rule is effective August 21, 2008.

FOR FURTHER INFORMATION CONTACT: Karen Nies-Vogel, Chair, End-User Review Committee, Office of the Assistant Secretary, Bureau of Industry and Security, *kniesv@bis.doc.gov,* (t) 202–482–3811, (f) 202–482–3911.

SUPPLEMENTARY INFORMATION:

Background

The Entity List (Supplement No. 4 to Part 744 of the EAR) provides notice to the public of the identity of certain parties whose presence as a recipient of items subject to the EAR can result in the imposition of a license requirement in an export or reexport transaction.

BIS published a proposed rule (72 FR 31005, June 5, 2007) to authorize adding to the Entity List entities that BIS has reasonable cause to believe, based on specific and articulable facts, have been, are or pose a risk of being involved in activities that are contrary to the national security or foreign policy interests of the United States or those acting on behalf of such entities. This new authorization would not be used to add to the Entity List entities that are U.S. persons (as defined in § 772.1 of the EAR). The proposed rule also provided a procedure for entities listed on the Entity List to request removal or modification of their entries. After review of the comments on the proposed rule, BIS is publishing this final rule.

Reasons for This Rule

This rule will allow BIS to focus its export control efforts more closely on problematic recipients of items that are subject to the EAR, where those recipients do not meet the criteria set forth in §§ 744.2, 744.3, 744.4, 744.6, 744.10, 744.17, 744.20 or 744.21 for addition to the Entity List. Pursuant to this rule, the U.S. government will be able to conduct prior review and make appropriate licensing decisions regarding proposed exports and reexports to such recipients to the degree necessary to protect United States national security or foreign policy interests. The government will be able to tailor license requirements and availability of license exceptions for exports and reexports to parties that have taken, are taking, or pose a significant risk of taking actions that are contrary to U.S. national security or foreign policy interests without imposing additional license requirements that apply broadly to entire destinations or items. BIS believes that such targeted application of license requirements provides the flexibility to prevent items subject to the EAR from being used in ways that are inimical to the interests of the United States, with minimal costs to and disruption of legitimate trade. As export controls continue to focus not just on countries, but also on individual customers or entities, BIS believes it is important to provide more information to the public about entities of concern. Implementation of this rule will provide additional information to enhance the ability of members of the public to screen potential recipients of items subject to the EAR.

In addition, this rule will simplify the EAR by reducing the need to issue general orders that impose license requirements on specific parties, thereby reducing the number of EAR provisions that the public would be required to review to determine license requirements under the EAR.

Summary of the Provisions of This Rule

This rule authorizes imposing foreign policy export and reexport license requirements, limiting the availability of license exceptions, and setting license application review policy for exports and reexports to entities under certain circumstances. Specifically, such steps may be taken where there is reasonable cause to believe, based on specific and articulable facts, that an entity has been involved, is involved or poses a risk of being involved in activities that are contrary to the national security or foreign policy interests of the United States or is acting on behalf of such an entity. Under this rule, the activities at issue need not involve items or activities that are subject to the EAR in order for the entity to be placed on the Entity List. Pursuant to this rule, BIS will implement changes to the Entity List made by decision of an interagency committee called the End-User Review Committee (the ''Committee''). The End-User Review Committee will consist of representatives of the Departments of Commerce, State, Defense, Energy and, if appropriate in a particular case, the Treasury. The grounds for changes to the Entity List established by this rule are in addition to the grounds provided in §§ 744.2, 744.3, 744.4, 744.6, 744.10 744.17, 744.20 and 744.21 of the EAR.

This rule lists, as illustrative examples, five types of conduct that the End-User Review Committee could determine are contrary to U.S. national security or foreign policy interests. The five types of conduct are:

(i) Supporting persons engaged in acts of terror.

(ii) Actions that could enhance the military capability of, or the ability to support terrorism of governments that have been designated by the Secretary of State as having repeatedly provided support for acts of international terrorism.

(iii) Transferring, developing, servicing, repairing, or producing conventional weapons in a manner that is contrary to United States national security or foreign policy interests or enabling such transfer, development, service, repair or production by supplying parts, components, technology, or financing for such activity.

(iv) Preventing accomplishment of an end use check conducted by or on behalf of BIS or the Directorate of Defense Trade Controls of the Department of State by: precluding access to; refusing to provide information about; or providing false or misleading information about parties to the transaction or the item to be checked. The conduct in this example includes: expressly refusing to permit a check, providing false or misleading information, or engaging in dilatory or evasive conduct that effectively prevents the check from occurring or makes the check inaccurate or useless. A nexus between the conduct of the party to be listed and the failure to produce a complete, accurate and useful check is required, even though an

express refusal by the party to be listed is not required.

(v) Engaging in conduct that poses a risk of violating the EAR when such conduct raises sufficient concern that prior review of exports or reexports involving the party and the possible imposition of license conditions or license denial enhances BIS's ability to prevent violations of the EAR.

These examples are illustrative of conduct that could be contrary to the national security or foreign policy interests of the United States. An entity could be added to the Entity List if specific and articulable facts provided reasonable cause to believe that the entity is involved in, has been involved in, or poses a significant risk of being or becoming involved in conduct described by one or more of the five listed illustrative examples or other activities that are contrary to U.S. national security or foreign policy interests.

This rule also authorizes BIS to modify the license requirements, license exception availability or license application review policy that applies to any entity placed on the Entity List pursuant to this rule. As with decisions to place an entity on the Entity List, BIS will make such modifications in accordance with the decisions of the End-User Review Committee.

This rule does not authorize adding to the Entity List an entity to which exports or reexports require a license pursuant to §§ 744.12, 744.13, 744.14 or 744.18 of the EAR. Those sections impose license requirements because of the presence of certain parties on the List of Specially Designated Nationals and Blocked Persons published by the U.S. Department of the Treasury, Office of Foreign Assets Control. This rule does not authorize placing U.S. persons, as defined in § 772.1 of the EAR, on the Entity List.

All impositions of license requirements or statements of license application review policy or any modification thereof pursuant to this rule must be done by publishing an amendment to the Entity List found at Supplement No. 4 to part 744 of the EAR. License exceptions are not available for any entity added to the Entity List pursuant to this rule unless specifically authorized in the entry for the entity.

This rule permits a party listed on the Entity List to request that its listing be removed or modified. Such requests, including reasons therefor, must be made in writing, and BIS will provide a written response. Such requests will be reviewed by an End-User Review Committee composed of representatives of the Departments of Commerce, State, Defense, and Energy and, if appropriate in a particular case, the Treasury. The End-User Review Committee will make a decision in accordance with the procedures set forth in Supplement No. 5 to part 744 of the EAR. The Deputy Assistant Secretary for Export Administration will convey the decision to the requesting party. This decision shall be the final agency action on such a request and may not be appealed to the Under Secretary for Industry and Security under part 756 of the EAR.

Summary of the Changes From the Proposed Rule

Changes to § 744.11

Section 744.11 of the proposed rule included an introductory paragraph, set forth criteria for listing a party on the Entity List and provided five illustrative examples of conduct that could meet the criteria. In response to the public comments, this final rule revises the introductory paragraph, paragraph (b), the criteria and two of those illustrative examples.

This final rule adds two sentences to the end of the introductory paragraph of § 744.11 in the proposed rule. This final rule also replaces the phrase ''that BIS has reasonable cause to believe'' in the criteria with the phrase ''for which there is reasonable cause to believe.'' BIS is making these changes in the final rule in response to public comments stating that more information about the procedure for adding, removing and modifying Entity List listings pursuant to this rule should be disclosed. This addition and replacement are intended to make clear that decisions to add, remove or modify Entity List listings pursuant to § 744.11 are made by an interagency End-User Review Committee.

This final rule revises the first sentence of paragraph (b) to clarify the meaning of that sentence. This final rule also revises the fifth sentence in paragraph (b) to clarify that the list of examples is merely illustrative not exhaustive.

The second illustrative example addresses actions that benefit governments that have been designated by the Department of State as sponsors of terrorism. In this final rule that example has been revised to remove a reference to actions that are detrimental to the human rights of citizens of those governments. BIS believes that this revision makes the example clearer and more focused.

The fourth illustrative example addresses lack of cooperation with end use checks. As proposed, the example read ''Deliberately failing or refusing to comply with an end use check conducted by or on behalf of BIS or the Directorate of Defense Trade Controls of the Department of State, by denying access, by refusing to provide information about parties to a transaction, or by providing information about such parties that is false or that cannot be verified or authenticated.'' In response to requests that the example be more clearly distinguished from the criteria for placing an entity on a BIS publication entitled ''The Unverified List,'' this final rule emphasizes that some conduct on the part of the party to be listed that makes conducting the check impossible or that renders its results inaccurate or useless would justify placing the entity on the Entity List although that conduct need not be an express refusal to permit the check. Accordingly, in this final rule, the example has been revised to read: ''Preventing accomplishment of an end use check conducted by or on behalf of BIS or the Directorate of Defense Trade Controls of the Department of State by: precluding access to; refusing to provide information about; or providing false or misleading information about parties to the transaction or the item to be checked. The conduct in this example includes: expressly refusing to permit a check, providing false or misleading information, or engaging in dilatory or evasive conduct that effectively prevents the check from occurring or makes the check inaccurate or useless. A nexus between the conduct of the party to be listed and the failure to produce a complete, accurate and useful check is required, even though an express refusal by the party to be listed is not required.''

This final rule also revises the fifth illustrative example, which, in the proposed rule, read: ''Engaging in conduct that poses a risk of violating the EAR and raises sufficient concern that BIS believes that prior review of exports or reexports involving the party and the possible imposition of license conditions or license denial enhances BIS's ability to prevent violations of the EAR.'' In response to public comments recommending the example be modified to apply only to imminent and serious violations of the EAR, this final rule revises the example to read: ''Engaging in conduct that poses a risk of violating the EAR when such conduct raises sufficient concern that the End-User Review Committee believes that prior review of exports or reexports involving the party and the possible imposition of license conditions or license denial enhances BIS's ability to prevent

violations of the EAR.'' BIS believes that, given the varying consequences of violations based on the facts in individual cases, declaring certain violations to be *a priori* less serious than others would be unwise. BIS also notes that preventing an ''imminent'' violation is part of the standard for imposing a temporary denial order under part 766 of the EAR. However, BIS concludes that the proposed example would be more precise and useful if it more clearly and directly tied imposing license requirements, possibly restricting the availability of license exceptions and setting licensing policy, to the ability to prevent violations. In addition, this final rule replaces the phrase ''that BIS believes'' with the phrase ''that the End-User Review Committee believes'' because decisions to add, remove or modify an Entity List listing pursuant to § 744.11 of the EAR will be made by the End-User Review Committee.

Changes to § 744.16 of the EAR

Section 744.16 of the EAR sets forth the procedure by which listed parties may request modification or removal of their listing. In the proposed rule, that section included the following statement: ''BIS will review such requests in conjunction with the Departments of Defense, State and Energy, and, if appropriate in a particular case, the Treasury.'' The corresponding language in the final rule reads: ''The End-User Review Committee will review such requests in accordance with the procedures set forth in Supplement No. 5 of this part'' to make clear the role of the End-User Review Committee in these decisions.

This rule also revises § 744.16 of the EAR to provide that decisions on a listed entity's request to have its listing modified or removed will be conveyed to the requester by the Deputy Assistant Secretary for Export Administration. The proposed rule provided that such decisions would be conveyed by the chairman of the End User Review Committee. BIS is making this change to make the procedure for delivering decisions pursuant to § 744.16 EAR consistent with the procedure for delivering ''is informed'' letters under §§ 744.2, 744.3, 744.4, 744.6, 744.17 and 744.21of the EAR.

Addition of New Supplement to Part 744

In response to public comments requesting more information about the procedures by which the Entity List would be modified pursuant to this rule, this final rule adds a new supplement: Supplement No. 5 to Part 744—Procedures for End-User Review Committee Entity List Decisions. This Committee is the body for all decisions to make changes to the Entity List pursuant to §§ 744.11 and 744.16 of the EAR.

Conforming and Technical Changes Made by This Rule

The proposed rule stated the decision on a party's request to have its listing removed or modified would be the final agency action on the request. BIS intended that language to mean that no further administrative procedures for changing the decision are available. As a conforming change, this final rule adds language to § 756.1 excluding decisions made by the End-User Review Committee pursuant to § 744.16 of the EAR from the appeal procedure of part 756 of the EAR. Such express exclusion is not needed with respect to End-User Review Committee decisions pursuant to § 744.11 of the EAR because those decisions must, in all instances, be implemented through an amendment to the EAR and are excluded from § 756.1 by preexisting language.

In response to a suggestion in the public comments, this rule revises § 744.11 of the EAR to reference Supp. No. 4 to part 744 of the EAR. That reference was not in the proposed rule.

Summary of the Public Comments and BIS's Responses to Those Comments

Comment on Rulemaking Requirements

1. One commenter stated that this proposed rule should be designated as a major rule because of its broad implications and the economic consequences that could arise for U.S. exporters if the rule results in a larger effort by foreign companies to design out U.S. products.

The Office of Management and Budget (OMB) has authority to designate rules as major under the Congressional Review Act. OMB has determined that this rule is not a major rule for purposes of that Act. The Department of Commerce does not have authority to designate a rule as major for purposes of the Congressional Review Act.

General Comments on the Proposed Rule

2. Three commenters expressed support in principle for the concept of targeted entity based license requirements. The reasons cited for support of the concept were that such controls are better suited to the global nature of national security and other threats than are broader, country based controls, that such controls have potential to employ more efficiently enforcement and compliance resources by government and the private sector by focusing on entities of concern and that such controls would allow BIS to conduct more prior reviews of exports to risky users. However, all of the commenters, whether or not they expressed support for the concept in principle, expressed reservations or suggested changes to some aspect of the concept as noted in the following paragraphs.

3. One commenter stated that adding new entries to the Entity List creates minimal disruption to private sector screening programs and specifically contrasted that procedure to the recently promulgated ''China rule.''

BIS believes that the targeted end-user controls set forth in this rule are valuable because they minimize disruption to business. However, the military end-use license requirements set forth in the ''China rule'' are also important instruments of United States policy. The reasons for those license requirements were set forth in the preamble to that rule (72 FR 33646, June 19, 2007) and need not be repeated here.

4. Two commenters suggested that all entries on the Entity List identify the EAR section on which that listing was based.

As set forth in the proposed rule and in this final rule, all of the entries to be added pursuant to § 744.11 as created by this rule will be identified as being added pursuant to § 744.11. The proposal to add section references to all of the existing entities on the Entity List that do not currently have such references is beyond the scope of this rule. At this time, BIS does not have plans to add such references to any pre-existing entries that do not already have such references. However, BIS plans to have the interagency End-User Review Committee conduct annual reviews of the Entity List. The Committee may consider the proposal in this comment as part of its review.

5. One commenter asserted that the proposed rule is seriously flawed and imprecise, offering a dubious process, which could be more effectively handled by existing mechanisms under the Export Administration Regulations.

BIS believes that the final rule is sufficiently precise. This rule will provide a mechanism for listing parties in the Code of Federal Regulations whose activities raise sufficient concern to justify imposing export and reexport license requirements on items to be sent to them. By doing so, all potential exporters and reexporters will have access to information about these parties of concern. BIS agrees that more public disclosure than was provided in the

proposed rule of the process by which entities will be added to the Entity List pursuant to this rule is warranted. Accordingly, this rule includes a new Supplement No. 5 to part 744, setting forth the process by which changes to the Entity List will be made.

BIS is publishing this rule precisely to make its license requirements more easily identifiable by the public and therefore more effective. License requirements based on country or item may be too broad to deal with problems that apply to particular recipients of EAR items. A denial of export privileges may be too rigid or unwarranted in a particular case. Adding a name to the Unverified List does not impose a license requirement and, therefore, does not allow BIS to scrutinize transactions in advance. This rule will reduce the need for ad hoc procedures such as use of general orders to impose license requirements on transactions involving problematic entities.

6. One commenter stated that foreign availability should be a key factor in all decisions, particularly with respect to items that may pose little or no national security or foreign policy concerns. If a foreign company presents such concerns that it must be listed, controls should be applied only to items that present a national security or foreign policy concern rather than across the board.

Decisions to set the license requirements, license exception availability and licensing policy for any entity listed pursuant to § 744.11 will be made by the End-User Review Committee. Nothing in this rule either precludes or requires considering foreign availability in the Committee's deliberations. Because this rule is intended to focus license requirements on specific entities based on the conduct of those entities, BIS believes that decisions about the factors to consider and items to control should be decided on a case-by-case basis.

7. One commenter stated that the preamble to the proposed rule states that the reasons for which BIS may place an entity on the Entity List are stated in §§ 744.2, 744.3, 744.4, 744.6, 744.10 and 744.20. However, only §§ 744.10 and 744.20 referred to Supp. 4 of the EAR. The commenter recommended that BIS add a reference to Supp 4 in §§ 744.2, 744.3, 744.4, and 744.6 and proposed § 744.11.

Although §§ 744.2, 744.3, 744.4 and 744.6 of the EAR do not explicitly mention Supp. No. 4 to part 744, they do provide for BIS to inform by amendment to the Export Administration Regulations that exports or reexports to certain parties require a license because those parties pose an unacceptable risk of use in or diversion to the activities set forth in those sections. Such amendments take the form of amendments to Supp. No. 4 to part 744 of the EAR. BIS believes that adding a reference to Supp. No. 4 in these sections is unnecessary and beyond the scope of this rule. Section 744.11 of the EAR in the proposed rule referred to the Entity List, but did not explicitly identify the Entity List as Supp. No. 4 to part 744. BIS believes that such identification would be useful. Accordingly, this final rule revises the introductory text of § 744.11 of the EAR to make such identification.

8. The proposed rule provided that new § 744.11 could not be used to add to the Entity List parties for whom a license is required pursuant to §§ 744.12, 13, 14 or 18 of the EAR. Those sections apply a BIS license requirement to certain entities that appear on the List of Specially Designated Nationals and Blocked Persons that is published by the Office of Foreign Assets Control in the Department of the Treasury. Two commenters recommended that the same limitation apply to entities added to the Entity List pursuant to § 744.20 of the EAR. Section 744.20 provides for inclusion on the Entity List certain parties who are sanctioned under certain statutes by the Department of State. Both § 744.20 and the new § 744.11 established by this rule are foreign policy based export controls. One commenter expressed concern that not excluding entities listed pursuant to § 744.20 from listing pursuant to new § 744.11 could cause differences of opinion between the Departments of State and Commerce in the EAR as to which entities are listed because of the foreign policy concerns that underlie § 744.11 and those listed because of the concerns that underlie § 744.20. The other commenter expressed concern that not excluding entities listed pursuant to § 744.20 from listing pursuant to new § 744.11 could lead to duplicate listings on the Entity List based on the two sections.

BIS believes that the potential consequences cited by these two commenters are not likely to pose problems in practice and that no change to the rule is needed on this point. A single committee (the End-User Review Committee) will vote on all changes to the Entity List regardless of the section that authorizes placement of the entity on the Entity List. The Department of State will have a representative on that Committee. Therefore, conflicting interagency opinions regarding a proposed listing are likely to be resolved before that listing is published. If the Committee were to conclude that more than one section supported placing an entity on the list, it could list all of the applicable sections with that entity's entry rather than have multiple listings.

9. One commenter recommended that BIS use the new § 744.11 to impose license requirements on entities that have been targeted for non-proliferation reasons by the United States government or by foreign governments where other provisions of part 744 do not authorize inclusion on the Entity List.

BIS believes that no change to the language of the proposed rule is needed because of the issues raised by this comment. Sections 744.2, 744.3, and 744.4 of the EAR provide a basis for listing entities on the Entity List because ''there is an unacceptable risk of use in or diversion to'' proliferation activities related to certain nuclear end-uses, certain rocket systems and unmanned air vehicles and certain chemical or biological weapons end-uses. Section 744.6 provides a basis for listing an entity on the Entity List because activities of U.S. persons in connection with that entity could involve certain nuclear activities, certain missile related activities or certain chemical or biological weapons activities. In addition, to the extent that an entity's proliferation related activities meet the criteria in new § 744.11, that section could serve as a basis for listing the entity. BIS believes that these sections provide sufficient basis for using the Entity List to promote non-proliferation interests and that the decisions to list an entity should be made on a case-by-case basis.

Comments on Proposed § 744.11(b) Criteria for Revising the Entity List—In General

10. One commenter stated that BIS should ensure that the criteria for making a decision to list an entity are well defined and clear, to avoid capturing entities that are in compliance with their countries' laws and regulations, particularly if those companies are located in countries that are allies or major trading partners of the United States.

Because the criteria set forth in the proposed rule are intended to protect U.S. national security and foreign policy interests, BIS believes that revising the criteria to preclude listing parties who are acting in accordance with their own countries' laws and regulations would undermine the purpose for imposing these license requirements. Nevertheless, BIS understands the need to act consistently with overall U.S. government interests, including the

interest in maintaining appropriate relationships with U.S. allies and major trading partners. BIS believes that the multi-agency composition of the End-User Review Committee will provide balanced consideration of relevant U.S. government national security and foreign policy interests including interests based on relationships with other governments.

11. One commenter stated that BIS should ensure that ''behaviors'' that can lead to placement on the List are at a comparable level in terms of failure to comply with U.S. government requirements.

An important role of the End-User Review Committee is to promote consistent practice with respect to the Entity List. The Committee's procedures, including the right of escalation by any member agency, are intended to promote such consistency. However, the criteria for placing an entity on the Entity List do not require that the party's conduct violate a U.S. law or regulation. Placement on the Entity List pursuant to new § 744.11 imposes a license requirement, sets licensing policy and sets the availability of license exceptions for the listed party. Failure to comply with government requirements would likely be a violation of law for which other actions, either instead of or in addition to placing an entity on the Entity List, would be appropriate.

12. One commenter stated that actions that would warrant placement on the list should be examined principally against international standards for business conduct and internationally agreed upon principles for addressing common threats to the world community, rather than on purely unilateral considerations.

BIS recognizes that international business, by its nature, must be conducted in accordance with the laws of more than one country. BIS also recognizes the value of international standards in influencing the laws and regulations of individual countries. In keeping with this recognition, the EAR include requirements drawn from multilateral export control regimes and United Nations arms embargoes. However, the EAR also include requirements that are based on U.S. interests that are not based on conclusions reached by a multinational body. BIS believes that multi agency participation (including the Department of State) on the End-User Review Committee will provide perspective (including an international perspective) in all decisions to modify the Entity List pursuant to § 744.11. However, as stated in both the proposed rule and in this final rule, the underlying purpose of the rule is to protect U.S. national security and foreign policy interests. As such, BIS believes that it would be counterproductive to adopt a rule that would require decisions to modify the Entity List pursuant to § 744.11 to meet an internationally agreed upon standard.

Comments on the Illustrative Examples of Criteria for Placing an Entity on the Entity List § 744.11(b)—In General

13. One commenter stated that the five illustrative examples of conduct are stated very broadly, that they are only illustrative and that clearer and narrower limits are needed to prevent confusion. Two commenters specifically stated that more guidance on the type of conduct that would place an entity on the Entity List is needed.

BIS believes the criteria and the illustrative examples must be broadly stated to illustrate effectively the kinds of activities that are contrary to U.S. national security or foreign policy interests and that justify placing an entity on the list. BIS notes that the decision to place an entity on the list must be based on specific and articulable facts. In recent years, BIS has sought to tailor certain export license requirements to specific users and has been forced to resort to *ad hoc* solutions to do so. Section 744.20 of the EAR allows for placing an entity on the Entity List only if the party is first sanctioned by the Department of State pursuant to certain statutes. That section has been used only one time. General Order Number 3 (Supp No. 1 to part 736 of the EAR) has been used to impose license requirements on parties where there is no regulatory basis to list those parties on the Entity List. BIS believes that broadly stating its criteria for placing an entity on the list will reduce the need for such *ad hoc* procedures. Broad illustrative examples are needed to illustrate effectively the broad nature of the criteria.

BIS believes that the overall effect of this rule will be to reduce the possibility of confusion by consolidating names of parties whose presence in a transaction trigger an EAR license requirement onto a single list.

As noted in the discussion above of the changes from the proposed rule, BIS has modified two of the illustrative criteria to describe more precisely the conduct that could justify placing an entity on the Entity List.

Comments on the Term ''Specific and Articulable Facts'' in § 744.11(b)

14. One commenter asked whether intelligence reporting would be used in the process and if so, would the intelligence be no more than two years old and actionable? The commenter went on to recommend that only intelligence that has been certified by the Director of National Intelligence should be used in this process. In support of these recommendations, the commenter offered several assertions.

This commenter asserted that, based on experience as a government employee in employment related to license application review, much intelligence information is of poor quality or outdated. This commenter also asserted that, in recent years, the focus of intelligence gathering has been closely tied to proliferation of weapons of mass destruction. Finally, this commenter asserted that a unit of the Department of Defense has, at times, stepped in to provide intelligence of poor quality.

BIS intends that the End-User Review Committee utilize reliable information that is relevant to the case at hand in making its decisions. BIS believes that the Committee will be in a position to evaluate the reliability of information on a case-by-case basis. Adding a provision to this final rule prohibiting the use of information because of its age, source, whether it is ''actionable'' or whether it has been certified by a particular official would arbitrarily restrict the Committee and might preclude the use of reliable information in some cases. BIS believes that a former employee's opinions regarding the quality or focus of intelligence reporting available during that former employee's government tenure should not be a basis for limiting by regulation the information that the End-User Review Committee may consider. Therefore, BIS is making no change to the rule based on this comment.

15. One commenter stated that the proposed rule could present problems for exporters in terms of compliance and ability to remain competitive in the international arena. This commenter asked for additional information about the standards that ''specific and articulable facts'' would have to meet, specifically what universe of conduct would lead to imposing a license requirement.

BIS believes that compliance with the license requirements imposed by this rule will impose a minimal additional burden on exporters. Most exporters will meet the definition of U.S. Person in § 772.1 of the EAR and thus may not be placed on the Entity List pursuant to this rule. By expanding the grounds for placing a name on the Entity List, BIS will be reducing the need to issue general orders that impose license

requirements, thereby reducing the number of provisions of the EAR that must be reviewed to identify potential recipients whose presence triggers a license requirement. BIS believes that describing in advance every sort of action that could be contrary to U.S. national security and foreign policy interests would be impossible and that attempting to do so would be counterproductive. Rather, the examples are intended to illustrate, in a general way, the nature of conduct that could be a basis for listing.

Comments Relating to the First Illustrative Example—Supporting Persons Engaged in Acts of Terror § 744.11(b)(1)

16. One commenter asked that BIS state the meaning of ''Supporting persons engaged in acts of terror.'' That same commenter asserted that there is no internationally agreed definition of terrorism and asked what the term ''acts of terror'' means.

BIS believes that the meaning of terror and terrorism are sufficiently understood in common parlance that defining these terms is not necessary for public understanding of this rule. However, as examples and not as limitations, the acts set forth in 18 U.S.C. 2331(1), 18 U.S.C. 2331(5) and the acts described in the preamble to the General Order Concerning Mayrow General Trading and Related Entities (71 FR 32272, June 5, 2006) would be considered supporting persons engaged in acts of terror for purpose of § 744.11 of the EAR.

This rule is intended to protect U.S. national security and foreign policy. Accordingly, obtaining international agreement as to the meaning of a term in the rule is unnecessary.

17. One commenter asked what types of exports or reexports these restrictions are intended to cover.

The license requirements imposed by adding a name to the Entity List could apply to any item subject to the Export Administration Regulations. The Committee could tailor the requirements based on the risks imposed by the party to be listed. The conduct that provides the reason for listing a party need not be an export or reexport of any type.

Comments Relating to the Second Illustrative Example—Actions That Could Enhance the Military Capability of, or the Ability To Support Terrorism of Governments That Have Been Designated by the Secretary of State as Having Repeatedly Provided Support for Acts of International Terrorism § 744.11(b)(2)

18. One commenter stated that it is not clear whether the illustrative example applies only to governments that the Department of State has designated as supporters of terrorism.

BIS's intent is that any party taking the action described in this illustrative example could be placed on the Entity List. The action would have to enhance the military capability or the ability to support terrorism of a government that has been designated by the Secretary of State as having repeatedly provided support for acts of international terrorism. However, the action itself need not be taken by such a government. BIS does not believe that any change to the text of the rule is needed to make this point clear.

19. One commenter asked whether the first clause addresses actions described in § 744.21 of the EAR as part of the China rule.

Read as a whole, this illustrative example does not address actions described in § 744.21 of the EAR. Attempting to ascribe a meaning to the first clause of this illustrative example without reference to the final clause could be misleading. Section 744.21 of the EAR imposes a license requirement for certain exports and reexports for military end-uses in China where the exporter or reexporter knows that the item at issue in the specific transaction will be employed in a military end-use. This illustrative example deals with imposing license requirements on exports and reexports to certain parties by listing those parties and the license requirements on the Entity List because those parties have taken actions to enhance certain capabilities (including military capabilities) of governments that have been designated by the Secretary of State as having repeatedly provided support for acts of international terrorism. China has never been so designated.

20. One commenter asserted that this section should be more clearly written to have the Department of State specify the government in question and tie the conduct that enhances the military capability of that government designated as supporting international terrorism. This, according to the commenter, would avoid confusion in the exporting community, avoid capricious interagency behavior and prevent commercial mischief.

The Department of State determines that certain countries have repeatedly provided support for acts of international terrorism and so designates those countries pursuant to its statutory authority. This rule makes no change to that procedure. BIS believes that there are several provisions in this rule that provide reasonable safeguards against capricious interagency behavior: the requirement that the decisions to place an entity on the Entity List be supported by specific and articulable facts, the multi-agency composition of the End-User Review Committee that makes decisions to place an entity on the Entity List, and the right of agencies to escalate as provided in Supplement No. 5 to part 744 of this final rule. The fact that identifying information about the entities will be published will serve to reduce opportunities for confusion among any segment of the public that is engaged in exporting or reexporting items that are subject to the EAR.

Comments Relating to the Third Illustrative Example—Transferring, Developing, Servicing, Repairing or Producing Conventional Weapons in a Manner That Is Contrary to United States National Security or Foreign Policy Interests or Enabling Such Transfer, Service, Repair, Development, or Production by Supplying Parts, Components, Technology, or Financing for Such Activity—744.11(b)(3)

21. One commenter stated that the language of this illustrative example ''should not be a back door maneuver seeking to penalize parties for certain conduct'' that was in the proposed version of the recently published China rule but that was removed from the final version of that rule.

BIS believes that this comment is inapposite. The proposed modification to § 744.6 of the EAR to which the commenter alludes would have applied a license requirement to certain support activities if done with knowledge that the underlying export or reexport transaction was occurring without a required license (*See* 72 FR 33817, July 6, 2006). This illustrative example describes a type of conduct, including support activities related to that conduct, that, when done contrary to United States national security or foreign policy interests, could justify imposing a license requirement for shipments to the party who engaged in that conduct and for notifying the public of the existence of that license requirement through publication on the Entity List.

22. Two commenters suggested that the conduct in this illustrative example could cover situations in which foreign companies are complying with the laws and regulations of their own countries and that these situations are best dealt with through government to government negotiations rather than by imposing a license requirement on the party involved. One of these commenters noted that other governments may have bilateral arms arrangements and defense cooperation agreements and that BIS should not drive foreign policy by penalizing entities engaged in trade that is in compliance with their own domestic laws and regulations. The other commenter asked specifically in what ''manner'' the entity would have to be involved in such activities to be placed on the list.

BIS is aware that not all other countries share the views of the U.S. government and that those countries may enter into arrangements and agreements consistent with their own interests. Nevertheless, an important part of BIS's role is to regulate exports in a manner that is consistent with U.S. foreign policy interests. The participation of the Department of State on the End-User Review Committee provides an opportunity for foreign policy input so that the Committee's actions are consistent with overall U.S. foreign policy interests. Moreover, the placement of an entity on the Entity List pursuant to this rule would not preclude the Department of State from engaging with another government regarding that government's policies and practices.

The use of the word ''manner'' in this illustrative example is intended to make clear that any of the activities in this illustrative example must be contrary to U.S. national security or foreign policy interests to serve as a basis for placing a name on the Entity List.

Comments Relating to the Fourth Proposed Illustrative Example—Deliberately Failing or Refusing to Comply With an End Use Check Conducted by or on Behalf of BIS or DTC by Denying Access, by Refusing to Provide Information About Parties to a Transaction, or by Providing Information About Such Parties That is False or That Cannot be Verified or Authenticated—§ 744.11(b)(4)

23. One commenter stated that ''some parties have not been notified that they have been deemed to fail end use checks—either because they hadn't failed such checks or because the checks never even had been attempted.'' The rule ''as applied [should] include steps to ensure that such parties are not added to the Entity List in these circumstances.''

All proposed additions to the Entity List pursuant to § 744.11 will be reviewed by the multi-agency End-User Review Committee. The Committee will be in a position to inquire into the details and circumstances of the end use check before making a decision. In addition, the Committee's procedures allow any participating agency to escalate the decision to a higher level. Finally, this rule contains a provision for the listed entity to seek to have its listing removed or modified and to present information supporting its request to the Committee. BIS believes that these procedures are sufficient to provide reasonable assurances against errors of the types described in the comment. BIS has modified the language of this illustrative example to emphasize that some conduct on the part of the party to be listed that makes conducting the check impossible or that renders its results inaccurate or useless must be present for the terms of this example to be met.

24. Two commenters compared this illustrative example with the existing Unverified List published by BIS. One commenter stated that this illustrative example conflicted with the Unverified List because the Unverified List stated that it did not create a license requirement. The other commenter stated that the existing mechanism under the EAR for addressing entities in countries where BIS has been unable to conduct pre-license checks or post shipment verifications is more than adequate because it requires enhanced due diligence. This commenter asserted that establishing new license requirements on U.S. companies for actions that could be seen by other countries as their sovereign right could have consequences for U.S. manufacturers as those companies could decide to ''design out'' their [the U.S. manufacturers] products.

BIS believes that conduct described in this illustrative example is sufficiently distinct from the conduct that would form a basis for placing a party on BIS's Unverified List that conflicting decisions are unlikely. Moreover, the existing Unverified List is not adequate to address the situations covered by this rule. BIS may place entities on the Unverified List because BIS is unable to perform an end use check or where BIS is unable to verify the existence or authenticity of the end user, intermediate consignee, ultimate consignee or other party to an export transaction for reasons outside the control of the U.S. government (*See* 67 FR 40910, June 14, 2002 and 69 FR 42652, July 16, 2004). This illustrative example requires a deliberate refusal or a pattern of conduct by the party to be listed that makes the check impossible to conduct or that makes the results of the check inaccurate or useless. To emphasize this point, BIS has revised the language published in the proposed rule. BIS believes that conduct of the type described in this illustrative example can warrant imposing a license requirement on transactions with the parties who engage in the conduct because a license requirement will result in more comprehensive scrutiny of transactions than would identifying the party's presence as a red flag thereby requiring additional scrutiny by a private sector party. Although nothing in the EAR expressly precludes an entity from being listed simultaneously on the Unverified List and on the Entity List, BIS expects that such an event is unlikely given the differences in criteria underlying the two lists.

Although some risk exists that manufacturers will attempt to design out U.S. origin components because of any U.S. export control regulation, BIS believes that judicious review by the End-User Review Committee will provide reasonable assurance that the Committee will list only entities whose conduct truly merits placement on the Entity List.

Comments Relating to the Proposed Fifth Illustrative Example—Engaging in Conduct That Poses a Risk of Violating the EAR and Raises Sufficient Concern That BIS Believes That Prior Review of Exports or Reexports Involving the Party and the Possible Imposition of License Conditions or License Denial Enhances BIS's Ability To Prevent Violations of the EAR.—§ 744.11(b)(5)

25. One commenter stated that more information is needed for the fifth illustrative example. The commenter stated that the example should be replaced with more specific illustrations of conduct that is of concern to BIS. The commenter stated that some violations are minor and that BIS should spell out in detail those types of violation risks that cause it concern. The commenter suggested that if this illustrative example is to be maintained, some form of materiality standard should be added and suggested ''engaging in conduct that poses a substantial risk of imminent and serious violation of the EAR'' as a possible materiality standard.

Although many acts could pose a risk of violating the EAR, the acts that would meet the terms of this example are limited to those where the End-User Review Committee believes that imposing license requirements through

the Entity List enhances BIS's ability to prevent violations of the EAR. In this final rule, BIS has modified the language of this illustrative example to emphasize that connection. BIS believes that replacing this illustrative example with several more specific examples, which inevitably would be more narrow in scope, could mislead readers into focusing on the specific conduct in the examples themselves rather than on the nexus between the conduct that poses a risk of violating the EAR and enhanced ability to prevent violations that would result from an Entity List listing.

BIS believes that it would not be prudent to designate some EAR violations as, *a priori,* more serious than others. The seriousness of a violation may vary according to the facts of a particular case. This illustrative example, as clarified in this final rule, is designed to illustrate that there must be a nexus between the conduct of the party to be placed on the Entity List and the enhanced ability of BIS to prevent violations through imposing a license requirement. BIS believes that further illustrations are not needed to explain this point.

''[P]revent[ing] an imminent violation'' is the standard for imposing temporary denial orders pursuant to § 766.24 of the EAR. BIS believes that, in some instances, a license requirement may prevent a violation even in the absence of an imminent threat and that § 744.11 of the EAR could be used in such instances.

26. One commenter stated that it would be better for BIS to engage in a partnership with U.S. industry in order to find ways to prevent potential violations rather than impose additional licensing requirements on a U.S. company.

BIS is open to suggestion from any member of the public as to ways to prevent violations and welcomes all such recommendations. However, members of the public vary in their willingness and ability to detect and deter violations. This rule recognizes that in some instances, a license requirement, which enables the government to review the proposed transaction, impose license conditions, or, if necessary, deny the license application, is needed to prevent violations. This final rule revises this illustrative example to tie more explicitly the conduct of the party to be added to the Entity List to the risk of a violation and to the End-User Review Committee's belief that imposing the review associated with license applications will aid BIS in preventing violations.

Comments Relating to the Listing Process—§ 744.11 of the EAR

27. One commenter stated that more information should be provided about the process for listing entities on the Entity List pursuant to this rule. Specifically, the commenter wanted more information on the process that will be employed to determine whether non-EAR related activities would provide a basis for listing, who would determine the national security interests of the United States, the levels at which interagency consultations will take place, who will make listing determinations with respect to non-EAR activities and, the checks that will be in place to prevent lower level officials from applying their own notions of national security and foreign policy.

BIS agrees that this rule should disclose more information on the process by which Entity List decisions will be made pursuant to §§ 744.11 and 744.16 than the proposed rule disclosed. Accordingly, this final rule includes, as a supplement to part 744, the procedures to be used by the End-User Review Committee in making such decisions. Those procedures provide that the Committee will include representatives from the Departments of State, Defense, Energy and Commerce, and the Treasury as appropriate. Decisions to make changes to the Entity List will be made by majority vote of the Committee. Any participating agency that disagrees with the outcome may escalate the matter according to the same procedures that are used to escalate interagency disputes regarding export license applications. BIS believes that these procedures provide reasonable assurances that low level officials will not impose any personal notions of national security or foreign policy that are inconsistent with actual U.S. national security or foreign policy interests.

Under this rule, the activity that forms a basis for listing an entity need not be an activity that is a violation of the EAR or even be an activity that is regulated pursuant to the EAR. BIS believes that the multi-agency composition of the End-User Review Committee and its procedures as set forth in new Supplement No. 5 to part 744 of the EAR will provide reasonable assurance that any activity forming the basis for listing an entity will be consistent with the criteria set forth in § 744.11.

28. Two commenters proposed that any entity under consideration for placement on the Entity List should be notified and afforded an opportunity to state its position, provide information and present arguments against the listing before any action is taken.

BIS is not adopting this proposal because other provisions of the EAR provide adequate provision for listed parties to be heard. This rule provides a procedure in new § 744.16 that allows a listed entity to present information to the End-User Review Committee. In addition, placement on the Entity List results in the imposition of a license requirement, the establishment of licensing policy, and the establishment of limits on use of License Exceptions for that entity. If any license application to send an item that is subject to the EAR to a listed entity subsequently is denied, that entity, as a person directly and adversely affected by the denial, would have a right to appeal under part 756 of the EAR.

29. Two commenters stated that certain members of the public (particularly U.S. exporters) who could be affected by new Entity List listings should have an opportunity to present information before a final decision is made to place an entity on the Entity List.

BIS believes that it is not necessary to notify the public at large of impending Entity List changes. Placement of an entity on the Entity List results in the imposition of a license requirement, the establishment of licensing policy, and the establishment of limits on use of license exceptions for that entity. If any license application to send an item that is subject to the EAR to a listed entity subsequently is denied, the license applicant, as a person directly and adversely affected by the denial, would have a right to appeal under part 756 of the EAR.

30. One commenter stated that BIS failed to provide a transparent and rational process, raising serious issues under the national treatment provisions of the WTO treaty.

BIS does not know what this commenter means by ''serious issues.'' BIS is not aware of any treaty provision that this rule would contravene.

Comments Concerning § 744.16—Procedure for Requesting Removal or Modification of an Entity List Entry

31. One commenter asserted that the need for more information about the process would be vital for persons seeking removal from the list and that given the broad and far reaching nature of criteria for listing an entity, senior level officials should have a greater role in the removal process.

BIS agrees that this rule should disclose more information on the process by which Entity List decisions will be made than the proposed rule

disclosed. Decisions made pursuant to § 744.16 (requests for removal or modification) will be made by the same End-User Review Committee that makes decisions to add an entity pursuant to § 744.11 Accordingly, this final rule includes, as a supplement to part 744, the procedures that the End-User Review Committee will use in making such decisions. That procedure provides that a member agency that disagrees with a decision has the right to escalate the matter to more senior officials.

32. One commenter stated that persons whose requests for removal are denied by the interagency review committee should have an express right of appeal.

BIS believes that a right of appeal for listing decisions on the Entity List is not necessary as the EAR already contains a mechanism for appeals of decisions to reject license applications. A rejection of a party's request to be removed from the Entity List retains existing license requirements, licensing policy and restrictions on availability of license exceptions. In the event that a license application on which the listed entity is shown as a party is denied, the listed entity as a party directly and adversely affected by that denial would have a right to appeal under part 756 of the EAR.

33. One commenter stated that there should be a transparent and rational process that allows the listed party and interested parties to request removal. This commenter asserted that failure to provide a transparent and rational process raises serious issues under the national treatment provisions of the WTO treaty.

BIS agrees that more disclosure than was contained in the proposed rule of the process by which Entity List decisions will be made pursuant to § 744.11 and 744.16 is appropriate. Accordingly, this final rule includes, as a supplement to part 744, the procedures of the End-User Review Committee that will make such decisions. BIS does not know what this commenter means by ''serious issues.'' BIS is not aware of any treaty provision that this rule would contravene. Comments are not related to specific proposals in the proposed rule.

34. One commenter suggested that BIS consider replacing the broader based controls as in the recent China rule with targeted entity based controls.

Although BIS believes that targeted end-user controls are valuable, BIS also believes that they cannot at this replace end-use license requirements imposed by the recent China rule. The reasons for those license requirements were set forth in the preamble to that rule (72 FR 33646, June 19, 2007) and need not be repeated here.

35. One commenter stated that BIS should take steps to coordinate any expanded Entity List with the Validated End User process, for example, make the VEU process available to all entities not included on the Entity List or by creating a presumption that a party not included on the list should be eligible, in the absence of other specific and articulable facts, for VEU status.

BIS believes that neither of these suggestions is practical. The Validated End User (VEU) authorization (§ 748.15 of the EAR) allows exports and reexports without a specific license of certain items to end users who have been approved by the End-User Review Committee. Section 744.11 as set forth in this rule imposes license requirements on exports and reexports to certain identified parties even if such exports and reexports would not require a license in the absence of the Entity List listing. Between these two categories of potential recipients are many potential recipients for whom neither Entity List listing nor Validated End User status is likely to be appropriate.

36. Two commenters recommended that the rule include a ''contract sanctity'' provision. One stated that parties should be able to complete transactions that were entered into before the date that BIS determined that specific and articulable facts justified listing of a party on the Entity List. The other stated that such a provision was needed to avoid unnecessary disruption to collaborative efforts that may have been in place for a long time.

This rule provides the authorization for adding parties to the Entity List, but does not add any parties to the list. BIS believes that establishing a contract sanctity provision that would apply to all Entity List additions regardless of circumstances and consequences would be unwise. BIS notes that this rule does not preclude the use of a contract sanctity provision in an individual action to add a party to the Entity List nor does it preclude consideration of a preexisting contract in evaluating any license application for an export or reexport to a party added to the Entity List pursuant to this rule. However, BIS believes that foreseeing at this time all of the possible circumstances that would justify either including or precluding a ''contract sanctity'' provision in a particular Entity List decision is not possible. Accordingly, BIS is making no changes to the rule based on this comment.

37. Two commenters recommended changes for improving the quality of information on the Entity List. Their recommendations included identifying the locations of listed entities, supplying known aliases and contact information and systematic review to correct or remove outdated entries or entries that have changed names or affiliations.

BIS agrees that more systematic review and updating of the Entity List is desirable and would make the List more useful to the public. Therefore BIS intends to have the End-User Review Committee conduct a systematic review of the Entity List for the purpose of identifying and implementing any needed corrections and updates at least annually. The End-User Review Committee procedures published in Supplement No. 5 to part 744 as part of this rule reference that annual review. BIS expects that the first review will be completed no later than August 21, 2009.

38. One commenter noted that BIS has stated that it cannot supply the Chinese names of entities on the Entity List because the **Federal Register** cannot accommodate their publication. BIS should overcome this technical limitation by publishing on its Web site an augmented version of the Entity List including names of listed entities in original alphabets.

BIS recognizes that making the Entity List as widely understood as possible would be beneficial to users of the list and to BIS's interest in promoting voluntary compliance. However, given other priorities and BIS's limited resources, implementing a recommendation such as this in the foreseeable future is unlikely.

39. One commenter stated that BIS should provide clear guidance on how to deal with entities related to those on the list. BIS should explicitly state the extent to which the license restrictions on listed entities apply to related entities and should list all of the related entities to which restrictions apply.

BIS intends to publish guidance in the near future on dealing with entities related to those on the Entity List. In addition, the new Supplement No. 5 to Part 744, which sets forth the End-User Review Committee's procedures, provides for annual review of the Entity List. That annual review is to include an assessment of whether affiliates should be added to or removed from the Entity List.

40. One commenter stated that the rule should make clear that only listed entities—not, for example, unlisted affiliates, subsidiaries or sister entities are covered.

BIS intends to publish guidance on dealing with entities related to those on the Entity List in the near future.

41. One commenter stated that the Entity List should avoid capturing parent companies and subsidiaries, and ensure that a decision to do so takes into consideration all potential consequences for legitimate business of the parent or subsidiary, particularly if they could negatively impact additional companies far removed from the behavior that may cause the listing.

BIS believes that decisions to list or refrain from listing a subordinate or affiliated entity should be made on a case by case basis by the End-User Review Committee after consideration of the facts relevant to that decision.

42. One commenter suggested that BIS include information about the reason for an entity's listing in order to inform exporters more about diversion risk. The commenter noted that the section that forms the basis for a listing indirectly suggests the reason, but that the broad scope of § 744.11 as proposed would obscure the underlying reason. The commenter suggested that a ''warning list'' published by the Japanese Ministry of Economy, Trade and Industry provides a useful model.

Although informing the public about the nature of diversion risks may be useful, the Entity List serves to inform the public about license requirements based on diversion risks or other factors that meet the criteria for Entity List listing. Accordingly, BIS is not changing the structure of the Entity List at this time.

43. One commenter recommended that BIS should consider more systematic use of § 744.20 of the EAR, which allows adding to the Entity List parties sanctioned by the State Department. The commenter noted that such sanctions are applied to various parties for proliferation related activities. The commenter stated that all of these ''inherently risky'' end-users should be added and retained on the list even after the State sanction expires unless the End-User Review Committee determines that they are no longer a risk.

The recommendation to increase use of § 744.20 of the EAR to place more entities that have been sanctioned by the Department of State on the Entity List is beyond the scope of this rule. However, BIS notes that, the conduct for which the Department of State imposed sanctions might, in a particular case, also meet the standards for placing the party on the Entity List pursuant to new § 744.11 and the End-User Review Committee might decide to list such an entity.

44. One commenter asserted that the recently promulgated China rule goes beyond the Wassenaar Statement of Understanding on the Control of non-Listed Dual-use Items and that the United States has no overarching China trade policy, but seeks to cobble together a trade policy directed to China, creating unpredictability for U.S. exporters in terms of compliance and ability to remain competitive. This same commenter also stated that the United States government should change its position on the development of an International Arms Trade Treaty. The commenter stated that seeking to penalize those involved in conventional weapons activities while not using its influence to work towards a meaningful arms trade treaty within the United Nations framework is dysfunctional and hypocritical.

All of these ideas are outside the scope of the proposed rule and BIS is making no changes to the rule in response to them. BIS's rationale for publishing the recently published China rule is set forth in the preamble to that rule (72 FR 33646, June 19, 2007) and need not be repeated here. Without expressing an opinion on the commenter's assessment of the United States government's trade policy towards China, BIS notes that the composition of the End-User Review Committee and the right of agencies to escalate disputed decisions are intended to provide a balanced approach that considers all relevant U.S. policy interests. BIS does not determine the position that the U.S. government takes on proposed treaties or represent the United States at the United Nations.

45. One commenter asserted that repeated on-site visits to known consignees, increasing pressure from Congress and elsewhere and limited staff to conduct these visits result in delays and backlogs of pending license applications. The commenter stated that a better approach would be for BIS to work with the technical advisory committees to develop a risk transaction matrix that would identify specific criteria that call for such on-site visits.

This comment addresses criteria by which transactions are selected for on-site visits, an issue that is beyond the scope of this rule.

46. One commenter recommended that BIS consider the potential effect of listing decisions on imports from listed companies and resulting consequences for U.S. companies.

This rule reflects BIS's statutory mission to utilize export controls to protect United States national security and foreign policy interests (by listing problematic entities) without unduly burdening legitimate export activities (avoiding imposing license requirements to entire destinations or items when doing so is not necessary). If a nexus between the potential effect of a listing decision on imports and protecting U.S. national security or foreign policy interests exists in a particular case, the impact of the listing decision on imports properly may be considered in that case. BIS believes that determining whether such a nexus exists must be done on a case-by-case basis and that a rule requiring such consideration in all cases would not be appropriate.

47. One commenter stated that BIS should conduct more training overseas on U.S. export control requirements to ensure that foreign companies and governments fully understand the extraterritorial nature of U.S. export controls.

This comment is outside the scope of the proposed rule. BIS conducts a number of training sessions both in the United States and abroad and expects to do so in the future.

Rulemaking Requirements

1. This rule has been determined to be a significant rule pursuant to Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule involves two collections of information that have been approved by OMB. Control number 0694–0088 ''Multi-Purpose Application'' carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. Miscellaneous and recordkeeping activities account for 12 minutes per submission. Control number 0694–0134, Procedure for Parties on the Entity List to Request Removal or Modification of their Listing carries a burden hour estimate of three hours per submission and an estimate of five submissions per year.

Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to David Rostker, OMB Desk Officer, by e-mail at *david_rostker@omb.eop.gov* or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and

Security, Department of Commerce, Room 2705, Washington, DC 20044.

3. This rule does not contain policies with Federalism implications as this term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States (see 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., are not applicable. However, to obtain the benefit of a variety of viewpoints before issuing this final rule, BIS issued this rule in proposed form with a request for comments.

5. The license requirements imposed by this rule are an expansion of foreign policy export controls and require a report to Congress in accordance with section 6 of the Export Administration Act. The report was delivered to Congress on August 12, 2008.

List of Subjects

15 CFR Part 730

Administrative practice and procedure, Advisory committees, Exports, Reporting and, recordkeeping requirements, Strategic and critical materials.

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

15 CFR Part 756

Administrative practice and procedure, Exports, Penalties.

■ Accordingly, parts 730, 744 and 756 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

PART 730—[AMENDED]

■ 1. The authority citation for part 730 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 2151 note; 22 U.S.C. 3201 et seq.; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; 22 U.S.C. 7201 et seq.; 22 U.S.C. 7210; E.O. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 12002, 42 FR 35623, 3 CFR, 1977 Comp., p. 133; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12214, 45 FR 29783, 3 CFR, 1980 Comp., p. 256; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 179; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 12981, 60 FR 62981, 3 CFR, 1995 Comp., p. 419; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp. p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; E.O. 13338, 69 FR 26751, May 13, 2004; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008); Notice of November 8, 2007, 72 FR 63963 (November 13, 2007).

■ 2. Amend Supplement No. 1 to part 730 by adding an entry to the table immediately following the entry for collection number 0694–0132 that reads as follows:

0694–0134	Procedure for parties on the Entity List to Request Removal or Modification of their Listing	§ 744.16

PART 744—[AMENDED]

■ 3. The authority citation for part 744 is revised to read as follows:

Authority: 50 U.S.C. app. 2401; 50 U.S.C. 1701 et seq. ; 22 U.S.C. 3201 et seq.; 42 U.S.C. 2139a; 22 U.S.C. 7201 et seq.; 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008); Notice of November 8, 2007, 72 FR 63963 (November 13, 2007).

■ 4. In § 744.1(a)(1), a new sentence immediately following the current seventh sentence and a new sentence immediately following the current eighth sentence are added, to read as follows:

§ 744.1 General provisions.

(a)(1) * * *

Section 744.11 imposes license requirements, to the extent specified in Supplement No. 4 to this part, on entities listed in Supplement No. 4 to this part for activities contrary to the national security or foreign policy interests of the United States.

* * *

Section 744.16 sets forth the right of a party listed in Supplement No. 4 to this part to request that its listing be removed or modified.

* * * * *

■ 5. Section § 744.11 is added to read as follows:

§ 744.11 License requirements that apply to entities acting contrary to the national security or foreign policy interests of the United States.

BIS may impose foreign policy export and reexport license requirements, limitations on availability of license exceptions, and set license application review policy based on the criteria in this section. Such requirements, limitations and policy are in addition to those set forth elsewhere in the EAR. License requirements, limitations on use of license exceptions and license application review policy will be imposed under this section by adding an entity to the Entity List (Supp. No. 4 to this part) with a reference to this section and by stating on the Entity List the license requirements and license application review policy that apply to that entity. BIS may remove an entity from the Entity List if it is no longer engaged in the activities described in paragraph (b) of this section and is unlikely to engage in such activities in the future. BIS may modify the license exception limitations and license application review policy that applies to a particular entity to implement the policies of this section. BIS will implement the provisions of this section in accordance with the decisions of the End-User Review Committee or, if appropriate in a particular case, in accordance with the decisions of the body to which the End-User Review Committee decision is escalated. The End-User Review Committee will follow the procedures set forth in Supplement No. 5 to this part.

(a) *License requirement, availability of license exceptions, and license application review policy.* A license is required, to the extent specified on the Entity List, to export or reexport any item subject to the EAR to an entity that is listed on the Entity List in an entry that contains a reference to this section. License exceptions may not be used unless authorized in that entry. Applications for licenses required by

this section will be evaluated as stated in that entry in addition to any other applicable review policy stated elsewhere in the EAR.

(b) *Criteria for revising the Entity List.* Entities for which there is reasonable cause to believe, based on specific and articulable facts, that the entity has been involved, is involved, or poses a significant risk of being or becoming involved in activities that are contrary to the national security or foreign policy interests of the United States and those acting on behalf of such entities may be added to the Entity List pursuant to this section. This section may not be used to place on the Entity List any party to which exports or reexports require a license pursuant to §§ 744.12, 744.13, 744.14 or 744.18 of this part. This section may not be used to place on the Entity List any party if exports or reexports to that party of items that are subject to the EAR are prohibited by or require a license from another U.S. government agency. This section may not be used to place any U.S. person, as defined in § 772.1 of the EAR, on the Entity List. Examples (1) through (5) of this paragraph provide an illustrative list of activities that could be contrary to the national security or foreign policy interests of the United States.

(1) Supporting persons engaged in acts of terror.

(2) Actions that could enhance the military capability of, or the ability to support terrorism of governments that have been designated by the Secretary of State as having repeatedly provided support for acts of international terrorism.

(3) Transferring, developing, servicing, repairing or producing conventional weapons in a manner that is contrary to United States national security or foreign policy interests or enabling such transfer, service, repair, development, or production by supplying parts, components, technology, or financing for such activity.

(4) Preventing accomplishment of an end use check conducted by or on behalf of BIS or the Directorate of Defense Trade Controls of the Department of State by: precluding access to; refusing to provide information about; or providing false or misleading information about parties to the transaction or the item to be checked. The conduct in this example includes: expressly refusing to permit a check, providing false or misleading information, or engaging in dilatory or evasive conduct that effectively prevents the check from occurring or makes the check inaccurate or useless. A nexus between the conduct of the party to be listed and the failure to produce a complete, accurate and useful check is required, even though an express refusal by the party to be listed is not required.

(5) Engaging in conduct that poses a risk of violating the EAR when such conduct raises sufficient concern that the End-User Review committee believes that prior review of exports or reexports involving the party and the possible imposition of license conditions or license denial enhances BIS's ability to prevent violations of the EAR.

■ 6. Section 744.16 is added to read as follows:

§ 744.16 Procedure for requesting removal or modification of an Entity List Entity.

Any entity listed on the Entity List may request that its listing be removed or modified.

(a) All such requests, including reasons therefor, must be in writing and sent to: Chair, End-User Review Committee, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Room 3886, Washington, DC 20230.

(b) The End-User Review Committee will review such requests in accordance with the procedures set forth in Supplement No. 5 to this part.

(c) The Deputy Assistant Secretary for Export Administration will convey the decision on the request to the requester in writing. That decision will be the final agency action on the request.

■ 7. Add a new Supplement No. 5 to part 744 to read as follows:

Supplement No. 5 to Part 744—Procedures for End-User Review Committee Entity List Decisions

The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce, State, Defense, Energy and, where appropriate, the Treasury, will make all decisions to make additions to, removals from or changes to the Entity List. The ERC will be chaired by the Department of Commerce and will make all decisions to add an entry to the Entity List by majority vote and all decisions to remove or modify an entry by unanimous vote.

When determining to add an entity to the Entity List or to modify an existing entry, the ERC will also specify the section or sections of the EAR that provide the basis for that determination. In addition, if the section or sections that form the basis for an addition or modification do not specify the license requirements, the license application review policy or the availability of license exceptions, the ERC will specify the license requirements, the license application review policy and which license exceptions (if any) will be available for shipments to that entity.

Any agency that participates in the ERC may make a proposal for an addition to, modification of or removal of an entry from the Entity List by submitting that proposal to the chairman.

The ERC will vote on each proposal no later than 30 days after the chairman first circulates it to all member agencies unless the ERC unanimously agrees to postpone the vote. If a member agency is not satisfied with the outcome of the vote of the ERC that agency may escalate the matter to the Advisory Committee on Export Policy (ACEP). A member agency that is not satisfied with the decision of the ACEP may escalate the matter to the Export Administration Review Board (EARB). An agency that is not satisfied with the decision of the EARB may escalate the matter to the President.

The composition of the ACEP and EARB as well as the procedures and time frames shall be the same as those specified in Executive Order 12981 as amended by Executive Orders 13020, 13026 and 13117 for license applications. If at any stage, a decision by majority vote is not obtained by the prescribed deadline the matter shall be raised to the next level.

A final decision by the ERC (or the ACEP or EARB or the President, as may be applicable in a particular case) to make an addition to, modification of, or removal of an entry from the Entity List shall operate as clearance by all member agencies to publish the addition, modification or removal as an amendment to the Entity List even if, in the case of a decision by the ERC to add an entry or any decision by the ACEP or EARB, such decision is not unanimous. Such amendments will not be further reviewed through the regular Export Administration Regulations interagency review process.

A proposal by the ERC to make any change to the EAR other than an addition to, modification of, or removal of an entry from the Entity List shall operate as a recommendation and shall not be treated as interagency clearance of an EAR amendment. The chairman of the ERC will be responsible for circulating to all member agencies proposals submitted to him by any member agency. The chairman will be responsible for serving as secretary to the ACEP and EARB for all review of ERC matters. The chairman will communicate all final decisions that require Entity List amendments or individual ''is informed'' letters, to the Bureau of Industry and Security which shall be responsible for drafting the necessary changes to the Entity List. If the ERC decides in a particular case that a party should be informed individually instead of by EAR amendment the chairman will be responsible for preparing the ''is informed'' letter for the signature of the Deputy Assistant Secretary for Export Administration.

A listed entity may present a request to remove or modify its Entity List entry along with supporting information to the chairman at Room 3886, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. The chairman shall refer all such requests and supporting information to all member agencies. The member agencies will review

and vote on all such requests. The time frames, procedures and right of escalation by a member agency that is dissatisfied with the results that apply to proposals made by a member agency shall apply to these requests. The decision of the ERC (or the ACEP or EARB or the President, as may be applicable in a particular case) shall be the final agency decision on the request and shall not be appealable under part 756 of the EAR. The chairman will prepare the response to the party who made the request. The response will state the decision on the request and the fact that the response is the final agency decision on the request. The response will be signed by the Deputy Assistant Secretary for Export Administration.

The End-User Review Committee will conduct a review of the entire Entity List at least once per year for the purpose of determining whether any listed entities should be removed or modified. The review will include analysis of whether the criteria for listing the entity are still applicable and research to determine whether the name(s) and address(es) of each entity are accurate and complete and whether any affiliates of each listed entity should be added or removed.

PART 756—[AMENDED]

■ 8. The authority citation for part 756 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008).

■ 9. In § 756.1, add a new paragraph (a)(3) to read as follows:

§ 756.1 Introduction.

(a) * * *

(3) A decision on a request to remove or modify an Entity List entry made pursuant to § 744.16 of the EAR.

* * * * *

Dated: August 7, 2008.

Christopher R. Wall,

Assistant Secretary for Export Administration.

[FR Doc. E8–19102 Filed 8–20–08; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740, 742, 744, 748, 750, 754, 764 and 772

[Docket No. 0612242559–8545–02]

RIN 0694–AD94

Mandatory Electronic Filing of Export and Reexport License Applications, Classification Requests, Encryption Review Requests, and License Exception AGR Notifications

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule requires that export and reexport license applications, classification requests, encryption review requests, License Exception AGR notifications and related documents be submitted to the Bureau of Industry and Security (BIS) via its Simplified Network Application Process (SNAP–R) system. This requirement does not apply to applications for Special Comprehensive Licenses or in certain situations in which BIS authorizes paper submissions.

DATES: Effective date October 20, 2008.

FOR FURTHER INFORMATION CONTACT: For information about this rule contact William Arvin, e-mail *warvin@bis.doc.gov* or tel. 202–482–2440. For information about registering for or using the SNAP–R system contact Lisa Williams at 202–482–2148.

SUPPLEMENTARY INFORMATION:

Background

BIS administers a system of export and reexport controls in accordance with the Export Administration Regulations (EAR). In doing so, BIS requires that parties wishing to engage in certain transactions apply for licenses, submit encryption review requests, or submit certain notifications to BIS. BIS also reviews, upon request, specifications of various items and determines their proper classification under the EAR. Currently, members of the public submit these applications, requests and notifications to BIS in one of three ways: via SNAP–R, via BIS's Electronic License Application Information Network (ELAIN), or via the paper BIS Multipurpose Application Form BIS 748–P and its two appendices, the BIS 748–P A (item appendix) and the BIS 748–P B (end user appendix). In many instances, BIS needs additional documents to act on the submission. For documents that relate to paper submissions, the documents can be mailed or delivered to BIS with the BIS 748–P form. For submissions made electronically via ELAIN, the documents must be sent to BIS separately and matched up with the applications when they arrive.

In 2006, BIS replaced its then existing Simplified Network Application Processing system (SNAP) with an improved system referred to as ''SNAP Redesign (SNAP–R)''. The improvements include the ability to include documents related to a submission in the form of PDF (portable document format) files as ''attachments'' to the submission. Other improvements include a feature that allows BIS personnel to securely request additional information from the submitting party and for the party to submit that information in a manner that ties the chain of communication to the submission.

BIS believes that use of SNAP–R will reduce processing times and simplify compliance with and administration of export controls. SNAP–R provides not only improved efficiency in submission and processing, but improved end-user security through rights management and an updated application and security infrastructure.

Therefore, beginning October 20, 2008 all export and reexport license applications (other than Special Comprehensive License and Special Iraq Reconstruction License applications), classification requests, encryption review requests, License Exception AGR notifications, and ''attached'' related documents must be submitted to BIS via its Simplified Network Application Process Redesign (SNAP–R) system unless BIS authorizes paper submissions. This rule also sets forth the criteria under which BIS authorizes paper submissions.

Changes Made by This Rule

The changes that this rule makes center on part 748 of the EAR, which sets forth the principal procedures governing the submission of the applications, review requests and notifications affected by this rule. The changes are in § 748.1 ''General provisions,'' § 748.3 ''Classification requests, advisory opinions, and encryption review requests,'' and in § 748.6 ''General instructions for license applications.'' The rule also makes conforming changes to a number of EAR provisions that currently employ language related to the paper forms.

Substantive Changes

Section 748.1 is revised to emphasize electronic filing over paper and to set forth the basic requirement that license

applications (other than Special Comprehensive License or Special Iraq Reconstruction License applications), encryption review requests, License Exception AGR notifications, and classification requests and any accompanying documents must be submitted via SNAP–R unless BIS authorizes submission via paper. Revised section 748.1 continues to specify that for paper submissions, only original BIS paper forms may be used and that reproductions or facsimiles are not acceptable.

Section 748.1 also sets forth the criteria under which BIS will authorize paper submissions. Those criteria are: (1) BIS has received no more than one submission from the party in the twelve months immediately preceding the current submission, *i.e.*, the combined total of the party's license applications (other than Special Comprehensive Licenses), encryption review requests, License Exception AGR notifications, and classification requests could not exceed one; (2) the party does not have access to the Internet; (3) BIS has rejected the party's electronic filing registration or revoked its eligibility to file electronically; (4) BIS has requested that the party submit on paper for a particular transaction; or (5) BIS has determined that urgency, a need to implement government policy or a circumstance outside the submitting party's control justifies allowing paper submissions on a particular instance.

Parties who wish to submit on paper must submit the BIS Form 748–P. In addition to the information relevant to the substance of the submission itself, the submitter must include, either on the form or as an attachment, a statement explaining which of the five foregoing criteria justifies a paper submission and provide supporting information. If BIS agrees that at least one of the criteria is met, it will process the submission in accordance with its regular procedures. If BIS finds that none of the criteria asserted by the submitter are met, it will return the form without action and inform the submitter of the reason for rejecting the request to file on paper. A decision by BIS to reject the request to file on paper is subject to appeal under part 756 of the EAR. This rule also moves the address for paper submissions from § 748.2 to § 748.1.

Section 748.3 is revised to replace instructions about where and how to submit classification requests, with a reference to the procedures in § 748.1 and to require that documents submitted with the classification request be submitted in PDF format as attachments to the SNAP–R submission unless BIS had authorized a paper submission pursuant to § 748.1 of the EAR. Section 748.3 continues to state requirements about the kinds of information that must be included in classification requests.

Section 748.6 is revised to require that any documents submitted in support of any license application submitted via SNAP–R be submitted via the SNAP–R system as PDF (portable document format) files. Section 748.6 also is revised to remove the statement that application control numbers are preprinted on the paper forms. The paper forms will continue to bear a preprinted application control number, but for electronic submissions, application control numbers are communicated to the submitter electronically once BIS accepts the submission.

Conforming Changes

Prior to publication of this rule, a number of EAR provisions stated that a particular submission must be made on the BIS 748–P paper form or its electronic equivalent. If such a provision referred to a classification request or encryption review request, this rule revises that provision to state that the submission must be made in accordance with §§ 748.1 and 748.3. If such a provision referred to a license application (other than a Special Comprehensive License application or Special Iraq Reconstruction License), this rule also would revise that provision to state that the submission must be in accordance with §§ 748.1, 748.4 and 748.6. The changes described in this paragraph are to be made in:

- § 740.8(b)(2), relating to classification requests pursuant to License Exception ''Key Management Infrastructure (KMI)'';
- § 740.9(a)(4)(i) and (iii), relating to authorizations to sell or dispose of or to retain abroad more than one year items exported under License Exception ''Temporary imports, exports and reexports (TMP)'';
- § 740.12(a)(2)(iii)(C), relating to applications to exceed the frequency limits for individual gift parcels under License Exception ''Gift parcels and humanitarian donations (GFT)'';
- § 740.15, footnote number 4, relating to certain exports to U.S. or Canadian vessels;
- § 740.17(d)(1), relating to the submission of encryption review requests under License Exception ''Encryption commodities and software (ENC)'';
- § 742.15(b)(2)(i), relating to submission of review requests for certain encryption items;
- Supplement No. 6 to part 742, relating to submission of review requests for certain ''mass market'' encryption commodities and software;
- § 754.2(g)(1), relating to applications for export of certain California crude oil;
- § 754.4(d)(1), relating to applications to export unprocessed Western Red Cedar; and
- § 764.7(b)(2)(i), relating to applications to take certain actions with respect to certain items in Libya.

This rule replaces the requirement to use the form BIS 748–P in § 740.18(c)(2) when submitting notice to the government in advance of shipments under License Exception ''Agricultural Commodities (AGR)'' with a requirement to submit such notices in accordance with § 748.1 of the EAR.

This rule also replaces references to the BIS 748-P Multipurpose Application Form with the word ''application'' in provisions that describe certain information that must be submitted with particular types of license applications. This change emphasizes that the same information is required regardless of whether an application is submitted on paper or electronically. The change described in this paragraph is made in:

- § 742.2(e)(1), relating to certain license requirements imposed for chemical and biological weapons proliferation concerns;
- § 744.21(d), relating to applications to export or reexport certain items to known military end-uses in the People's Republic of China;
- § 748.4(b)(1), relating to disclosure of parties on a license application;
- § 748.4(b)(2)(ii), relating to written authority of certain agents to submit on a principal's behalf;
- § 748.5 introductory paragraph and paragraph (b), relating to parties on the application;
- § 754.4(d)(2) and (d)(3), relating to applications for export of unprocessed western red cedar;
- § 754.5(b)(2), relating to applications to export horses by sea;
- Supplement No. 2 to Part 754, relating to applications for export of western red cedar: and
- § 772.1, definition of ''Other party authorized to receive license.''

This rule removes the reference to date time stamping in § 754.2(g)(5)(i) by BIS of applications to export crude oil because that process occurs only with paper applications. However, the rule retains the policy in § 754.2(g)(5)(i) of issuing licenses for approved applications in the order in which the applications are received.

This rule also changes the references to § 748.2(c) as a source of BIS's address

in §§ 748.3, 750.7(h)(3), 750.8(b) and 750.9(a) to a reference to § 748.1(h)(3) because the rule removes § 748.2(c) and includes the address in § 748.1(h)(3).

Public Comments

Comments Related to Lack of Direct Data Interface Between SNAP–R and Corporate Databases

BIS received comments on the proposed rule from eleven commenters. Eight commenters stated that SNAP–R should be modified to include capability for direct data transfer from corporate databases. Five of these eight stated that SNAP–R should not be made mandatory until it includes such a function. Two of the eight stated that a direct data interface was needed but did not state that they were opposed to making use of SNAP–R mandatory without such an interface. One of the eight supported making use of SNAP–R mandatory, but noted the need for a direct data interface. Four of the eight commenters stated that ''rather than terminate ELAIN replace it with a program interface that incorporates SNAP–R data formats and document attachment capabilities.''

The eight commenters who addressed direct data transfer offered the following points in support of the need for a direct data interface. Not all of the eight commenters offered all of these points and some of these points were offered by more than one commenter.

- Lack of a direct interface forces users to go outside corporate computer systems that provide internal compliance checks, a practice that creates a compliance risk because it reduces management's ability to see the information and removes a basis for analysis and audits of best practices throughout the corporation.
- Manual data entry is a potential source of errors and is inefficient and costly. One commenter estimated that it will have to spend $50,000 in additional labor costs to do data entry in SNAP–R.
- Other government programs that require submission of export related information to the government have direct data interfaces. Commenters specifically mentioned the D–TRADE (used for State Department export license applications) and the Automated Export System (used to collect shippers' export data).
- The application of current Internet technologies (including file transfer and XML data formats) to parallel the SNAP–R Web site make the development of a SNAP–R automated interface a very modest information systems project.
- Allowing direct data interface would allow large users to employ their own business compliance rules in the application submission process. In some cases, these internal rules might be stricter than the minimum EAR requirements.
- Allowing direct data interface would allow large users to incorporate automated denied persons list screening, automated status checking, message handling and notifications into the industry side of the system.
- Although BIS addressed the impact of the rule on small entities, it did not address the fact that a large percentage of submissions come from a small number of submitters and the burden that manual data entry would impose on them.

BIS acknowledges the convenience and potential cost savings that can be provided to the public by a direct data transmission from the applicants' computer systems to BIS. However, BIS must also consider the security requirements of its computer systems. These security needs are based on both Federal information system security requirements and a statutory provision that precludes BIS from disclosing certain information in those systems, except as provided by law. As a government agency, BIS must comply with these requirements in a manner that treats similarly situated parties in a similar manner.

The data provided to BIS through the submissions affected by this rule can include sensitive international trade information about pricing, technical design or the identity of potential customers. The systems that contain the data are high security impact systems in accordance with Federal Information Processing Standards Publication 199, Standards for Security Categorization of Federal Information Systems and the National Institute of Standards and Technology Special Publication (SP) 800–60, Guide for Mapping Types of Information and Information Systems to Security Categories. These standards did not exist when ELAIN was created in the 1980s.

In addition to the need to comply with government standards for high security impact systems, BIS is obligated to implement the provisions of Section 12(c) of the Export Administration Act of 1979, as amended (EAA). Section 12(c) of the EAA prohibits the release of information that was obtained for the purpose of consideration of or that concerns license applications without a determination that the release of such information is in the national interest. To meet this obligation, BIS, among other things, makes efforts to guard against unauthorized access to its computer systems that contain information that is protected by Section 12(c) of the EAA.[1]

Meeting these obligations poses ever increasing challenges for BIS. Over the last decade, the number and sophistication of cyber attacks on government systems has increased. BIS is a confirmed target of these attacks and in order to prevent the loss or compromise of the data that it is obligated to protect, BIS has adopted stringent measures.

BIS requires extraordinary IT Security measures due to its: (1) International trade data which per FIPS–199 referenced above, carries a ''high'' security impact level, and (2) confirmation by the Department of Homeland Security (DHS) U.S. Computer Emergency Response Team (USCERT) that BIS is a target of international actors engaging in broad federal level cyber espionage. The former requires data security exceeding even the requirements of personal privacy information; the latter requires security infrastructure over and above that provided by commercially available products.

The general nature of the cyber-espionage threat is that BIS has been and continues to be the target of attempts by external actors to exfiltrate data. The history and pattern of these attacks support the premise that their frequency and sophistication are likely to increase. BIS bases its information technology security planning upon that premise.

The most effective BIS response to the cyber-espionage threat is to implement a compartmentalized network and security infrastructure to secure mission critical export control system applications and data from foreign intrusions. Physical and logical segregation is the same concept applied to classified systems and data protection. BIS has implemented this approach for the same reasons that it is applied in classified environments—the cyber espionage vulnerabilities exceed the protections provided by commercial products in a non-compartmentalized environment. As confirmed with DHS and other independent federal and

[1] Although the EAA expired in August 2001, the President has ordered that ''the provisions of the [EAA] and the provisions for administration of the [EAA] shall be carried out * * * so as to continue in full force and effect * * * the export control system.'' Executive Order 13222 (Aug. 17, 2001). The Department has determined, and federal courts have agreed, that this order has the effect of preserving the confidentiality requirements of Section 12(c). *See e.g. Wisconsin Project on Nuclear Arms Control* v. *U.S. Dept. of Commerce,* 317 F.3d 275 (DC Cir. 2003).

private security experts, a compartmentalized system is the only approach which will, with a high degree of certainty, yield results. Selective targeted IT security measures have not been and are not effective because of the breadth, resources, sophistication and nature of the attack methods. For example, the BIS compartmentalization includes, but is not limited to, export control system segregation from general internet access, and particular e-mail message formats and attachments. This not only allows BIS to continue to mitigate, with 100% effectiveness, the risk of BIS systems losing sensitive data, but to ensure its systems are not used to launch an attack against the exporter community or other agencies.

Finally, this security posture must be implemented with the principle that any direct computer interface standard to be implemented for the purpose of submitting data to BIS should not arbitrarily exclude any party.

With these considerations in mind, BIS has assessed options for accomplishing the goals of the commenters without breaching its security and fairness obligations. This examination included, but was not limited to, review of procedures used by the other agencies referenced by the commenters.

For example, one method to achieve the commenters' objectives would be to allow direct data interface between private sector computer systems and the BIS licensing systems. BIS rejected this alternative. Allowing a system of unknown security standards to interface directly with a high impact security system is, in BIS's view, inconsistent with the security controls specified in National Institute of Standards and Technology publication 800–53A, Guide for Assessing the Security Controls in Federal Information Systems. This position is reinforced by the information provided by Federal and private security sources, and the knowledge BIS has acquired in responding to previous attempts by outside parties to gain access to data in its information systems. BIS has determined that this method would pose an unacceptable risk of compromise and unauthorized system and data access.

BIS also considered the option of allowing data transmission from private sector computers to a logically and physically segregated BIS computer that would be isolated from BIS systems that would store sensitive data. There are options to mitigate but not to eliminate the risk posed by malicious code which may be embedded in transmissions and data content. Given sufficient time and resources, BIS could implement an isolation and containment solution that would provide an acceptable level of risk mitigation. However, the cost of the solution would increase as the number of unique user systems authorized to interface directly with BIS computer systems increased. The possibility of concealing harmful code in a data transmission and the corresponding costs and technical challenges of detecting and removing that code exist regardless of the data interface method or format; they will simply differ in nature if BIS applies an XML schema as suggested by one commenter.

Because costs and complexity would increase as the number of unique user systems increased, providing opportunity for direct data transmission to all parties who submitted comments requesting direct data transmission to BIS would not be cost effective given current information technology security requirements and capabilities. Moreover, BIS could not in fairness limit such costs and complexity by restricting direct data transmission to a few parties or to a limited number of service providers. Doing so would favor some private sector parties over others and could be viewed as fostering a government protected oligopoly.

After considering the foregoing factors, BIS concludes that eliminating the ELAIN system and requiring use of the SNAP–R Web based data entry system is the best available alternative given current information technology capabilities and fiscal constraints. Accordingly, BIS intends to discontinue use of ELAIN and require the use of the SNAP–R system unless one of the reasons for authorizing paper submissions set forth in this rule applies in particular case.

Comment Related to Cost Reduction Afforded by SNAP–R

One commenter noted that use of SNAP–R would likely reduce costs and processing time compared to paper forms.

BIS agrees. One of the main advantages of an electronic system such as SNAP–R is reduced costs and processing time.

Comments Proposing Changes to SNAP–R That Are Not Related to the Proposed Rule

BIS received several comments proposing changes to SNAP–R that do not address the issues in the proposed rule. BIS will consider these comments as it further develops the SNAP–R system and may implement them as resources become available. These comments are:

- SNAP–R should provide status checking ability similar to STELA, either in addition to STELA or instead of STELA;
- Licensing officers should be able to enter remarks about the status of a submission that would be readable by the applicant;
- SNAP–R should list the licensing officer assigned to the application;
- SNAP–R should allow edits to the commodity field after the field is saved by the user;
- Improve SNAP–R rights management to allow better management oversight via access to all of the company's submissions, employee reassignments, assignment of access rights, systematic peer review and coordination of export control compliance policies, and practices among affiliated companies (Consider the United Kingdom's SPIRE system as an example);
- Allow exporters to designate third parties to submit on their behalf and to monitor the activities of those third parties;
- Include application control numbers or reference numbers in the drop down menu;
- Interact with the National Security Agency (NSA) so that encryption requests submitted via SNAP–R are automatically routed to NSA instead of requiring applicant to submit a copy of its SNAP–R submission to NSA; and
- Revise the ''View Messages'' screen in SNAP–R to add columns that show the (submitter's) reference number and the application control number and allow the submitter to sort the display on these columns.

These comments embody proposals to make SNAP–R more useful or effective. BIS believes that they need not be addressed in connection with this rule. BIS will consider these comments in connection with its future efforts to improve SNAP–R.

Comments Proposing Changes That Cannot Be Implemented at This Time Because of Legacy System Limitations

Two comments proposed changes to SNAP–R that cannot be implemented at this time because of limitations of the legacy Export Control Automated Support System (ECASS). ECASS, which has been operational since the early 1980s, is the computer system that BIS uses for internal processing of license applications, classification requests, encryption review requests and License Exception AGR notifications. BIS will consider these comments in connection with its multi-year incremental ECASS redesign and deployment of the ECASS Redesign

(ECASS–R) system. However, the expectation is that the changes proposed in these two comments, if adopted, will not be implemented until the final stage of the ECASS–R system deployment when the legacy ECASS system is retired. This is because the legacy ECASS system architecture is an outdated ''monolithic'' design; although the new ECASS–R system is being implemented in modules incrementally, the legacy system must be retired in its entirety to implement broad data element changes cost effectively.

These two comments are:

- Increase the number of characters permitted in the line item field; and
- Increase the number of characters permitted in the technical note field.

Comment Related to the Ability of SNAP–R To Accept Data Required by the Export Administration Regulations

One commenter stated that BIS should change the computer/microprocessor performance field to accommodate APP (adjusted peak performance) rather than MTOPS (millions of theoretical operations per second).

In April 2006, the EAR were amended to replace the computer performance metric composite theoretical performance (CTP) measured in millions of theoretical operations per second (MTOPS) with a new metric called adjusted peak performance (APP) measured in weighted teraFLOPS (WT). In November 2007, another EAR amendment replaced CTP with APP for microprocessor performance measurement. In the preamble to the April 2004 rule, BIS noted that a computer with a CTP of 190,000 MTOPS would have an APP of approximately 0.75 WT. A change of this magnitude requires an adjustment to the range of values that may be entered into the relevant field in SNAP–R. Currently SNAP–R will accept a range of values ranging from 0.0000001 to 9.9999999 WT. After considering applications and licenses currently in its database and estimating the rate of future increases in computer performance, BIS believes that SNAP–R as currently configured is adequate for data input of currently available computers and microprocessors. However, BIS estimates that computers with a performance level of 10 WT or greater are likely to be available sometime in the year 2009 or 2010. Therefore, BIS will begin the change control review process to modify SNAP–R to accept values exceeding 10 WT in the APP field.

Comments Concerning Electronically ''Attaching'' Files to SNAP–R Submissions

BIS received comments concerning the requirements for electronically ''attaching'' documents to the SNAP–R submissions. These comments are:

- Expand the size of supporting documents allowed via SNAP (SNAP–R). Exporters must use both paper and electronic means for submission of a single application.
- Not all submissions are paper and exporters must use both paper and electronic means for submission of a single application.

BIS contacted the commenter who provided this comment for clarification and queried its licensing officers to identify instances of the problems alluded to in these comments. With the information obtained from those sources, BIS concluded that these comments are intended to address the following three issues:

- A submitter may not have a PDF version of the document. In one instance identified by a BIS licensing officer, the only electronic copy was in JPEG (joint photography experts group) format.
- A document may be too large to fit into the submitter's scanner.
- The submitter's PDF file is larger than the maximum file size that SNAP–R accepts for attachments.

BIS believes that no changes to the rule or to SNAP–R are needed because of the issues raised in these comments. BIS selected PDF as the file format for attachments in SNAP–R because it is widely available, low cost and BIS can effectively implement security measures that provide a high level of protection against the Adobe related attack vectors. BIS notes that PDF files are widely used for transmission of technical documents. Although some documents are too large to scan in desktop scanners, commercial services that can scan such documents exist. SNAP–R will accept attachment files up to 10 Mb in size. BIS has reviewed the SNAP–R submissions that it has received and determined that the typical file size is approximately 5 Mb. SNAP–R does not place a limit on the number of files that may be attached to a submission. In some cases, the submitter may be able to split the file into more than one file to get below the file size limitations. Finally, BIS notes that one of the criteria under which BIS will authorize paper submissions is ''BIS has determined that urgency, a need to implement U.S. government policy or a circumstance outside the submitting party's control justify allowing paper submissions in a particular instance.'' BIS believes that this criterion provides it with adequate discretion to authorize paper submissions in instances where circumstances truly make attaching PDF files impracticable.

Comment Related to SNAP–R Registration Procedures

One commenter stated a two-week period to issue a Personal Identification Number is not suitable if SNAP (SNAP–R) is mandatory.

BIS agrees that, in nearly all cases, two weeks should not be needed to issue a PIN. BIS believes that most PINs are issued substantially less than two weeks time. BIS encourages persons who believe that the issuance of a PIN is taking inordinately long to contact the Export Management and Compliance Division at 202 482 2148 or 202 482 0062.

Changes in This Final Rule Compared to the Proposed Rule

After review of the comments, BIS is making no changes to the substantive points of the proposed rule in response to the comments. BIS is making only the following technical and conforming changes compared to the proposed rule.

The proposed rule did not state whether the applications for a Special Iraq Reconstruction License (SIRL) would be required to be filed via SNAP–R. SIRL applications are similar to Special Comprehensive License (SCL) applications. This final rule explicitly states the SNAP–R filing is not required for SIRLS, thereby giving the two similar applications the same treatment.

In § 740.17, footnote number 4 is revised to refer to §§ 748.1, 748.4 and 748.6, the sections that govern license application submission under this rule.

In § 742.2(e)(1), the reference to the BIS form 748–P is changed to a reference to an application.

In § 750.7(h)(3), 750.8(b), and 750.9(a) the reference to § 748(c) is replaced with § 748.1(d)(2) because this rule removes § 748.2(c) and includes the relevant information in § 748.1(d)(2).

Rulemaking Requirements

1. This rule has been determined to be significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget

(OMB) Control Number. This regulation involves collections previously approved by the OMB under control number 0694–0088, ''Simplified Network Application Processing System'' which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. Miscellaneous and recordkeeping activities account for 12 minutes per submission. This proposed rule would require persons seeking authorization to submit paper filings to state, either in the additional information block on the paper form or an attachment, which of the criteria for paper submissions they meet and the reasons therefore. BIS believes that requests seeking authorization to submit paper filings would impose a minimal burden on applicants as the information requirements are small and the number of requests is expected to be low. Applicants making a request would identify one or more of the 5 criteria under which BIS would authorize a paper submission, and provide the factual basis for the authorization to submit on paper. BIS estimates that only a small number of submissions will seek authorization to file on paper. In 2008, more than 96% of all submissions affected by this rule were submitted to BIS via SNAP–R. Therefore, BIS estimates that this requirement will make no material change of the estimated time of 58 minutes needed to prepare and submit a BIS–748. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to David Rostker, OMB Desk Officer, by e-mail at *david_rostker@omb.eop.gov* or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, Room H 2705, 14th Street and Pennsylvania Ave., NW., Washington, DC 20230.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The Chief Counsel for Regulation at the Department of Commerce certified to the Chief Counsel for Advocacy at the Small Business Administration that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis was published in the proposed rule and is not repeated here. BIS received no comments that addressed the economic impact of this rule on small entities, therefore a final regulatory flexibility analysis was not prepared.

List of Subjects

15 CFR Parts 740, 750 and 748

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

15 CFR Part 754

Agricultural commodities, Exports, Forests and forest products, Horses, Petroleum, Reporting and recordkeeping requirements.

15 CFR Part 764

Administrative practice and procedure, Exports, Law enforcement, Penalties.

15 CFR Part 772

Exports.

■ Accordingly, parts 740, 742, 744, 748, 750, 754, 764 and 772 of the Export Administration Regulations (15 CFR 730–774) are amended as follows:

PART 740—[AMENDED]

■ 1. The authority citation for 15 CFR part 740 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec. 901–911, Public Law 106–387; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006); Notice of July 23, 2008, 73 FR 43603 (July 25, 2008).

■ 2. In § 740.8 revise paragraph (b)(2) to read as follows:

§ 740.8 Key management infrastructure (KMI).

* * * * *

(b) * * *

* * * * *

(2) For such classification requests, indicate ''License Exception KMI'' in Block 9 on the application. Submit the request to BIS in accordance with §§ 748.1 and 748.3 of the EAR and send a copy of the request to: Attn: ENC Encryption Request Coordinator, 9800 Savage Road, Suite 6940, Fort Meade, MD 20755–6000.

* * * * *

■ 3. In § 740.9 revise the first sentences of paragraphs (a)(4)(i) and (a)(4)(iii) to read as follows:

§ 740.9 Temporary imports, exports and reexports (TMP).

* * * * *

(a) * * *

(4) * * *

(i) * * * If the exporter or the reexporter wishes to sell or otherwise dispose of the items abroad, except as permitted by this or other applicable provision of the EAR, the exporter or reexporter must request authorization by submitting a license application to BIS in accordance with §§ 748.1, 748.4 and 748.6 of the EAR.

* * * * *

(iii) * * * If the exporter wishes to retain an item abroad beyond the 12 months authorized by paragraph (a) of this section, the exporter must request authorization by submitting a license application in accordance with §§ 748.1, 748.4 and 748.6 of the EAR to BIS 90 days prior to the expiration of the 12 month period.

* * * * *

■ 4. In § 740.12, revise paragraph (a)(2)(iii)(C) to read as follows:

§ 740.12 Gift parcels and humanitarian donations (GFT).

(a) * * *

(2) * * *

(iii) * * *

(C) Parties seeking authorization to exceed these frequency limits due to compelling humanitarian concerns (*e.g.*, for certain gifts of medicine) should submit a license application in accordance with §§ 748.1, 748.4 and 748.6 of the EAR to BIS with complete justification.

* * * * *

■ 5. In § 740.15, revise footnote 4 to paragraph (c), introductory text to read as follows:

§ 740.15 Aircraft and vessels (AVS).

* * * * *

[4] Where a license is required, see §§ 748.1, 748.4 and 748.6 of the EAR.

* * * * *

■ 6. In § 740.17 revise paragraph (d)(1) to read as follows:

§ 740.17 Encryption commodities and software (ENC).

* * * * *

(d) * * *

* * * * *

(1) *Instructions for requesting review.* Review requests submitted to BIS must be submitted as described in §§ 748.1 and 748.3 of the EAR. See paragraph (e)(5)(ii) of this section for the mailing address for the ENC Encryption Request Coordinator. To ensure that your review request is properly routed, insert the phrase ''License Exception ENC'' in Block 9 (Special Purpose) of the application. Also, place an ''X'' in the box marked ''Classification Request'' in Block 5 (Type of Application) of Form

BIS–748P or select ''Commodity Classification'' if filing electronically. Neither the electronic nor paper forms provide a separate block to check for the submission of encryption review requests. Failure to properly complete these items may delay consideration of your review request.

* * * * *

■ 7. In § 740.18 revise paragraph (c)(2) to read as follows:

§ 740.18 Agricultural commodities (AGR).

* * * * *

(c) * * *

* * * * *

(2) *Procedures.* You must provide prior notification of exports and reexports under License Exception AGR by submitting a completed application in accordance with § 748.1 of the EAR. The following blocks must be completed, as appropriate: Blocks 1, 2, 3, 4, 5 (by marking box 5 ''Other''), 14, 16, 17, 18, 19, 21, 22 (a), (e), (f), (g), (h), (i), (j), 23, and 25 according to the instructions described in Supplement No. 1 to part 748 of the EAR. If your commodity is fertilizer, western red cedar or live horses, you must confirm that BIS has previously classified your commodity as EAR99 by placing the Commodity Classification Automatic Tracking System (CCATS) number in Block 22(d). BIS will not initiate the registration of an AGR notification unless the application is complete.

* * * * *

PART 742—[AMENDED]

■ 8. The authority citation for 15 CFR part 742 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; Sec 1503, Public Law 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008); Notice of November 8, 2007, 72 FR 63963 (November 13, 2007).

■ 9. Revise the first sentence of § 742.2(e)(1) to read as follows:

§ 742.2 Proliferation of chemical and biological weapons.

* * * * *

(e) * * *

(1) Supplement No. 1 to part 748 of the EAR provides general instructions for completing license applications

* * * * *

* * * * *

■ 10. In § 742.15, revise paragraph (b)(2)(i) to read as follows:

§ 742.15 Encryption items.

* * * * *

(b) * * *

* * * * *

(2) * * *

* * * * *

(i) *Procedures for requesting review.* To request review of your mass market encryption products, you must submit to BIS and the ENC Encryption Request Coordinator the information described in paragraphs (a) through (e) of Supplement No. 6 to this part 742, and you must include specific information describing how your products qualify for mass market treatment under the criteria in the Cryptography Note (Note 3) of Category 5, Part 2 (''Information Security''), of the Commerce Control List (Supplement No. 1 to part 774 of the EAR). Submit review requests to BIS in accordance with §§ 748.1 and 748.3 of the EAR. To ensure that your review request is properly routed, insert the phrase ''Mass market encryption'' in Block 9 (Special Purpose) and place an ''X'' in the box marked ''Classification Request'' in Block 5 (Type of Application) Block 5 does not provide a separate item to check for the submission of encryption review requests. Failure to properly complete these items may delay consideration of your review request. Submissions to the ENC Encryption Request Coordinator should be directed to the mailing address indicated in § 740.17(e)(5)(ii) of the EAR. BIS will notify you if there are any questions concerning your request for review (*e.g.*, because of missing or incomplete support documentation).

* * * * *

■ 11. In Supplement No. 6 to part 742 revise the first sentence to read as follows:

Supplement No. 6 to Part 742 Guidelines for Submitting Review Requests for Encryption Items

Review requests for encryption items must include all of the documentation described in this supplement and be submitted to BIS in accordance with §§ 748.1 and 748.3 of the EAR.

* * * * *

PART 744—[AMENDED]

■ The authority citation for part 744 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008); Notice of November 8, 2007, 72 FR 63963 (November 13, 2007).

■ 12. Revise § 744.21(d) to read as follows:

§ 744.21 Restrictions on certain military end-uses in the People's Republic of China.

* * * * *

(d) *License application procedure.* When submitting a license application pursuant to this section, you must state in the ''additional information'' block of the application that ''this application is submitted because of the license requirement in § 744.21 of the EAR (Restrictions on Certain Military End-uses in the People's Republic of China).'' In addition, either in the additional information block or in an attachment to the application, you must include all known information concerning the military end-use of the item(s). If you submit an attachment with your license application, you must reference the attachment in the ''additional information'' block of the application.

* * * * *

PART 748—[AMENDED]

■ 13. The authority citation for 15 CFR part 748 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008).

■ 14. In § 748.1, revise paragraph (a) and add a paragraph (d) to read as follows:

§ 748.1 General provisions.

(a) *Scope.* In this part, references to the Export Administration Regulations or EAR are references to 15 CFR chapter VII, subchapter C. The provisions of this part involve requests for classifications and advisory opinions, export license applications, encryption review requests, reexport license applications, and certain license exception notices subject to the EAR. All terms,

conditions, provisions, and instructions, including the applicant and consignee certifications, contained in electronic or paper form(s) are incorporated as part of the EAR. For the purposes of this part, the term ''application'' refers to both electronic applications and the Form BIS–748P: Multipurpose Application.

* * * * *

(d) *Electronic Filing Required.* All export and reexport license applications (other than Special Comprehensive License or Special Iraq Reconstruction License applications), encryption review requests, license exception AGR notifications, and classification requests and their accompanying documents must be filed via BIS's Simplified Network Application Processing system (SNAP–R), unless BIS authorizes submission via the paper forms BIS 748–P (Multipurpose Application Form), BIS–748P–A (Item Appendix) and BIS–748P–B, (End-User Appendix). Only original paper forms may be used. Facsimiles or reproductions are not acceptable.

(1) *Reasons for authorizing paper submissions.* BIS will process paper applications notices or requests if the submitting party meets one or more of the following criteria:

(i) BIS has received no more than one submission (*i.e.* the total number of export license applications, reexport license applications, encryption review requests, license exception AGR notifications, and classification requests) from that party in the twelve months immediately preceding its receipt of the current submission;

(ii) The party does not have access to the Internet;

(iii) BIS has rejected the party's electronic filing registration or revoked its eligibility to file electronically;

(iv) BIS has requested that the party submit a paper copy for a particular transaction; or

(v) BIS has determined that urgency, a need to implement U.S. government policy or a circumstance outside the submitting party's control justify allowing paper submissions in a particular instance.

(2) *Procedure for requesting authorization to file paper applications, notifications, or requests.* The applicant must state in Block 24 or as an attachment to the paper application (Form BIS 748–P) which of the criteria in paragraph (d)(1) of this section it meets and the facts that support such statement. Submit the completed application, notification or request to Bureau of Industry and Security, U.S. Department of Commerce, 14th Street and Pennsylvania, NW., Room H2705, Washington DC 20230.

(3) *BIS decision.* If BIS authorizes or requires paper filing pursuant to this section, it will process the application, notification or request in accordance with Part 750 of the EAR. If BIS rejects a request to file using paper, it will return the Form BIS–748P and all attachments to the submitting party without action and will state the reason for its decision.

§ 748.2 [Amended]

■ 15. In § 748.2, remove paragraph (c).

■ 16. In § 748.3 revise; paragraph (b) introductory text, the final sentence of paragraph (b)(1), paragraph (b)(2) and first sentence of paragraph (c) to read as follows:

§ 748.3 Classification requests, advisory opinions, and encryption review requests.

* * * * *

(b) * * * Submit classification requests in accordance with the procedures in § 748.1.

(1) * * * Classification requests must be supported by any descriptive literature, brochures, precise technical specifications or papers that describe the items in sufficient technical detail to enable classification by BIS submitted as PDF files attached to the SNAP–R submission unless a paper submission is authorized pursuant to § 748.1 of the EAR.

(2) When submitting a classification request, you must complete Blocks 1 through 5, 14, 22(a), (b), (c), (d), and (i), 24, and 25 on the application. You must provide a recommended classification in Block 22(a) and explain the basis for your recommendation based on the technical parameters specified in the appropriate ECCN in Block 24. If you are unable to determine a recommended classification for your item, include an explanation in Block 24, identifying the ambiguities or deficiencies that precluded you from making a recommended classification.

(c) * * * Advisory opinion requests must be in writing and be submitted to the address listed in § 748.1(d)(2). * * *

* * * * *

■ 17. In § 748.4, revise the third sentence of paragraph (b)(1) and the first sentence of paragraph (b)(2)(ii) to read as follows.

§ 748.4 Basic guidance related to applying for a license.

* * * * *

(b) * * * (1) * * * If there is any doubt about which persons should be named as parties to the transaction, the applicant should disclose the names of all such persons and the functions to be performed by each in Block 24 of the application. * * *

(2) * * *

(ii) * * * Block 7 of the application (documents on file with applicant) must be marked ''other'' and Block 24 (Additional information) must be marked ''748.4(b)(2)'' to indicate that the power of attorney or other written authorization is on file with the agent.

* * * * *

■ 18. In § 748.5, revise the first sentence of the introductory paragraph and the second sentence of paragraph (b) to read as follows:

§ 748.5 Parties to the transaction.

The following parties may be entered on the application. * * *

(a) * * *

(b) * * * If a person and address is listed in Block 15 of the application, the Bureau of Industry and Security will send the license to that person instead of the applicant.

* * * * *

■ 19. In § 748.6, revise paragraph (a), the first sentence of paragraph (b) and paragraph (e) to read as follows:

§ 748.6 General instructions for license applications.

(a) *Instructions.* General instructions for filling out license applications are in Supp. No. 1 to this part. Special instructions for applications involving certain transactions are listed in § 748.8 and described fully in Supp. No. 2 to this part.

(b) * * * Each application has an application control number. * * *

* * * * *

(e) *Attachments to applications.* Documents required to be submitted with applications filed via SNAP–R must be submitted as PDF files using the procedures described in SNAP–R. Documents required to be submitted with paper applications must bear the application control number to which they relate and, if applicable, be stapled to the paper form. Where necessary, BIS may require you to submit additional information beyond that stated in the EAR confirming or amplifying information contained in your license application.

* * * * *

PART 750—[AMENDED]

■ 20. The authority citation for part 750 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec. 1503, Public Law 108–11, 117 Stat. 559; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003;

Notice of July 23, 2008, 73 FR 43603 (July 25, 2008).

■ 21. Revise the last sentence of § 750.7(h)(3) to read as follows:

§ 750.7 Issuance of licenses.

* * * * *

(h) * * *

(3) * * * The written request must be submitted to BIS at the address listed in § 748.1(d)(2) of the EAR.

* * * * *

■ 22. Revise the second sentence of § 750.8(b) to read as follows:

§ 750.8 Revocation or suspension of licenses.

* * * * *

(b) * * * The license must be returned to BIS at the address listed in § 748.1(d)(2) of the EAR, Attn: ''Return of Revoked/Suspended License''.

* * * * *

■ 23. Revise the first sentence of § 750.9(a) to read as follows:

§ 750.9 Duplicate licenses.

(a) * * * If a license is lost, stolen or destroyed, you, as the licensee, may obtain a duplicate of the license by submitting a letter to the BIS at the address listed in § 748.1(d)(2) of the EAR, Attention: ''Duplicate License Request''.

* * * * *

PART 754—[AMENDED]

■ 24. The authority citation for 15 CFR part 754 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 30 U.S.C. 185(s), 185(u); 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; E.O. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006); Notice of July 23, 2008, 73 FR 43603 (July 25, 2008).

■ 25. In § 754.2, revise paragraphs (g)(1) and (g)(5)(i) to read as follows:

§ 754.2 Crude oil.

* * * * *

(g) * * *

* * * * *

(1) Applicants must submit their applications in accordance with §§ 748.1, 748.4 and 748.6 of the EAR.

* * * * *

(5) * * *

(i) BIS will issue licenses for approved applications in the order in which the applications are received, with the total quantity authorized for any one license not to exceed 25 percent of the annual authorized volume of California heavy crude oil.

* * * * *

■ 26. In § 754.4, revise paragraphs (d)(1), (d)(2), and the introductory text of paragraph (d)(3) to read as follows:

§ 754.4 Unprocessed Western Red Cedar.

* * * * *

(d) * * *

(1) Applicants requesting to export unprocessed western red cedar must apply for a license in accordance with § 748.1, 748.4 and 748.6 of the EAR, submit any other documents as may be required by BIS, and submit a statement from an authorized representative of the exporter, reading as follows:

I, (Name) (Title) of (Exporter) HEREBY CERTIFY that to the best of my knowledge and belief the (Quantity) (cubic meters or board feed scribner) of unprocessed western red cedar timber that (Exporter) proposes to export was not harvested from State or Federal lands under contracts entered into after October 1, 1979.

_____

Signature

_____

Date

(2) In Blocks 16 and 18 of the application, ''Various'' may be entered when there is more than one purchaser or ultimate consignee.

(3) For each application submitted, and for each export shipment made under a license, the exporter must assemble and retain for the period described in part 762 of the EAR, and produce or make available for inspection, the following:

* * * * *

■ 27. In § 754.5 revise the second sentence of paragraph (b)(2) to read as follows:

§ 754.5 Horses for export by sea.

* * * * *

(b) * * *

(2) * * * You must provide a statement in the additional information section of the application certifying that no horse under consignment is being exported for the purpose of slaughter.

* * * * *

■ 28. In Supplement No. 2 to Part 754, revise footnote number 2 to read as follows:

Supplement No. 2 to Part 754—Western Red Cedar

[2] Report commodities on license applications in the units of quantity indicated.

* * * * *

PART 764—[AMENDED]

■ 29. The authority citation for 15 CFR part 764 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006); Notice of July 23, 2008, 73 FR 43603 (July 25, 2008).

■ 30. In § 764.7, revise the second sentence of paragraph (b)(2)(i) to read as follows:

§ 764.7 Activities involving items that may have been illegally exported or reexported to Libya.

* * * * *

(b) * * *

(2) * * *

(i) * * * License applications should be submitted in accordance with §§ 748.1, 748.4 and 748.6 of the EAR, and should fully describe the relevant activity within the scope of § 764.2(e) of this part which is the basis of the application.

* * * * *

PART 772—[AMENDED]

■ 31. The authority citation for 15 CFR part 772 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006); Notice of July 23, 2008, 73 FR 43603 (July 25, 2008).

■ 32. In § 772.1 revise the second sentence of the definition of the term ''Other party authorized to receive license.''

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

* * * * *

Other party authorized to receive license. * * * If a person and address is listed in Block 15 of the application, the Bureau of Industry and Security will send the license to that person instead of the applicant.

* * * * *

Dated: August 7, 2008.

Christopher R. Wall,

Assistant Secretary for Export Administration.

[FR Doc. E8–18852 Filed 8–20–08; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 5

[Docket No. FR–5226–F–01]

RIN 2501–AD43

Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937; Conforming Amendment To Include Students With Disabilities Receiving Assistance as of November 30, 2005

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This rule makes a conforming amendment to HUD's regulation that restricts individuals enrolled in an institution of higher education and who meet certain other requirements from receiving assistance under section 8 of the U.S. Housing Act of 1937. That regulation was required by statute to be promulgated in 2005, and the statute was subsequently amended to exempt from this restriction students with disabilities who were receiving section 8 assistance as of November 30, 2005.

DATES: *Effective Date:* September 22, 2008.

FOR FURTHER INFORMATION CONTACT: For Section 8 voucher issues, Danielle L. Bastarache, Director, Housing Voucher Management and Operations Division, Office of Public and Indian Housing, Room 4210, telephone number 202–402–5264; for the Office of Housing's project-based Section 8, Gail Williamson, Director, Housing Assistance Policy Division, Room 6138, telephone number 202–708–3000. For all of the individuals, the address is Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000. None of the aforementioned telephone numbers are toll-free numbers. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Fiscal Year (FY) 2006 appropriations for HUD, enacted in Title III of Public Law 109–115, approved on November 30, 2005, contained an administrative provision (section 327) that placed restrictions on housing assistance that can be provided to students of higher education under section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f) (1937 Act). Specifically, section 327 provided as follows:

(a) No assistance shall be provided under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) to any individual who—

(1) Is enrolled as a student at an institution of higher education (as defined under section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002));

(2) Is under 24 years of age;

(3) Is not a veteran;

(4) Is unmarried;

(5) Does not have a dependent child; and

(6) Is not otherwise individually eligible, or has parents who, individually or jointly, are not eligible, to receive assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

(b) For purposes of determining the eligibility of a person to receive assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), any financial assistance (in excess of amounts received for tuition) that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*), from private sources, or an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall be considered income to that individual, except for a person over the age of 23 with dependent children.

This law was enacted to address incidents of college students obtaining federal housing assistance without their educational financial assistance counting as income for purposes of income eligibility for federal housing assistance. The law also described how educational financial assistance is to be treated in the calculation of income for purposes of determining eligibility.

Section 327 directed HUD to issue a final rule to carry out this section no later than 30 days from the date of enactment of the law, and HUD issued its final rule on December 30, 2005 (70 FR 77742).

Public Law 109–249, approved on July 27, 2006, amended section 327 to exempt, from the restrictions placed on the provision of housing assistance to students enrolled at an institution of higher education, students with disabilities, as such term is defined in section 3(b)(3)(E) of the 1937 Act, and who were receiving assistance under section 8 of the 1937 Act as of November 30, 2005.

FY 2007 appropriations for HUD were provided as part of the Continuing Appropriations Resolutions, 2007, signed by President George W. Bush on February 15, 2007 (Pub. L. 110–5). HUD's FY 2007 appropriations, found in Title I and Chapter 10 of Title II of the Continuing Appropriations Resolution, 2007, funded HUD appropriations accounts at the same levels provided in FY 2006, and under the same conditions and restrictions imposed by Public Law 109–115. Given that funding for FY 2007 was subject to the same conditions as those imposed on FY 2006 funds, HUD concluded that the restrictions on assistance to students, enacted in Public Law 109–115, as amended by Public Law 109–249, remained in place.

FY 2008 appropriations for HUD were provided as part of the Consolidated Appropriations Act, 2008 (Pub. L. 110–161, approved on December 26, 2007). An administrative provision, section 218, of Title II of Division K of the Consolidated Appropriations Act, 2008, included the language of section 327 as amended by Public Law 109–249, placing restrictions on assistance to students enrolled in institutions of higher education, with an exemption for students who are persons of disabilities who were receiving section 8 assistance as of November 30, 2005.

II. This Final Rule

HUD is issuing this final rule to conform its regulation in 24 CFR 5.612 to include the exemption for persons with disabilities who were receiving section 8 assistance as of November 30, 2005.

III. Justification for Final Rule

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. Part 10, however, provides for exceptions to the general rule if HUD finds good cause to omit advanced notice and public participation. The good cause requirement is satisfied when prior public procedure is ''impractical, unnecessary, or contrary to the public interest'' (see 24 CFR 10.1). HUD has determined that prior public comment is unnecessary, because this rule is limited to making a conforming change so that HUD's regulation in 24 CFR 5.612 fully reflects all statutory requirements. No discretion is being exercised through this rulemaking. The statute provides for the exemption that is being added to the regulation, and the statutory exemption has been in place and implemented since 2006.

IV. Findings and Certifications

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule imposes no additional economic or other burdens on small entities. As noted earlier, this rule is limited to

making a conforming change so that HUD's regulation in 24 CFR 5.612 fully reflects all statutory requirements pertaining to restrictions on housing assistance to students enrolled in institutions of higher education. The entities covered by the statutory restrictions in section 8 of the 1937 Act, which are agencies administering tenant-based and project-based assisted housing, already are familiar with the exemption for students with disabilities receiving section 8 assistance as of November 30, 2005, added by statute in July 2006. Accordingly, the undersigned certifies that this final rule would not have a significant economic impact on a substantial number of small entities.

Environmental Impact

In accordance with 24 CFR 50.19(c)(1) of the Department's regulations, this rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Therefore, this final rule is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule does not impose any federal mandates on any state, local, or tribal government or the private sector within the meaning of UMRA.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from publishing any rule that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

List of Subjects in 24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Crime, Government contracts, Grant programs—housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

■ Accordingly, for the reasons stated in the preamble, HUD amends 24 CFR part 5 as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

■ 1. The authority citation for 24 CFR part 5 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d), and Sec. 327, Pub. L. 109–115, 119 Stat. 2936.

■ 2. In § 5.612, remove the word ''and'' at the end of paragraph (e), redesignate paragraph (f) as paragraph (g), and add a new paragraph (f) to read as follows:

§ 5.612 Restrictions on assistance to students enrolled in an institution of higher education.

* * * * *

(f) Is not a person with disabilities, as such term is defined in section 3(b)(3)(E) of the 1937 Act and was not receiving assistance under section 8 of the 1937 Act as of November 30, 2005; and

* * * * *

Dated: August 13, 2008.

Roy A. Bernardi,

Deputy Secretary.

[FR Doc. E8–19435 Filed 8–20–08; 8:45 am]

BILLING CODE 4210–67–P

POSTAL SERVICE

39 CFR Part 111

Implementation of New Standards for Intelligent Mail Barcodes

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: On April 30, 2008, we published in the **Federal Register** (Volume 73, Number 84, pages 23393–23403) proposed mailing standards to require the use of Intelligent Mail® barcodes on all letters and flats mailed at automation prices as of May 2010. We described two options for using Intelligent Mail barcodes as of May 2009: The basic option and the full-service option. In this final rule, we summarize comments received in response to our proposed rule and provide our new mailing standards for the use of Intelligent Mail barcodes.

DATES: *Effective Date:* May 11, 2009.

FOR FURTHER INFORMATION CONTACT: Bill Chatfield at 202–268–7278 or Karen Zachok at 202–268–8779.

SUPPLEMENTARY INFORMATION: Current mailing standards require either POSTNET™ barcodes or Intelligent Mail barcodes on letters and flats mailed at automation prices and on letters mailed at Standard Mail® enhanced carrier route prices. Both barcode formats contain routing information, but Intelligent Mail barcodes offer additional options. They can include indicators for added services such as Address Change Service and Confirm®, and enable tracking of individual mailpieces through our processing system. This additional visibility adds value to the mail and enables us to monitor service.

In response to many mailer requests, we will continue to allow POSTNET barcodes on automation letters and flats until May 2011. However, effective May 2009, we will require all automation flats to bear barcodes that include delivery point routing codes, as currently required for automation letters.

In May 2009, we will offer two options for using Intelligent Mail barcodes. Under the basic option, mailers will use the Intelligent Mail barcode on their letter and flat mailpieces. The basic Intelligent Mail barcode contains routing information for the delivery address but does not need to uniquely identify the mailpiece. Under the full-service option mailers must: Use unique Intelligent Mail barcodes on mailpieces; use Intelligent Mail tray barcodes and Intelligent Mail container barcodes; and electronically submit postage statements and mailing documentation.

We will offer customers who qualify for the full-service Intelligent Mail option the following benefits in May 2009:

- Start-the-clock information at no additional charge to notify mailers when USPS® takes possession of mailings, and
- Address correction information at no charge for qualified letters and flats that do not have the most current address or that are undeliverable for other reasons, when those pieces are endorsed as specified for OneCode ACS™.

In May 2009, all First-Class Mail®, Periodicals, Standard Mail, or Bound Printed Matter (BPM) letters and flats requiring a barcode will be eligible for the full-service option if the pieces bear Intelligent Mail barcodes and meet all other full-service option requirements.

Overview of Comments

We are encouraged by the mailing industry's support of our Intelligent Mail vision. In response to our proposed rule, we received 68 submissions from mail preparers, vendors, and mailers with wide ranges of annual mail volumes. Many commenters shared our enthusiasm for the Intelligent Mail initiative and appreciated our revised timeline for full-service option implementation as well as our extension of POSTNET barcode eligibility. Nevertheless, many commenters expressed concern about the new implementation timeline and about specific aspects of the program. In the sections below, we summarize comments and provide our responses.

Timing for Full-Service Implementation

Readiness

Many commenters questioned the readiness of mailers, software and hardware vendors, and the Postal Service to support full-service use of Intelligent Mail barcodes by May 2009. Despite the extended time for implementation of full-service Intelligent Mail, several commenters suggested that May 2009 was still too aggressive and asked the Postal Service to reconsider. Several commenters requested that we phase-in implementation and continue to allow POSTNET barcodes on automation letters and flats until 2011 or later. In contrast, one mailer association suggested that we do not allow POSTNET barcodes on automation letters and flats after May 2009.

The Postal Service is aware of the technological challenges that the mailing industry faces. Postal systems will support full-service use of Intelligent Mail in May 2009. We will continue to work closely with the mailing industry to ensure a successful implementation. We recognize that mailers need time to incorporate vendor-supported solutions and must establish budgetary priorities. Therefore, Intelligent Mail barcodes will not be required for automation prices in May 2009. We will continue to allow POSTNET barcodes on automation letters and flats until May 2011. The USPS will offer the benefits to those mailers who are ready for full-service in May 2009.

Final Requirements

A primary concern about May 2009 implementation is the need for final technical requirements. These requirements allow vendors to supply new software and hardware that will enable mailers to print high-quality barcodes and provide electronic documentation via Mail.dat® or Mail.XML (replacing Wizard Web Services). Many commenters stated that vendors may need six to twelve months to develop, test, and finalize their products, followed by additional testing and implementation time for mailers. This final rule contains the final mailing standards for basic and full-service use of Intelligent Mail barcodes. *A Guide to Intelligent Mail Letters and Flats* (the Guide), available on the USPS Web site at *ribbs.usps.gov*, provides direction on how to implement the technical requirements.

PostalOne! Capacity

Mailers expressed concern about the ability of *PostalOne!* to handle the larger, more complex files needed to document full-service mailings, and several commenters asked that *PostalOne!* operate around the clock, 7 days a week. *PostalOne!* is upgrading both hardware and software to be able to support the increased size and complexity of full-service mailing files. Currently, *PostalOne!* is a full production system that is available 24 hours a day, 7 days a week, except for its maintenance window. The standard scheduled maintenance window is on Sundays from 4 a.m. to 8 a.m. Central Time.

Pricing and Benefits

Requests for Advanced Notice of Prices

Many commenters asked us to provide information, before next year's price adjustment announcement, about the pricing structure for mailpieces with Intelligent Mail barcodes that qualify for full-service prices and those eligible for basic prices. Most of these commenters stated that this information is needed to evaluate the financial costs and benefits of implementing the full-service option by May 2009. Two mailers suggested that the Postal Service work with the Postal Regulatory Commission to announce the Intelligent Mail barcode price structure before the annual Mailing Services price adjustment announcement.

Some commenters stated that prices for pieces mailed under the full-service option should be lower than current automation prices. Some commenters further stated that the full-service prices should recognize the significant costs to the industry to participate in the full-service option. There were also a few requests for complete pricing structures, including all automation and nonautomation prices.

One mailer association suggested that new mailing requirements to avoid price increases could constitute an effective price increase. Another commenter, declaring no need for the full-service option for themselves, opposed a dual price structure. One vendor suggested that pricing for full-service flats should be discounted more than for letters.

There were several inquiries about whether we would establish two or three automation price tiers. One mailer asked for a pricing roadmap for related services.

Response Concerning Prices

The benefits of Intelligent Mail reside in the enhanced value of the information-enriched mailstream, rather than in any prices that may accompany the Intelligent Mail barcode's introduction. While we understand that a number of factors affect how rapidly our customers adopt this new technology, we want to ensure that mailers focus on the groundbreaking nature of the Intelligent Mail barcode itself.

Responses to our **Federal Register** proposed rule revealed that there are wide variations in preparedness. Given the variation in mailers' readiness, and the current state of the economy, we want customers to adopt the new technology at their own pace. We do not want the implementation of any price to be interpreted as a mandate to adopt the full-service option in May 2009.

As we noted in our proposed rule, the Postal Service typically does not comment on specific prices in advance of a general price change announcement. As part of our price adjustment announcement in 2009, we will recommend to the Board of Governors that there be two automation pricing tiers, with lower automation prices in the Fall of 2009 for letters and flats that require a barcode and that are eligible for the full-service use of Intelligent Mail. We also will announce prices for related services as part of the annual price adjustment announcement.

We believe that the benefits of the information-enriched mailstream will be evident to most mailers and that they will determine that those benefits (those included in the full-service option as well as the internal uses of the data generated for the mailer through use of the Intelligent Mail barcode) will be worth their investments. The Postal Service will be ready to implement both full-service and basic options of

Intelligent Mail in May 2009 and will work with mailers to promote and assist adoption. The Postal Service will provide start-the-clock and address correction information to full-service participants in May 2009.

Concerns About Other Benefits

Many commenters asked for more details regarding the value or benefits of using the full-service option for mailers and mail providers. There were requests for the USPS to summarize the costs and benefits of full-service option implementation for the USPS and for customers. There also were requests for an explanation of how the industry will recover costs; with one commenter stating that implementation of the full-service option provides no value to mail service providers. One mailer association stated that a mature data feedback system for providing beneficial data should be developed and in place by the time customers need to be ready for implementation. One commenter suggested that full tracking information be the primary benefit for full-service mailings, instead of establishing a lower price.

Response Concerning Benefits

Intelligent Mail offers significant benefits. The USPS will provide automated address correction notices for letters and flats and start-the-clock information for mailings prepared under the full-service option. Mailers will receive actionable address correction information so that the right mailpiece is delivered to the right recipient at the right time. This improves mail quality and the return on investment of mailings. Start-the-clock information will enable visibility for when a mailing is inducted in the mailstream, allowing participants to bring accountability to the supply chain. Full-service option mail requires unique identification of mailpieces and containers and the provisioning of electronic documentation. These features can be used by mailers to automate and improve document management processes, quality control, and hand-off to third party suppliers. Mailers will no longer need to print and provide hard copy qualification reports and paper postage statements. This not only reduces paper usage, but eliminates the associated costs for handling, storing, managing, and disposing of paper-based documentation, promoting a more sustainable approach. See subsequent sections on ''Address Correction Notices'' and ''Visibility'' for explanations of these benefits.

A Guide to Intelligent Mail for Letters and Flats

Many commenters expressed concern about the recently published *A Guide to Intelligent Mail for Letters and Flats*, and stated that a longer period should be allowed for comments about that document. We have welcomed input and have continued to work with mailers to enhance the Guide and improve its usefulness. Several commenters asked that electronic documentation requirements be separated from Intelligent Mail implementation. As a reminder, electronic documentation is an integral part of the full-service option and remains an eligibility requirement. There is concern from customers that specifications in the Guide will continue to change. The Guide has been updated to accommodate feedback received from mailers and provide greater clarity for electronic documentation solutions. We are publishing the Guide on *ribbs.usps.gov*, concurrent with this final rule.

Comments about the Guide included inquiries about the timing of Mail.dat and Web Services updates to resolve such issues as nesting of mailpieces. Other inquiries include the identification of mail owners, customer registration IDs (CRIDs), accounting for pieces in combined and copalletized mailings, accounting for mailpiece spoilage, designation of ''by/for'' entities, and designation of authorized third parties (or ''cast of characters'') for data dissemination.

The Guide has been updated to reflect changes to support the full-service option. The Guide specifies the versions of Mail.dat and Mail.XML that will support Intelligent Mail. The Guide clarifies that the CRID is a 10-digit number field. There are no current plans to change the CRID to a 12-digit field. The Guide has also been updated to identify the spoilage, shortage, and data distribution solutions in collaboration with the mailing industry. More specific information on these and other items raised by commenters are in the Guide.

Mailer ID Concerns

Many commenters appreciated our clarification regarding the optional use of a mail owner's or mail preparer's Mailer ID in the Intelligent Mail barcode.

Application Process

There were many requests to streamline the application process, with a few requests to establish an online process. One service provider asked if mail preparers would be able to directly obtain Mailer IDs for mail owners. In response to these requests, we have simplified the application form. Mail preparers may obtain Mailer IDs for mail owners via a redesigned application form, available online at *ribbs.usps.gov*.

Mail owners and mail preparers requested that the USPS consolidate the application process so that one Mailer ID could be used for OneCode ACS, OneCode Confirm, and general use of Intelligent Mail barcodes. One Mailer ID will be sufficient to access Confirm service, OneCode ACS, and the full-service option, except for specific uses of OneCode ACS. When a mailer uses the same ACS™ endorsement on all mailpieces, the same Mailer ID can be used. If a mailer uses different endorsements, such as ''Address Service Requested'' for some mailpieces and ''Change Service Requested'' for other mailpieces, a separate Mailer ID may be needed for each endorsement. Several commenters asked for a solution that would allow one Mailer ID to be used for multiple endorsements. The Guide explains the limited circumstances when mailers will need to use a different Mailer ID to support multiple endorsements.

Some commenters asked the USPS to remove questions from the application that asked for information they considered to be proprietary in nature. We redesigned the Mailer ID application to remove these sections.

6-digit Mailer IDs for MLOCRs and ''Jackpotting''

Many mailers asked us to assign 6-digit Mailer IDs to individual multi-line optical character reader (MLOCR) machines. An MLOCR mailer may be given more than one 6-digit or 9-digit Mailer ID for use in the production environment for mailings prepared under full-service requirements if the MLOCR mail preparer's volume is such that they could not maintain unique identification of the mailpieces in a 45-day period using a single Mailer ID.

A concern was raised about whether an MLOCR mailer would be required to profile each customer's mail volume separately when ''jackpotting'' several small customer volumes together within a single mailing. We will allow MLOCR mailers to jackpot the mail from customers who provide less daily volume than 1% of the total average daily volume processed at that facility or 3,000 pieces (whichever is less). Mail preparers may not jackpot pieces with postage paid by permit imprint or any nonprofit pieces included in a combined mailing. Mail preparers may not subdivide one day's mailing into smaller segments to increase the number

of opportunities to jackpot the mail. A concern was expressed about the ability to jackpot reject mailpieces if the mail owner had to be identified either in the barcode or in the mailing documentation. Reject mailpieces will not have to be separately profiled.

Mail Owner Identification

Two mail service providers objected to the proposed requirement that the mail owner's request to use the owner's Mailer ID be honored, stating that this could not be done while maintaining mailpiece uniqueness. A few service providers and two industry associations requested that we remove the requirement for identification of the mail owner in the electronic documentation. Except for mailpieces with unreadable barcodes that may need to have a replacement barcode applied by a mail preparer, we are reiterating the requirement that mail preparers honor mail owners' requests to use their Mailer IDs in the Intelligent Mail barcode. We also retain the requirement to identify the mail owner via electronic documentation.

Mailpiece Uniqueness

Several commenters reiterated the previous suggestion that mailpiece ''uniqueness'' (unique numbering of mailpieces) be achieved by linking the delivery routing code with the serial number ID. As of May 2009, when mailpiece uniqueness is required for full-service, the serial number ID in combination with the Mailer ID and Service Type ID (by class of mail) will be required for mailpiece uniqueness. When mailers separate pieces of identical weight permit imprint mail by price category, or when the correct postage is affixed to each piece in full-service mailings of less than 10,000 pieces, mailpieces may have the same serial number on all pieces.

Many commenters expressed doubt about their ability to maintain uniqueness for 45 days. Several commenters questioned why the USPS needed to ensure uniqueness at all. To provide maximum solutions for information needed now and for future development, piece uniqueness is required, and that uniqueness lies in the Service Type ID (by class of mail), Mailer ID, and unique serial number. The USPS assigns 6-digit and 9-digit Mailer IDs to mailers to accommodate the ability to uniquely identify mailpieces, taking into account their mail volumes. A 9-digit Mailer ID allows up to 1 million pieces with unique serial numbers for a period of 45 days. A 6-digit Mailer ID allows up to 1 billion pieces with unique serial numbers, which should enable mailers to maintain mailpiece uniqueness for 45 days.

Intelligent Mail Barcodes for Mailpieces

Height

Several mailers asked for a reduction in height of the Intelligent Mail barcode and for a reduction in the required space between address elements and the barcode, and one mailer asked if the technical specifications for the Intelligent Mail barcode have been finalized. We understand the barcode printing concerns and the necessity of maintaining an address area that facilitates use of a 1-inch-high label. The USPS Engineering and Intelligent Mail Planning and Standards departments have worked extensively with mailer groups over the past 18 months to resolve barcode specification issues. Ink jet printer manufacturers also provided recommendations and testing.

As a result, the Postal Service revised the barcode specification to reduce the barcode minimum height to 0.125 inch (from 0.134 inch) and the minimum vertical text-to-barcode spacing to 0.028 inch (from 0.040 inch). This results in an overall line height that is actually less than the POSTNET™ barcode requirements. In addition, the void spacing maximum (the empty space between print dots that make up a bar) has been doubled from 0.005 inch to 0.010 inch and MERLIN® barcode thresholds have been altered to be lower than the minimum heights of the barcode with slightly lower text-to-barcode spacing to allow for printing variations. These specifications are final.

Barcode theory and USPS testing indicate that any further reductions in barcode height will erode the readability of the barcode. This issue is due to the physical limitations of creating four different elements within the barcode's height. In addition, ink jet printer manufacturers are concerned that further reductions in barcode height would exceed the tolerance their equipment can meet. As an alternative to further barcode dimension changes, the Postal Service has reduced the address block text sizes for barcoded mail. These new dimensions allow a minimum text height of 0.065 inch (0.080 inch was initially proposed). These changes represent significant steps in facilitating address block and barcode printing. Ink jet printer manufacturer feedback to these latest changes has been unequivocally positive.

Business Reply Mail (BRM) Barcode Placement

One commenter stated that the placement of Intelligent Mail barcodes on Business Reply Mail® (BRM) in the barcode clear zone does not allow adequate printing tolerance, particularly for taller barcodes. A delivery point barcode must be positioned vertically between 0.1875 inch and 0.4375 inch from the bottom edge of the piece. The maximum 0.165-inch-high Intelligent Mail barcode will fit within the 0.250-inch area with room remaining for print tolerance. The Intelligent Mail barcode specification provides ample tolerance for printers to comply with the clear zone dimensions.

Redirection Visibility

There was one request that the USPS upgrade our Postal Automated Redirection System (PARS) to spray a new Intelligent Mail barcode on forwarded pieces so that the data in the original barcode are retained. The USPS decided not to make a modification to PARS.

Miscellaneous Barcode Issues

One commenter asked about the future of the PLANET Code barcode. We will retain the PLANET Code barcode for Confirm service as long as we continue to allow the POSTNET barcode for automation price eligibility. Several commenters asked if Intelligent Mail barcodes would be required on nonautomation pieces, and one commenter recommended that the Intelligent Mail barcode be optional on machinable pieces. We will not require barcodes on nonautomation mailpieces, but would allow correct barcodes at the mailer's option. One commenter asked if both alpha and numeric indicators could be used in the Intelligent Mail barcode. Current specifications for the Intelligent Mail barcode use numeric indicators; we have no plans to include alpha indicators in the barcode.

One commenter suggested that the USPS test readability of the Intelligent Mail barcode on Periodicals publications. Since 2006, the USPS has worked with mailers to test a variety of letters and flats to achieve the most flexible barcode specifications. The barcode specifications are now standardized and all mailers will be provided support as needed for implementation.

One commenter requested specific standards for applying Intelligent Mail barcodes on postcards. Current standards allow Intelligent Mail barcodes on postcards that have enough space in the address block to include the barcode.

Container Placards and Barcodes

Two commenters reacted favorably to the elimination of the proposed requirement for a green strip or border on the container placard (previously referred to as a ''container label''). One mailer expressed appreciation for the added option of using a smaller placard when affixed to the outside of the shrinkwrap. Several commenters urged the USPS to improve our container barcode scanning percentage.

Number of Placards

There were several requests that we retain the current two-placard requirement for pallets due to increased costs of applying a third placard. As of May 2009, under the full-service option, we will require two affixed placards on adjacent sides on the outside of shrinkwrapped pallets. Mailers who load pallets on trucks must position the pallets so that one pallet placard faces the rear of the truck.

Layers of Shrinkwrap

There were several objections to the restriction of no more than two layers of shrinkwrap covering pallet placards, noting compliance problems due to the automation of their wrapping procedures. We reiterate the importance of having all pallet placards placed so that they are readable and the barcodes may be scanned. We cannot generate or provide scans for placards that are obscured by shrinkwrap. In May 2009, for full-service mailings, we require that all pallet placards with Intelligent Mail container barcodes be affixed on the outside of shrinkwrap.

Placard Specifications

Two commenters objected to changing the minimum height of pallet placards. Mailers may choose to use smaller self-adhesive pallet placards with a minimum size of 4 inches by 7 inches for placards not containing ''mailer-area'' information, that are affixed to the outside of shrinkwrap. We also are retaining the current minimum height of 8 inches for pallet placards with a defined ''mailer area.'' The top 4.25 inches of the placard will remain reserved for USPS use only. Mailers who use the 8 x 11 inch size must limit the mailer area to the remaining lower portion of the placard, which reduces the size of that area. Several commenters suggested that the Intelligent Mail container barcode include the destination. The Intelligent Mail container barcode has been designed to uniquely identify a unit load of mail and capture specific tracking data. The unique ID in the barcode is designed to link the physical unit load with its detailed attributes contained within an electronic file. The barcode is not designed for routing purposes.

A mailer association asked if leading dashes or zeros could be used in the container barcode. The current Intelligent Mail container barcode specification supports the use of either leading dashes or zeros.

One mailer asked if a basic-option mailer could use the Intelligent Mail container placard, even though not required. We welcome these mailers' use of Intelligent Mail container placards, and hope that those who do so will participate in the full-service option at their earliest opportunity.

One vendor asked how the USPS would use container scan data. We will furnish induction container scan data, when available, for full-service mailings to the mailers as part of the start-the-clock feedback. We also will use these data to validate drop-shipments for full-service mailings.

Tray Labels and Barcodes

Some commenters expressed concern about the changing 10/24 barcode format for Intelligent Mail tray labels, and many commenters asked when the new 24-digit barcode format could be used. The final specifications for the 10/24 transitional Intelligent Mail tray label and the 24-digit Intelligent Mail tray label are available on *ribbs.usps.gov*. Mailers will be able to use the 24-digit barcoded label on, but not before, April 6, 2009. The need for accurate 24-digit barcodes on labels generated through vendor software is imperative to the success of full-service implementation. Therefore, we are requesting that all vendor software that generates the 24-digit barcoded labels go through a certification process to ensure readiness. The certification process is posted on our Intelligent Mail Web site at *ribbs.usps.gov*. One mailer requested that tray label specifications be finalized within 60 days. Specifications for the 24-digit Intelligent Mail tray label are provided in the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) section of this final rule.

Several commenters urged the Postal Service to ensure adequate supplies of plastic sacks and label holders and to improve the quality of existing label holders. The Postal Service uses 2-inch label holders on letter and flats trays, and supplies label holders to mailers upon request. We have an adequate supply of plastic sacks and sack label holders, and we welcome specific suggestions for improving the quality of existing label holders.

One mailer asked if both alpha and numeric indicators could be used in the Intelligent Mail tray barcode. We developed the Intelligent Mail tray barcode to include only numeric indicators and are not planning to allow alpha indicators.

Address Correction Notices

Provision of Data

Many commenters sought clarification about how USPS will provide address correction notices, and inquired about the ability to distribute these notices to authorized third parties. Two commenters requested that free address correction information be provided to all users of Intelligent Mail barcodes. Several commenters requested that notices be provided in a downloadable file format.

We will provide automated address correction notices for correctly formatted full-service mailpieces that meet OneCode ACS requirements. The information will be provided in one of two ways. Authorized entities may obtain downloadable files via the Internet or an electronic exchange method.

Provision of Notices at No Additional Charge

Mailers will qualify for automated address correction notices at no additional charge for mailpieces verified as eligible for Intelligent Mail full-service, when mailers use the provided information to update their address records. Mailers who do not update an address record after notification may incur charges for subsequent notices for that address.

One mailer suggested that free address correction notices be provided for carrier route flats when they have Intelligent Mail barcodes and are part of a full-service mailing. We will consider including carrier route flats as eligible for full-service benefits in the future.

Move Update

A few commenters questioned whether participation in the full-service option would meet the Move Update requirement. Full-service mailings would meet Move Update requirements as long as address correction information previously obtained has been used to update addresses within 95 days (effective November 23, 2008) of the date of mailing. It is important that mailers use the information provided in address correction notices to update addresses used in future mailings. A premailing method, such as NCOA^{LINK}®, is necessary for Move Update compliance when mailers use

newly purchased lists or lists that have not used an approved Move Update process within the previous 95 days. As a reminder, mailpieces with alternative addressing formats (simplified, occupant, and exceptional addresses) are not subject to the Move Update standard and may not use ancillary service endorsements. Alternative addresses include pieces with addresses such as ''Postal Customer,'' ''Occupant'' with a delivery address, or an addressee's name accompanied by ''Or Current Resident'' with a delivery address. Pieces with alternative addressing formats must not use ACS.

We received additional questions about whether mailers could switch OneCode ACS on and off for different mailings. Mailers may use OneCode ACS on selected mailings or on selected pieces within a mailing, but should be aware that we will monitor address quality to ensure compliance with Move Update standards. Commenters also questioned whether free notices would be provided for mailpieces that failed to maintain uniqueness. Mailpieces that are ostensibly presented as part of full-service mailings, but which do not maintain the required uniqueness or fail to qualify for full-service for any reason will not be eligible to receive automated address correction notices at no additional charge.

A mailer association asked about the obligation of a third party when address lists are rented. The mailer is responsible for ensuring compliance with Move Update requirements. Mail providers may request that mail owners complete PS Form 6014, *Certification of Move Update Compliance*.

Printed Endorsements

Several commenters questioned the need for printed ancillary service endorsements on pieces requesting OneCode ACS. First-Class Mail letters and Periodicals mailpieces with OneCode ACS do not need printed endorsements since all undeliverable-as-addressed First-Class Mail letters and Periodicals mailpieces are sent to either the Postal Automated Redirection System (PARS) or Centralized Forwarding System (CFS) units for processing where the Intelligent Mail barcode is read to detect the mailer's request for address correction services. First-Class Mail flats, without a printed endorsement, that can be forwarded are also sent to CFS units for processing and generation of OneCode ACS notices based on the Intelligent Mail barcode. First-Class Mail flats that are undeliverable for any other reason are not sent to CFS units for processing and do not generate the OneCode ACS address correction notice unless they have a printed endorsement indicating the mailer's request for address correction services. All undeliverable-as-addressed Bound Printed Matter (BPM) and Standard Mail pieces received at the delivery unit are disposed of if they do not bear printed endorsements to alert delivery employees to the mailer's request for address correction services.

We also received questions about additional charges for services implied by endorsements, including whether the USPS would charge for hard copy notices provided for full-service option pieces. When Periodicals, Standard Mail, and BPM pieces have endorsements requesting an undeliverable mailpieces' forwarding or return, additional charges apply for these services. Also, when hard copy notices are provided at the mailer's request associated with the forwarding of a mailpiece, current prices apply. However, as today, mailers will not be required to pay the manual notice fee for a hard copy notice for pieces properly prepared for OneCode ACS when the endorsement is Electronic Service Requested.

Miscellaneous

One commenter suggested that providing free notices devalued use of NCOA^{LINK}. A premailing method, such as NCOA^{LINK}, may be necessary for compliance with Move Update requirements when mailers use newly purchased lists or lists of addressees to which they have not mailed within the previous 95 days. We urge customers to use NCOA^{LINK} before mailing to increase the percentage of deliverable, timely mail. We consider the provision of address correction notices, which includes information not available in NCOA^{LINK} when files are processed, as a supplement to NCOA^{LINK} and other mailer efforts to update and cleanse their address lists.

Several commenters asked if mailpieces for which the USPS database could not supply 11-digit routing codes would be eligible for automation prices. One commenter suggested that the USPS improve its address database to lower the percentage of uncodeable addresses. As of May 2009, barcodes with 11-digit routing codes will be required for automation flats. Currently, 11-digit routing codes are required in barcodes on automation letters. The USPS makes a continuous effort to identify and resolve any missing information in its address database. However, not all addresses maintained by the mailing industry represent valid delivery points served by the USPS. When a mailer has addressed a piece to an address that is not a USPS delivery point, or when the address cannot be matched to the USPS address data, an 11-digit routing code cannot be provided. The USPS provides many different products, programs, and services to assist mailers in resolving addresses that cannot be matched to the USPS database. As a reminder, current DMM standards accommodate situations when mailpieces are addressed for delivery to an address with a unique 5-digit ZIP Code™ or unique ZIP+4® code.

A mailer association asked when the USPS would retire traditional ACS, and another commenter asked if notices would be ''free forever.'' We have no plans to retire traditional ACS. When mailers participate in the full-service option, automated address correction notices will be provided for qualifying mailpieces. We will monitor the effectiveness of this service on reducing the volume of undeliverable-as-addressed mail and the results will influence future pricing decisions.

Visibility

Many commenters asked for clarification about information that will be provided as ''start-the-clock'' information—verification of USPS possession of the mailing or container scans. There were many requests to specify the method for providing the information, with observations that online reports would be inadequate. Several commenters requested that container scans be provided in a downloadable file format, with the ability to provide information to mail owners, mail preparers, and authorized third parties. Two commenters suggested that tray and container scans be provided at no charge to full-service option participants. We will provide information about when the mail is inducted into the mailstream. All available induction scan data will be provided. Information will be provided online via an online method or an electronic data exchange capability.

Two commenters stated the need for the USPS to provide detailed diagnostic information based on data obtained when pieces are processed. The USPS will provide address correction information and start-the-clock information as part of the full-service option. The USPS will consider offering additional mail quality diagnostics in the future.

Confirm

Several commenters requested that the USPS maintain Confirm service in its current state, allowing all mailers

who use either Intelligent Mail barcodes or PLANET Code barcodes to access mailpiece tracking information. Several commenters requested an expanded ability to distribute scan data to third parties. One mailer requested that the USPS expand pricing options to accommodate fewer scans for a subscription price lower than the current Silver price level.

We agree that Confirm provides information that improves the value of mail for customers; this is consistent with the Intelligent Mail vision. Any changes in the pricing or availability of Confirm would be pursued separately. This notice reiterates the availability of OneCode Confirm through the use of a Service Type ID in the Intelligent Mail barcode, and does not change the existing ability of authorized third parties to receive Confirm data. Expanded data distribution capabilities are discussed in the Guide.

One commenter asked if OneCode Confirm will supply forwarding scans. The USPS does not plan to offer this at this time.

Data Security

Commenters requested information regarding USPS plans to provide security for data transmitted by mailers and data captured under the full-service option use of Intelligent Mail. The Intelligent Mail implementation will be in compliance with its comprehensive security standards as published in the USPS Handbook, AS–805, *Information Security*. The AS–805 handbook and its related documents are based upon industry and government standards and best practices.

Customer/Supplier Agreements

Containerization Standards

Commenters noted that our proposal lacked standards for containerization of First-Class Mail letters and flats. Several commenters requested that we finalize containerization standards and publish them as part of the final rule, rather than possibly publishing them as a separate notice. We continue to work with the mailing industry on containerization of large, origin entered mailings through customer/supplier agreements.

Variations by Site

Some commenters expressed concern about local agreements varying by site, and three commenters requested a defined resolution process. One commenter suggested that containerization requirements should translate into price discounts. Customer/supplier agreements are the result of cooperation between mailers and USPS plant managers to establish appropriate separation of mailing containers related to critical mail acceptance times. Customer/supplier agreements will be used for origin-entered mailings verified at a mailer's facility, for mail presented at the BMEU requesting later entry times, and for time-sensitive dropshipped Periodicals mailings requesting later entry times. The nature of customer/supplier agreements is one of a mutually beneficial agreement. The process for establishing customer/supplier agreements is outlined in the Guide and these will be established as needed for eligible customers.

Special Postage Payment Agreements

Several commenters asked if optional procedure agreements or other special postage payment agreements would be replaced with customer/supplier agreements. Special postage payment agreements will remain as they are currently, with customer/supplier agreements supplementing special postage payment agreements rather than replacing them.

Miscellaneous

One mailer requested that the USPS allow First-Class Mail mailers to retain scheduled pickups. There are no plans to discontinue current local transportation schedules. One mailer asked that the USPS not require multiple mailings to be combined. This is not required now and the Postal Service has no plans to require it in the future. A vendor association stated that more information on transportation routes and handling of First-Class Mail is needed. There are no planned changes in current transportation requirements.

Reply Mail

Most commenters appreciated the longer time provided in our proposal to use POSTNET barcodes on reply mail, but some asked us to rethink whether we needed Intelligent Mail barcodes on all reply mail. One mailer asked that we not require Mailer IDs in Intelligent Mail barcodes on Business Reply Mail (BRM).

BRM or Courtesy Reply Mail™ (CRM) pieces will not be required to have Intelligent Mail barcodes until May, 2011. However, letters claiming Qualified Business Reply Mail (QBRM) prices and Permit Reply Mail (PRM) pieces will be required to use Intelligent Mail barcodes, including Mailer IDs, as of May 2010. We will continue to allow, until May 2011, either POSTNET or Intelligent Mail barcodes on other reply mail that is enclosed within automation mailpieces.

Two commenters asked for a 5 percent rebate on postage for Courtesy Reply Mail bearing Intelligent Mail barcodes and enclosed in full-service mailings. Courtesy Reply Mail pieces are entered into the mail system as single-piece items and are fully processed by the USPS; therefore we do not plan to offer a rebate on postage for Courtesy Reply Mail pieces.

Verification of Full-Service Mailings

Mixed Mailings

Many commenters asked if, under the full-service option, the USPS would allow mailpieces with POSTNET barcodes and basic option Intelligent Mail barcodes to be commingled with full-service pieces. We will allow full-service and basic option mailpieces with Intelligent Mail barcodes as well as pieces with POSTNET barcodes to be combined in a single mailing, including copalletized mailings, when appropriate documentation is provided. As a reminder, when there are full-service pieces in a mailing, mailers must use Intelligent Mail tray labels and Intelligent Mail container placards (if the mail is containerized) and provide the USPS with electronic mailing documentation which includes piece level documentation for all mailpieces in those mailings. The Guide provides detailed information concerning documentation for mixed and copalletized mailings that include pieces with different types of barcodes.

Verification Procedures

Several commenters asked about continuation of current verification procedures, as well as proposed tolerances and penalties for failure to maintain mailpiece uniqueness or other errors. Current verification procedures, including use of MERLIN and established levels of error tolerances, will apply to basic and full-service mailings. Failure to meet qualifications for the full-service option, such as not maintaining mailpiece uniqueness, would result in a mailing being ineligible for full-service benefits; however, it may still be eligible for automation prices. A mailer association asked if hard copy documentation will be required for full-service mailings. Full-service mailings require the submission of electronic documentation; use of hard copy documentation for full-service mailings is not an option.

Miscellaneous

One commenter asked for the flexibility to enter a full-service mailing as a Standard Mail mailing, but upgrade it to a First-Class Mail mailing via electronic notification. There are no provisions for this type of change at this time.

Another commenter asked if the unique serial number in barcodes on pieces mailed under the full-service option would replace the printed unique mailpiece identification required for manifest mailings. The USPS will consider this option in the future, as mailers and the USPS determine that validation and verification procedures are adequate without the printed identifiers.

One mailer requested that the USPS publish a list of approved full-service vendors. We are not planning to certify or formally pre-approve vendors for full-service capabilities.

FAST

Several commenters expressed appreciation that Facility Access and Shipment Tracking (FAST®) appointments would not be generally needed for First-Class Mail mailings and for origin-entered mailings of other mail classes. We received several requests for clarification regarding the method needed to update files after the original appointment is made. Updates for recurring appointments may be provided via Mail.dat or Mail.XML, whereas updates to one-time appointments would be provided only via Mail.XML. One commenter asked if consolidators were responsible for updating appointment information. Whoever makes the appointment is responsible for updating the logistics information. Appointment content information may be updated by the appointment creator (scheduler) or may also be updated by the mail owner or mail preparer in joint scheduling scenarios.

One commenter asked how FAST accommodates customer/supplier agreements. FAST will be used, as defined in the customer/supplier agreement, to create appointments for origin entered mail that is transported by the mailer. The FAST system is also used to schedule appointments for dropshipment mailings, which typically do not require a customer/supplier agreement.

One mailer asked if FAST will be integrated with the Surface Air Management System (SAMS). SAMS and FAST serve different functions, and under the full-service option they will continue to function as they do today. There are no plans for a SAMS-FAST link.

Other Comments

Miscellaneous

Many commenters requested a technology roadmap for the next three to five years. The USPS will share the timeline for Intelligent Mail implementation with the mailing industry.

Several commenters requested that the USPS establish online and human technical support systems. USPS help desks are being resourced and trained to support the Intelligent Mail implementation in May 2009. Personnel across various USPS functions such as business mail acceptance, business service network, and sales are being trained. The USPS will provide webinars, training and educational material for vendors and customers after publication of this final rule.

Current Standards

We also received questions about issues that are already covered by mailing standards in the current DMM. For instance, barcode placement standards are in DMM 202.5, 302.4, and 708.4. We currently allow and encourage mailers to use Intelligent Mail barcodes on their letters and flats to qualify for automation prices according to standards in DMM 202.5, 302.4, and 708.4, with technical specifications available at *ribbs.usps.gov/OneCodeSolution/*. Standards regarding the use of Intelligent Mail barcodes with Confirm service are in DMM 503.13.3 and, with OneCode ACS™ in DMM 507.4.2. Standards for using Intelligent Mail barcodes on BRM are in DMM 507.9.9 and 708.4.0. We have a frequently asked questions (FAQs) section on our Intelligent Mail Web site at *ribbs.usps.gov*.

Summary

In May 2009, we will implement the following:

- Updated requirements for Intelligent Mail barcodes and POSTNET barcodes, with delivery point routing information required in barcodes on automation letters and flats and carrier route letters.
- Two options for using Intelligent Mail barcodes—the basic option and the full-service option.
- For full-service implementation, we will require:
- Unique identification in Intelligent Mail barcodes on letters and flats.
- Intelligent Mail tray labels, with unique barcodes, used on trays and sacks.
- Intelligent Mail container placards, with unique barcodes, affixed on the outside of pallets and placed on containers (if the mail is containerized).
- Electronic postage statements and documentation (when documentation is required).
- Full-service mailers will enjoy the following benefits:
- Address correction information for letters and flats using OneCode ACS at no charge (subject to approval by the Governors).
- ''Start-the-clock'' information that will document when the Postal Service has taken possession of each mailing.

In May 2010, we will require the Intelligent Mail barcode on QBRM letters and on Permit Reply Mail pieces.

As part of the annual price adjustment announcement in 2009, we will recommend to the Board of Governors that letters and flats requiring a barcode and mailed under the full-service option of Intelligent Mail pay lower automation prices in the Fall of 2009 than pieces mailed under the basic option or with POSTNET barcodes.

The Postal Service will adopt the following changes to *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations*. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

■ Accordingly, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM) as follows:

* * * * *

***Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM)**

* * * * *

200 Commercial Letters and Cards

* * * * *

230 First-Class Mail

233 Prices and Eligibility

* * * * *

5.0 Additional Eligibility Standards for Automation First-Class Mail Letters

5.1 Basic Standards for Automation First-Class Mail Letters

All pieces in a First-Class Mail automation mailing must:

* * * * *

[Revise item e of 5.1 as follows:]

e. Bear an accurate delivery point POSTNET barcode or an Intelligent Mail barcode encoded with the correct delivery point routing code, matching the delivery address and meeting the standards in 202.5.0, and 708.4.0. Mailers must apply the barcode either on the piece or on an insert showing through a window.

* * * * *

[*Renumber current 233.5.2 through 233.5.5 as new 233.5.3 through 233.5.6.*]

[Add a new 233.5.2 as follows:]

5.2 Additional Eligibility Standards for Full-Service Automation First-Class Mail Letters

All pieces entered under the full-service automation option 705.22, must:

a. Bear a unique Intelligent Mail barcode.

b. Be part of a mailing using unique Intelligent Mail tray labels on all trays and sacks.

c. Be part of a mailing using unique Intelligent Mail container barcodes on all destination-entry pallets and other containers prepared under 705.8.0 or as part of a customer/supplier agreement.

d. Be part of a mailing using an approved electronic method to transmit a postage statement and mailing documentation to the *PostalOne!* system.

* * * * *

234 Postage Payment and Documentation

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4.0 Mailing Documentation

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[Renumber current 234.4.4 through 234.4.9 as 234.4.5 through 234.4.10 and add a new 234.4.4 as follows:]

4.4 Documentation Submission—Full-Service Automation Option

Mailers entering First-Class Mail pieces under the full-service automation option must electronically submit postage statements and mailing documentation to the *PostalOne!* system as described in 705.22.3.4.

* * * * *

235 Mail Preparation

* * * * *

4.0 Tray Labels

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4.9 Barcoded Tray Labels

4.9.1 Basic Standards for Barcoded Tray Labels

[Revise 4.9.1 by adding a new second sentence as follows:]

* * * Intelligent Mail tray labels must be used with mailings entered under the full-service automation option. * * *

* * * * *

240 Standard Mail

243 Prices and Eligibility

* * * * *

6.0 Additional Eligibility Standards for Enhanced Carrier Route Standard Mail Letters

6.1 General Enhanced Carrier Route Standards

* * * * *

6.1.2 Basic Eligibility Standards

All pieces in an Enhanced Carrier Route or Nonprofit Enhanced Carrier Route Standard Mail mailing must:

* * * * *

[Revise item g of 6.1.2 as follows:]

g. Meet the requirements for automation compatibility in 201.3.0 and bear an accurate delivery point POSTNET barcode or Intelligent Mail barcode encoded with the correct delivery point routing code matching the delivery address and meeting the standards in 202.5.0, and 708.4.0. Letters with Intelligent Mail barcodes entered under the full-service automation option also must meet the standards in 705.22. Pieces prepared with a simplified address format are exempt from this requirement.

* * * * *

6.3 Basic Price Enhanced Carrier Route Standards

* * * * *

6.3.2 Basic Price Eligibility

* * * Basic prices also apply under these conditions:

[Revise item a of 6.3.2 as follows:]

a. Basic letter prices apply to each piece that is automation-compatible according to 201.3.0, and has an accurate delivery point POSTNET barcode or Intelligent Mail barcode encoded with the correct delivery point routing code matching the delivery address and meeting the standards in 202.5.0 and 708.4.0.

* * * * *

6.4 High Density Enhanced Carrier Route Standards

6.4.1 Basic Eligibility Standards for High Density Prices

[Revise the first sentence of 6.4.1 as follows:]

High density prices apply to each piece that is automation-compatible according to 201.3.0, and has an accurate delivery point POSTNET barcode or Intelligent Mail barcode encoded with the correct delivery point routing code matching the delivery address and meeting the standards in 202.5.0, and 708.4.0. * * *

* * * * *

6.5 Saturation ECR Standards

6.5.1 Basic Eligibility Standards for Saturation Prices

[Revise the first sentence of 6.5.1 as follows:]

Saturation prices apply to each piece that is automation-compatible according to 201.3.0, and has an accurate delivery point POSTNET barcode or Intelligent Mail barcode encoded with the correct delivery point routing code matching the delivery address and meeting the standards in 202.5.0, and 708.4.0. * * *

* * * * *

7.0 Eligibility Standards for Automation Standard Mail

7.1 Basic Eligibility Standards for Automation Standard Mail

All pieces in a Regular Standard Mail or Nonprofit Standard Mail automation mailing must:

* * * * *

[Revise item e of 7.1 as follows:]

e. Bear an accurate delivery point POSTNET barcode or Intelligent Mail barcode encoded with the correct delivery point routing code, matching the delivery address and meeting the standards in 202.5.0, and 708.4.0. Mailers must apply the barcode either on the piece or on an insert showing through a window.

* * * * *

[Renumber current 243.7.2 through 243.7.6 as new 243.7.3 through 243.7.7]

[Add a new 243.7.2 as follows:]

7.2 Additional Eligibility Standards for Full-Service Automation Standard Mail Letters

All pieces entered under the full-service automation option according to standards in 705.22 must:

a. Bear a unique Intelligent Mail barcode.

b. Be part of a mailing using unique Intelligent Mail tray labels on all trays and sacks.

c. Be part of a mailing using unique Intelligent Mail container barcodes on all destination-entry pallets and other containers prepared under 705.8.0 or as part of a customer/supplier agreement.

d. Be part of a mailing using an approved electronic method to transmit a postage statement and mailing documentation to the *PostalOne!* system.

e. Be scheduled for an appointment through the Facility Access and Shipment Tracking (FAST) system when deposited as a DBMC or DSCF drop-shipment.

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244 Postage Payment and Documentation

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4.0 Mailing Documentation

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[Renumber current 244.4.4 through 244.4.9 as 244.4.5 through 244.4.10]

[Add a new 244.4.4 as follows:]

4.4 Documentation Submission—Full-Service Automation Option

Mailers entering Standard Mail pieces under the full-service automation option must electronically submit postage statements and mailing documentation to the *PostalOne!* system as described in 705.22.3.4.

* * * * *

245 Mail Preparation

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4.0 Tray Labels

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4.9 Barcoded Tray Labels

4.9.1 Basic Standards for Barcoded Tray Labels

* * * Barcoded labels must meet these general standards:

[Revise 4.9.1 by adding a new item e as follows:]

e. Intelligent Mail tray labels must be used with mailings entered under the full-service automation option.

* * * * *

300 Commercial Flats

330 First-Class Mail

333 Prices and Eligibility

* * * * *

5.0 Additional Eligibility Standards for Automation Price First-Class Mail Flats

5.1 Basic Standards for Automation First-Class Mail

All pieces in a First-Class Mail automation mailing must:

* * * * *

[Revise item e of 5.1 to require a delivery point barcode as follows:]

e. Bear an accurate delivery point POSTNET barcode or Intelligent Mail barcode encoded with the correct delivery point routing code, matching the delivery address and meeting the standards in 302.4.0, and 708.4.0, either on the piece or on an insert showing through a barcode window.

* * * * *

[Renumber current 333.5.2 through 333.5.5 as 333.5.3 through 333.5.6.]

[Add a new 333.5.2 as follows:]

5.2 Eligibility Standards for Full-Service Automation First-Class Mail Flats

All pieces entered under the full-service automation option according to standards in 705.22 must:

a. Bear a unique Intelligent Mail barcode.

b. Be part of a mailing using unique Intelligent Mail tray labels on all trays and sacks.

c. Be part of a mailing using unique Intelligent Mail container barcodes on all destination-entry pallets and other containers prepared under 705.8.0 or as part of a customer/supplier agreement.

d. Be part of a mailing using an approved electronic method to transmit a postage statement and mailing documentation to the *PostalOne!* system.

* * * * *

334 Postage Payment and Documentation

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4.0 Mailing Documentation

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[Renumber current 334.4.4 through 334.4.9 as 334.4.5 through 334.4.10.]

[Add a new 334.4.4 to reflect electronic submission standards at the full-service automation price as follows:]

4.4 Documentation Submission—Full-Service Automation Option

Mailers entering First-Class Mail flats under the full-service automation option must electronically submit postage statements and mailing documentation, including qualification and container reports, to the *PostalOne!* system as described in 705.22.3.4.

* * * * *

335 Mail Preparation

* * * * *

4.0 Tray Labels

* * * * *

4.9 Barcoded Tray Labels

4.9.1 Basic Standards for Barcoded Tray Labels

* * * Barcoded labels must meet these general standards:

[Revise 4.9.1 by adding a new item e as follows:]

e. Intelligent Mail Tray labels must be used with mailings entered under the full-service automation option.

* * * * *

340 Standard Mail

343 Prices and Eligibility

* * * * *

7.0 Additional Eligibility Standards for Automation Standard Mail Flats

7.1 Basic Eligibility Standards for Automation Standard Mail

All pieces in a Regular Standard Mail or Nonprofit Standard Mail automation mailing must:

* * * * *

[Revise item e to require a delivery point barcode as follows:]

e. Bear an accurate delivery point POSTNET barcode or Intelligent Mail barcode encoded with the correct delivery point routing code, matching the delivery address and meeting the standards in 302.4.0, and 708.4.0, either on the piece or on an insert showing through a barcode window.

* * * * *

[Renumber current 343.7.2 through 343.7.4 as 343.7.3 through 343.7.5.]

[Add a new 343.7.2 as follows:]

7.2 Eligibility Standards for Full-Service Automation Standard Mail Flats

All pieces entered under the full-service automation option, according to standards in 705.22, must:

a. Bear a unique Intelligent Mail barcode.

b. Be part of a mailing using unique Intelligent Mail tray labels on all trays and sacks.

c. Be part of a mailing using unique Intelligent Mail container barcodes on all destination-entry pallets and other containers prepared under 705.8.0 or as part of a customer/supplier agreement.

d. Be part of a mailing using an approved electronic method to transmit a postage statement and mailing documentation to the *PostalOne!* system.

e. Be scheduled for an appointment through the Facility Access and Shipment Tracking (FAST) system when deposited as a DBMC or DSCF dropshipment.

* * * * *

344 Postage Payment and Documentation

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4.0 Mailing Documentation

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[Renumber current 344.4.4 through 344.4.9 as 344.4.5 through 344.4.10.]

[Add a new 344.4.4 as follows:]

4.4 Documentation Submission—Full-Service Automation Option

Mailers entering Standard Mail pieces under the full-service automation option must electronically submit postage statements and mailing documentation, including qualification and container reports, to the *PostalOne!* system as described in 705.22.3.4.

* * * * *

345 Mail Preparation

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4.0 Sack and Tray Labels

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4.8 Use of Barcoded Sack and Tray Labels

* * * Barcoded labels must meet these general standards:

[Revise 4.8 by adding a new item e as follows:]

e. Intelligent Mail tray labels must be used on all trays and sacks for mailings entered under the full-service automation option.

* * * * *

360 Bound Printed Matter

363 Prices and Eligibility

1.0 Prices and Fees for Bound Printed Matter

1.1 Nonpresorted Bound Printed Matter

* * * * *

1.1.4 Barcoded Discount—Flats

[Revise 363.1.1.4 to require BPM claiming a barcode discount price to be automation-compatible and bear a delivery point barcode as follows:]

The barcoded discount applies only to BPM flat-size pieces that meet the requirements for automation compatibility in 301.3.0 and bear a delivery point POSTNET barcode or Intelligent Mail barcode encoded with the correct delivery point routing code, matching the delivery address and meeting the standards in 302.4.0 and 708.4.0. The pieces must be part of a nonpresorted mailing of 50 or more flat-size pieces.

* * * * *

4.0 Price Eligibility for Bound Printed Matter Flats

4.1 Price Eligibility

* * * Price categories are as follows:

* * * * *

[Revise item d of 363.4.1 to require BPM claiming a barcode discount price to be automation-compatible and bear a delivery point barcode as follows:]

d. Barcoded Discount—Flats. The barcoded discount applies only to BPM flat-size pieces that meet the requirements for automation compatibility in 301.3.0 and bear an accurate delivery point POSTNET barcode or Intelligent Mail barcode encoded with the correct delivery point routing code, matching the delivery address and meeting the standards in 302.4.0 and 708.4.0. The pieces must be part of a nonpresorted mailing of 50 or more flat-size pieces or part of a presort mailing of at least 300 BPM flat-size pieces prepared under 705.8.0, and 365.7.0. The barcoded discount is not available for flat-size pieces mailed at Presorted DDU prices or carrier route prices.

* * * * *

6.0 Additional Eligibility Standards for Barcoded Bound Printed Matter Flats

6.1 Basic Eligibility Standards for Barcoded Bound Printed Matter

[Revise 6.1 by revising the first sentence as follows:]

The barcode discount applies only to BPM flat-size pieces that bear a delivery point POSTNET barcode or an Intelligent Mail barcode encoded with the correct delivery point routing code, matching the delivery address and meeting the standards in 302.4.0 and 708.4.0. * * *

[Renumber current 363.6.2 through 363.6.3 as 363.6.3 through 363.6.4.]

[Add a new 363.6.2 as follows:]

6.2 Eligibility Standards for Full-Service Automation Bound Printed Matter Flats

All pieces entered under the full-service automation option, according to standards in 705.22, must:

a. Bear a unique Intelligent Mail barcode.

b. Be part of a mailing using unique Intelligent Mail tray labels on all trays and sacks.

c. Be part of a mailing using unique Intelligent Mail container barcodes on all destination-entry pallets and other containers prepared under 705.8.0 or as part of a customer/supplier agreement.

d. Be part of a mailing using an approved electronic method to transmit a postage statement and mailing documentation to the *PostalOne!* system.

e. Be scheduled for an appointment through the Facility Access and Shipment Tracking (FAST) system when deposited as a DBMC or DSCF dropshipment.

* * * * *

364 Postage Payment and Documentation

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2.0 Mailing Documentation

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[Renumber current 364.2.4 through 364.2.9 as 364.2.5 through 364.2.10.]

[Add a new 364.2.4 as follows:]

2.4 Documentation Submission—Full-Service Automation Option

Mailers entering BPM pieces under the full-service automation option must electronically submit postage statements and mailing documentation to the *PostalOne!* system as described in 705.22.3.4.

* * * * *

365 Mail Preparation

* * * * *

4.0 Sack Labels

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4.9 Basic Standards for Barcoded Sack Labels

* * * Barcoded labels must meet these general standards:

[Revise 4.9 by adding a new item e as follows:]

e. Intelligent Mail tray labels (see 708.6.0) must be used on sacks for mailings entered under the full-service automation option.

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500 Additional Services

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507 Mailer Services

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9.0 Business Reply Mail (BRM)

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[Revise the title and text of 9.9 to allow Intelligent Mail barcodes on letter-size and flat-size BRM, except QBRM letters, to omit a Mailer ID as follows:]

9.9 Additional Standards for Letter-Size and Flat-Size BRM

In addition to the format standards in 9.8, letter-size BRM enclosed in automation mailings and all QBRM must be barcoded with a ZIP+4 POSTNET barcode or an Intelligent Mail barcode. Intelligent Mail barcodes on all

BRM must contain the barcode ID, service type ID, and correct ZIP+4 routing code, as specified under 708.4.3. QBRM letters must bear Intelligent Mail barcodes with a USPS-assigned Mailer ID, effective May 2010. Other BRM letters and flats may be barcoded at the permit holder's option. Barcoded BRM must meet the barcode standards in 708.4.0, the envelope basis weight standards in 9.7.1, all other mailpiece design standards in 201.3.0 (including thickness) or 301.3.0, and these standards:

* * * * *

10.0 Permit Reply Mail

* * * * *

10.3 Format Elements

* * * * *

10.3.6 Delivery Address

[Revise 10.3.6 as follows:]

The complete address (including the permit holder's name, delivery address, city, state, and ZIP + 4 code) must be printed on the piece. PRM pieces must bear a delivery point POSTNET (until May 2010) or Intelligent Mail barcode. Effective May 2010, PRM pieces must bear Intelligent Mail barcodes (under 708.4.3) with delivery point routing codes and USPS-assigned Mailer IDs.

700 Special Standards

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705 Advanced Preparation and Special Postage Payment Systems

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8.0 Preparing Pallets

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[Re-title 705.8.6 as follows:]

8.6 Pallet Placards

8.6.1 Placement

[Revise 8.6.1 by adding a new second sentence as follows]:

* * * Pallets prepared through plant-load or drop-shipment agreements must be placed on transportation so that a pallet placard on each pallet faces toward the rear of the vehicle.

8.6.2 Specifications

[Revise 8.6.2 to reference Intelligent Mail container barcoded pallet placards as follows:]

Pallet placards must be pink for Periodicals mailpieces or white for Standard Mail, Package Services, and Parcel Select. Pallet placards must measure at least 8 inches by 11 inches, except that pallet or other USPS container placards bearing Intelligent Mail container barcodes may measure 4 inches by 7 inches when prepared under 708.6.6.6. Placards bearing Intelligent Mail container barcodes must meet the standards for Intelligent Mail container placards in DMM 708.6.6 and at *ribbs.usps.gov*.

* * * * *

[Add new 705.22 to describe the conditions for the full-service automation option as follows:]

22.0 Full-Service Automation Option

22.1 Description

Access to full-service automation option benefits requires the use of Intelligent Mail barcodes to uniquely identify each mailpiece. In addition to the standards described in 22.2, all pieces entered under the full-service option must individually meet the eligibility requirements for automation prices according to their class and shape. Full-service automation mailings require Intelligent Mail barcodes on mailpieces; Intelligent Mail tray labels on trays and sacks; and Intelligent Mail container placards on pallets or similar containers (when created). Additional requirements include the use of an approved electronic method to transmit postage statements and mailing documentation to the USPS (describing how mailpieces are linked to trays or sacks, and containers, if applicable), and scheduling dropship appointments through the Facility Access and Shipment System (FAST) for destination bulk mail center, destination area distribution center, and destination sectional center facility dropshipments.

22.1.1 Basic Option Pieces Included in Full-Service Automation Mailings

Full-service automation option mailings may include pieces prepared under the basic automation option, but the basic automation option pieces will not be used to meet the eligibility standards for the full-service option and will not receive full-service benefits. Basic automation option pieces bear Intelligent Mail barcodes (under 708.4.0) and meet all eligibility requirements for automation prices.

22.1.2 POSTNET Pieces Included in Full-Service Automation Mailings

Full-service automation option mailings may include automation-compatible pieces bearing POSTNET barcodes. These pieces may not be used to meet the eligibility standards for the full-service option and will not receive full-service benefits.

22.2 Eligibility Standards

First-Class Mail, Periodicals, and Standard Mail letters and flats and Bound Printed Matter flats meeting eligibility requirements for automation prices, and Standard Mail letters meeting eligibility requirements for enhanced carrier route letter prices are eligible for the full-service automation option. All pieces entered under the full-service automation option must:

a. Bear a unique Intelligent Mail barcode.

b. Be part of a mailing using unique Intelligent Mail tray labels on all trays and sacks.

c. Be part of a mailing using unique Intelligent Mail container barcodes on all destination-entry pallets and other containers prepared under 705.8.0 or as part of a customer/supplier agreement. A customer/supplier agreement is authorized with a service agreement signed by the mailer, the USPS District Manager, Customer Service, and the USPS Processing and Distribution Center manager. The service agreement contains provisions regarding mailer and USPS responsibilities.

d. Be part of a mailing using an approved electronic method to transmit a postage statement and mailing documentation to the *PostalOne!* system.

e. Be scheduled for an appointment through the Facility Access and Shipment Tracking (FAST) system when deposited as a DBMC, DADC, or DSCF drop-shipment.

22.3 Preparation

22.3.1 Intelligent Mail Barcodes

Mailers must include an Intelligent Mail barcode on each mailpiece as described in 708.4 that accurately encodes the following fields:

a. Barcode ID.

b. Service Type ID.

c. Mailer ID. At the option of the mail owner, the Mailer ID field can be populated with the Mailer ID of the mail owner or mail preparer.

d. Serial number. Except for mail prepared under 22.4.3, each mailpiece must be encoded with a unique serial number. Mailers must ensure that these numbers remain unique for a period of at least 45 days. Serial numbers associated to an individual Mailer ID must not be duplicated within this 45-day period, regardless of the entry location.

e. Delivery point routing code. All Intelligent Mail barcodes must include an accurate delivery point routing code.

22.3.2 Intelligent Mail Tray Labels

All trays and sacks must contain accurately encoded Intelligent Mail tray labels as described in 708.6.5. Mailing documentation, when required, must associate each mailpiece to a

corresponding tray or sack, if applicable, as described in 22.3.4. Each tray or sack must be encoded with a unique serial number. Tray or sack serial numbers associated to an individual Mailer ID cannot be duplicated within a 45-day period, regardless of the acceptance location.

22.3.3 Intelligent Mail Container Placards

All required pallets and similar containers (such as all-purpose containers, hampers, and gaylords) and all containers prepared under 705.8.0 in full-service mailings must display container placards that include accurately encoded Intelligent Mail container barcodes as described in 708.6.6. Mailing documentation, when required, must associate each mailpiece (and tray or sack, if applicable) to a corresponding container as described in 22.3.4, unless otherwise authorized by the USPS. Each container must be encoded with a unique serial number. Container barcodes must not be duplicated within a 45-day period, regardless of the acceptance location.

22.3.4 Electronic Documentation

Mailers must electronically submit postage statements and mailing documentation (when required) to the *PostalOne!* system. Unless otherwise authorized, documentation must describe how each mailpiece is linked to a uniquely identified tray or sack, if applicable, and how each mailpiece and tray or sack is linked to a uniquely identified container (if applicable). The documentation must also meet the requirements in *A Guide to Intelligent Mail for Letters and Flats* (available at *ribbs.usps.gov/*). Mailers must transmit postage statements and mailing documentation to the *PostalOne!* system using Mail.dat, Mail.XML, or Postal Wizard (see 22.4.3).

22.3.5 Scheduling Appointments

Mailers must schedule appointments using the Facility Access and Shipment Tracking (FAST) system for dropship mailings (except for mailings entered at a DDU) or as required in a customer/supplier agreement. Mailers may schedule appointments online using the FAST Web site at *fast.usps.com* or they may submit appointment requests through *PostalOne!* FAST Web Services at *www.uspspostalone.com*, using Mail.XML or Mail.XML with Mail.dat.

22.3.6 Preparation of Containers

Mailings under the full-service automation option may be containerized, when volume warrants, in uniquely identified containers by palletizing bundles, sacks, or trays under standards in 705.8. Mailers required to containerize must make all separations when the volume for any presort level meets a required sortation level, as described in 705.8.5.2 or in the customer/supplier agreement. Full-service mailings containerized under 705.8.0 or as part of a customer/supplier agreement must have Intelligent Mail container placards (under 708.6.6) on the containers.

22.4 Additional Standards

22.4.1 Induction Data

Mailers presenting mailings under the full-service automation option will receive mail induction information (start-the-clock data corresponding to the date and time when the USPS receives the mailing) at no additional charge.

22.4.2 Address Correction Notices

Mailers presenting mailpieces that qualify for the full-service option will receive automated address correction notices at no additional charge when the pieces are encoded with Intelligent Mail barcodes with ''Address Service Requested'' or ''Change Service Requested'' under standards for OneCode ACS and under the conditions noted below.

a. Mailpieces must include the appropriate service type ID in the Intelligent Mail barcode to match the ancillary service requested. See 507.1.5 for mail disposition and address correction combinations by class of mail.

b. A complementary ancillary service request option also must be recorded in the mailer's Address Change Service (ACS) mailer profile. See 507.4.2 for more information about ACS. Address correction notices for mailpieces in full-service mailings are available for:

1. First-Class Mail letters and flats (printed endorsement not required for letters).

2. Periodicals letters and flats (printed endorsement not required).

3. Standard Mail letters and flats and Bound Printed Matter (BPM) flats. Standard Mail and BPM pieces must include a printed on-piece endorsement in addition to encoding the ancillary service request into the Intelligent Mail barcode. See 507.4.2 for additional standards.

c. Mailers must use the address correction information provided by the USPS to update their address records in order to receive notices without paying additional fees.

22.4.3 Special Standards—Small Volume Mailings

For mailings of fewer than 10,000 pieces, and postage is affixed to each piece at the correct price or each piece is of identical weight and the mailpieces are separated by price, the serial number field of each Intelligent Mail barcode can be populated with a mailing serial number that is unique to the mailing but common to all pieces in the mailing. This unique mailing serial number must not be reused for a period of 45 days from the date of mailing. These mailings are not required to submit electronic documentation for full-service, only an electronic postage statement. Unique mailing serial numbers must be populated in the Postal Wizard entry screen field or in the Mail.XML messages. Mailers must populate the serial number field of all Intelligent Mail tray or sack labels, and Intelligent Mail container barcodes (when mailings are containerized) with the unique mailing serial number.

* * * * *

707 Periodicals

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14.0 Barcoded (Automation) Price Eligibility

14.1 Basic Standards

14.1.1 General

All pieces in a Periodicals barcoded (automation) price mailing must:

[Revise item c of 14.1.1 to describe new standards for barcoded Periodicals mailings as follows:]

c. Bear an accurate delivery point POSTNET barcode or an Intelligent Mail barcode encoded with the delivery point routing code, matching the delivery address and meeting the standards in 202.5.0 (for letters), 302.4.0 (for flats), and 708.4.0. Mailers must apply the barcode either on the piece or on an insert showing through a window.

* * * * *

[Renumber current 14.2 through 14.4 as 14.3 through 14.5 and add new 14.2 as follows:]

14.2 Eligibility Standards for Full-Service Automation Periodicals

All pieces entered under the full-service automation option, according to standards in 705.22, must:

a. Bear a unique Intelligent Mail barcode.

b. Be part of a mailing using unique Intelligent Mail tray labels on all trays and sacks.

c. Be part of a mailing using unique Intelligent Mail container barcodes on all destination-entry pallets and other

containers prepared under 705.8.0 or as part of a customer/supplier agreement.

d. Be part of a mailing using an approved electronic method to transmit a postage statement and mailing documentation to the *PostalOne!* system.

e. Be scheduled for an appointment through the Facility Access and Shipment Tracking (FAST) system when deposited as a DBMC, DADC, or DSCF dropshipment.

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17.0 Documentation

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17.3 Basic Standards for Documentation

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17.3.3 Presenting Documentation

[Revise 17.3.3 by adding a new third sentence as follows:]

* * * Mailers entering Periodicals pieces under the full-service barcoded (automation) option must electronically submit postage statements and mailing documentation to the *PostalOne!* system as described in 705.21.3.4.

* * * * *

21.0 Sack and Tray Labels

* * * * *

21.4 Use of Barcoded Sack and Tray Labels

* * * Barcoded labels must meet these general standards:

[Revise 21.4 by adding a new item e as follows:]

e. Intelligent Mail tray labels must be used on all trays and sacks for mailings entered under the full-service automation option.

* * * * *

708 Technical Specifications

* * * * *

4.0 Standards for POSTNET and Intelligent Mail Barcodes

* * * * *

4.3 Intelligent Mail Barcodes

4.3.1 Definition

* * * Mailers may use Intelligent Mail barcodes as follows:

[Revise the first sentence in item b to require delivery point routing codes in Intelligent Mail barcode on automation flats as follows:]

b. When used on flat-size pieces for automation-price eligibility purposes, the barcode must contain a delivery point routing code that accurately matches the delivery address. * * *

[Revise item c of 4.3.1 to exempt certain reply mailpieces from the Mailer ID requirement by adding a new first sentence and revising the second sentence as follows:]

c. Reply mail pieces, except QBRM and Permit Reply Mail (PRM) pieces, using origin Confirm Service do not require a Mailer ID to be encoded into the Mailer Identifier field. All other mailpieces, including QBRM letters and PRM pieces as of May 2010, bearing Intelligent Mail barcodes must include the Mailer ID in the Mailer Identifier field. * * *

* * * * *

[Revise the title of 708.6 to reflect new container placard options as follows:]

6.0 Standards for Barcoded Tray Labels, Sack Labels, and Container Placards

[Renumber current 6.1 through 6.3 as new 6.2 through 6.4.]

[Add new 6.1 as follows:]

6.1 General

6.1.1 Tray and Sack Labels

Intelligent Mail tray labels (see 6.5), barcoded 2-inch tray and sack labels, and barcoded 1-inch sack labels are the USPS-approved methods to encode routing, content, origin, and mailer information on trays and sacks. Intelligent Mail tray labels are designed for use with Intelligent Mail barcoded mail and have the capacity to allow tracking through USPS systems, providing key information to mailers and the USPS.

6.1.2 Container Placards

Mailer-generated container placards bearing Intelligent Mail container barcodes identify the mail owner or agent and uniquely identify the unit load (pallet, container, or rolling stock). Intelligent Mail container placards are designed to be used with Intelligent Mail barcoded mail and Intelligent Mail tray labels.

[Revise the title of renumbered 6.2 as follows:]

6.2. Specifications for Barcoded Tray and Sack Labels

* * * * *

[Revise title of renumbered Exhibit 6.2.1 as follows:]

Exhibit 6.2.1 Required Barcoded Tray and Sack Labels

* * * * *

[Add new 6.5 as follows:]

6.5 Intelligent Mail Tray Label

6.5.1 Definition

Intelligent Mail tray labels are 2-inch labels used on all trays and sacks to uniquely identify each tray and sack in addition to each mailer or mail preparer. See Exhibit 6.5.1 for an example of the Intelligent Mail tray label. Detailed specifications for Intelligent Mail tray labels and barcode formats are available under the Intelligent Mail barcodes link at *ribbs.usps.gov*.

Exhibit 6.5.1 Intelligent Mail Tray Label

[Exhibit located on the Postal Explorer Web site at pe.usps.com under Federal Register notices].

6.5.2 Intelligent Mail Tray Label Format

The core data elements for the Intelligent Mail tray label are as follows:

a. Printer Line.

b. Tray or Sack Destination (Postal Destination Name).

c. Content Identifier Number (CIN) description (tray or sack content).

d. Office of mailing or mailer information.

e. Destination ZIP Code (the ZIP Code of the trays' or sacks' final destination).

f. Carrier Route information.

g. Mailer ID (unique identifier of the mailer).

h. 24-digit, ISS Code 128 subset C barcode numeric line.

i. Mailer's Area (set aside for mailer-generated human-readable information).

6.5.3 Barcode Format

The barcode format that a mailer uses depends on the Mailer ID assigned by the USPS. Upon request by the mailer, the USPS assigns a 6-digit or 9-digit Mailer ID based on the mailer's mail volume. Intelligent Mail tray barcodes contain the following elements:

a. Destination ZIP Code.

b. Content Identifier Number (CIN), as listed in Exhibit 6.2.4.

c. Processing Code, identifying the system or facility generating the label.

d. Mailer ID.

e. Serial Number, a unique number assigned to each tray or sack.

f. Label Type, a default digit.

6.5.4 Unique Barcode Requirement

The Intelligent Mail tray barcode encodes a unique ID for each tray and sack. Mailers must ensure that serial numbers in barcodes remain unique for 45 days.

6.5.5 Quality Assurance Provisions

Mailers printing Intelligent Mail tray labels are responsible for the inspection and testing of the labels prior to submission to USPS and for maintaining the overall quality of the labels they produce. It is recommended that inspection and testing of Intelligent Mail tray labels be performed

periodically. Mailers and label vendors are encouraged to submit samples to the National Customer Service Center (NCSC) in Memphis for certification (see 608.8.0 for address).

[Add new 6.6 as follows:]

6.6 Intelligent Mail Container Placards (Labels)

6.6.1 Definition

Mailer-generated container placards bearing Intelligent Mail container barcodes can be used to identify all pallets and other rolling stock, such as all-purpose containers. Intelligent Mail container barcodes uniquely identify each container and may be scanned at induction points. Detailed specifications for Intelligent Mail container barcodes and placards are available under the Intelligent Mail barcodes link at *ribbs.usps.gov*.

6.6.2 Intelligent Mail Container Placard Configurations

Intelligent Mail container placards can be produced in two configurations:

a. *Self-adhesive placard measuring at least 8 inches by 11 inches*. Placards must be affixed to the outside of any shrinkwrap or plastic by a self-adhesive or other adhesive means that will not obscure any required element of the placard, and remain secure throughout USPS processing. See 6.6.3 for specifications.

b. *Optional self-adhesive placard measuring at least 4 inches by 7 inches*. Placards also may be prepared in the alternate format (see 6.6.6) when affixed to the outside of any shrinkwrap or plastic by a self-adhesive or other adhesive means that will not obscure any required element of the placard and remain secure throughout USPS processing. This optional configuration does not accommodate a ''mailer area,'' such as the one supported by the larger configuration in 6.6.3. Mailers wishing to include their own information in a defined ''mailer area'' of the placard must use a placard with a minimum size of 8 inches by 11 inches under 6.6.3.

6.6.3 Intelligent Mail Container Placard Format

In addition to the general requirements for pallet placards in 705.8.6, Intelligent Mail container placards (see Exhibit 6.6.3) must retain the top portion of the placard for USPS-required elements. The USPS banner, identification bars, and human-readable text are required elements related to the Intelligent Mail container barcode and will serve as a guide to distinguish the barcode from the other information on the container placard. Components and their required elements include:

a. *USPS Banner*. ''USPS SCAN REQUIRED'' must be printed in all uppercase letters centered above the barcode and embedded within the upper Identification bar. Clear zone and font size are as follows:

1. A clear zone of at least 0.125 inch, but no more than 0.5 inch, must be maintained between the bottom edge of the text and the top of the barcode.

2. The banner must be printed in a boldface sans-serif font of at least 14-point type.

b. *Identification Bars*. Horizontal black bars of at least 0.10 inch thick must be printed above and below the barcode. At a minimum, the bars must extend the length of the barcode. Clear zone and other requirements are as follows:

1. The upper bar must be printed at least 0.125 inch above the top edge of the barcode.

2. The upper bar must have a void in the middle sufficient to insert the USPS banner without any element being obscured.

3. The lower bar must be printed at least 0.125 inch below the human-readable representation of the barcode string.

c. *Human-Readable Representation of Barcode Data*. The human-readable representation of barcode data (text) must be printed in a boldface sans-serif font of at least 12-point type. The text must not exceed the length of the barcode. To enhance readability, the text must be or separated by data field. Two blank character spaces must be left between each field. The text must be centered at least 0.125 inch, but no more than 0.25 inch, below the barcode.

d. *Barcode Location*. The barcode, along with the corresponding USPS banner and identification bars, must be printed on the front side of the pallet placard. When the identification bars extend beyond the length of the barcode, the barcode must be horizontally centered.

e. *Minimum size*. The minimum size of this placard is 8 inches high by 11 inches long. See additional specifications at *ribbs.usps.gov* under the Intelligent Mail link. Mailers using placards larger than this minimum size must ensure the barcode conforms to the published specification and the human-readable content is provided as illustrated in Exhibit 6.6.3 and as published on the RIBBS Web site.

Exhibit 6.6.3 Intelligent Mail Container Placard

[Exhibit located on the Postal Explorer Web site at pe.usps.com under Federal Register notices].

6.6.4 Barcode Format

Intelligent Mail container barcodes are 21 characters in length and contain a USPS-assigned Mailer ID. The format depends on the Mailer ID assigned by the USPS. Intelligent Mail container barcodes contain the following elements:

a. Application Identifier, identifying the source of the barcode.

b. Type Indicator, identifying internal or external label generation.

c. Mailer ID.

d. Serial Number, a unique number assigned to each container.

6.6.5 Placard Requirements

Mailers using container placards bearing Intelligent Mail container barcodes must:

a. Place two placards on pallets, one on each adjacent side, on the outside of shrinkwrap or plastic. Placards must be affixed by self-adhesive or other adhesive means that will not obscure any required element of the placard, and remain secure throughout USPS processing.

b. Place one label in the designated area on other USPS containers.

6.6.6 Optional Placard Format

Mailers may prepare pallet and container placards bearing Intelligent Mail container barcodes (see Exhibit 6.6.6) in a smaller alternate format when affixed to the outside of any shrinkwrap or plastic as follows:

a. Placards must include the required elements described in 705.8.6. Mailers wishing to include information in a defined ''mailer area'' must use the larger size placard specified in 6.6.3.

b. Placards must be securely affixed on two adjacent sides on the outside of pallets and may measure no less than 4 inches high by 7 inches long.

c. Placards containing Intelligent Mail container barcodes must meet the specifications for placards located under the Intelligent Mail barcodes link at *ribbs.usps.gov*.

Exhibit 6.6.6 Intelligent Mail Container Placard—Optional Format Without Mailer Area

[*Exhibit located on the Postal Explorer Web site at pe.usps.com*]

6.6.7 Unique Barcode Requirement

The Intelligent Mail container barcode encodes a unique ID for each container. Mailers must ensure that serial numbers in barcodes remain unique for 45 days.

6.6.8 Quality Assurance Provisions

Mailers printing Intelligent Mail container placards are responsible for the inspection and testing of the

placards prior to submission to the USPS and for maintaining the overall quality of the placards they produce. It is recommended that inspection and testing of Intelligent Mail container placards be performed periodically. Mailers are encouraged to work with their local Mailpiece Design Analyst to validate the accuracy and quality of their placards.

* * * * *

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E8–19339 Filed 8–20–08; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE™

39 CFR Part 111

Waiver of Signature Delivery Process

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service is revising the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) to update the standards regarding delivery of Express Mail® items with waiver of signature and return receipt for merchandise items with waiver of signature. Delivery employees deliver these items to the addressee's mail receptacle or other secure location without first attempting to obtain a signature from the addressee.

DATES: *Effective Date:* August 21, 2008.

FOR FURTHER INFORMATION CONTACT: Monica Grein at 202–268–8411.

SUPPLEMENTARY INFORMATION: Waiver of signature authorizes delivery to be made without obtaining the signature of the addressee or addressee's agent as long as the delivery employee establishes the article can be left in the addressee's mail receptacle or other secure location. By waiving signature, the sender agrees to accept the delivery time and date scan information as valid record of delivery.

When Express Mail® items with waiver of signature and return receipt for merchandise items with waiver of signature are delivered, the delivery employee will sign the PS Form 3849, *Sorry We Missed You,* without attempting to obtain a signature from the addressee. After signing the PS Form 3849, the delivery employee delivers the item to the addressee's mail receptacle or other secure location. This process expedites delivery time because the delivery employee is not required to try to obtain a signature from the addressee or addressee's agent, when a waiver of signature is indicated.

Comments Received: We received one comment on the proposal, from an attorney. The commenter expressed concerns about our process for handling disputes regarding mail delivery when the sender has authorized a waiver of signature.

The delivery employee has always signed the Form 3849 when ''waiver of signature'' was indicated and we have never provided the delivery employee's name. The only change from the previous process is that the delivery employee no longer needs to attempt to obtain a signature from the addressee first when ''waiver of signature'' is indicated. Therefore, the manner in which we handle delivery disputes has been well established and will not be changed.

The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®), which is incorporated by reference in the *Code of Federal Regulations.* See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

■ Accordingly, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) as follows:

* * * * *

100 Retail Letters, Cards, Flats, and Parcels

* * * * *

110 Express Mail

113 Prices and Eligibility

* * * * *

4.0 Service Features of Express Mail

4.1 General

The service features are as follows:

* * * * *

[Revise the text of the first and second sentences in item b as follows:]

b. When a signature is waived by the mailer, the delivery employee signs upon delivery. The item is delivered to the addressee's mail receptacle or other secure location. * * *

* * * * *

115 Mail Preparation

* * * * *

2.0 Express Mail Next Day and Second Day

* * * * *

2.2 Waiver of Signature

[Revise the text of 2.2 as follows:]

A mailer sending an Express Mail item may instruct the USPS to deliver an Express Mail Next Day Delivery or Express Mail Second Day Delivery item without obtaining the signature of the addressee or the addressee's agent by checking and signing the waiver of signature on Label 11–B or Label 11–F, *Express Mail Post Office to Addressee,* or indicating waiver of signature is requested on single-ply commercial label. Completion of the waiver of signature authorizes the delivery employee to sign upon delivery. The item is delivered to the addressee's mail receptacle or other secure location. Mailers who waive signature will be provided only the delivery date and time, and not an image of the signature when accessing delivery information on the Internet or when calling the toll-free number.

* * * * *

400 Commercial Parcels

* * * * *

410 Express Mail

413 Prices and Eligibility

* * * * *

4.0 Service Features of Express Mail

4.1 General

The service features are as follows:

* * * * *

[Revise the text of the first and second sentences in item b as follows:]

b. When waiver of signature is indicated by the mailer, the delivery employee signs upon delivery. The item is delivered to the addressee's mail receptacle or other secure location. * * *

* * * * *

415 Mail Preparation

* * * * *

2.0 Express Mail Next Day and Second Day

* * * * *

2.2 Waiver of Signature

[Revise the text of 2.2 as follows:]

A mailer sending an Express Mail item may instruct the USPS to deliver an Express Mail Next Day Delivery or Express Mail Second Day Delivery item without obtaining the signature of the

addressee or the addressee's agent by checking and signing the waiver of signature on Label 11–B or Label 11–F, *Express Mail Post Office to Addressee,* or indicating waiver of signature is requested on single-ply commercial label. Completion of the waiver of signature authorizes the delivery employee to sign upon delivery. The item is delivered to the addressee's mail receptacle or other secure location. Mailers who waive signature are provided only the delivery date and time, and not an image of the signature when accessing delivery information on the Internet or when calling the toll-free number.

* * * * *

500 Additional Mailing Services

503 Extra Services

* * * * *

8.0 Return Receipt for Merchandise

* * * * *

8.3 Mailing

* * * * *

8.3.2 How to Mail

A mailer can obtain Form 3804 and Form 3811 (return receipt) at the Post Office or from any rural carrier. Observe these procedures:

* * * * *

[Revise item f as follows:]

f. By signing the waiver on Form 3804, customers are instructing the USPS to deliver the item without obtaining the addressee's or addressee's agent's signature. Completion of the waiver of signature authorizes the delivery employee to sign upon delivery. The item is delivered to the addressee's mail receptacle or other secure location. To waive signature, detach both parts of the gummed sections of label 3804 and attach to the mailpiece.

* * * * *

Neva Watson,

Attorney, Legislative.

[FR Doc. E8–19340 Filed 8–20–08; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R05–OAR–2007–0952; FRL–8707–5]

Approval and Promulgation of Revised Municipal Waste Combustor State Plan for Designated Facilities and Pollutants: Indiana; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: EPA is withdrawing the July 8, 2008 (73 FR 38925), direct final rule revisions to Indiana's State Plan to control air pollutants from large Municipal Waste Combustors (MWC). The Indiana Department of Environmental Management (IDEM) submitted the State Plan on August 24, 2007.

In the direct final rule, EPA stated that if adverse comments were submitted by August 7, 2008, the rule would be withdrawn and not take effect. On July 29, 2008, IDEM submitted a comment to EPA. EPA believes this comment is adverse and, therefore, EPA is withdrawing the direct final rule. Specifically, IDEM commented that, in the table for particulate matter, there was a typographical error in identifying the appropriate footnotes for the emission limitations. In addition, IDEM stated that it had recently submitted an agency correction for publication in the Indiana Register to correct the footnotes for mercury and sulfur dioxide in the emission limitations table, and requested that these corrections be part of the final federal approval. EPA will address the comment in a subsequent final action based upon the proposed action also published on July 8, 2008 (73 FR 38954). EPA will not institute a second comment period on this action.

DATES: The direct final rule published at 73 FR 38925 on July 8, 2008, is withdrawn as of August 21, 2008.

FOR FURTHER INFORMATION CONTACT: Margaret Sieffert, Environmental Engineer, Environmental Protection Agency, Region 5, 77 West Jackson Boulevard (AT–18J), Chicago, Illinois 60604, (312) 353–1151, *sieffert.margaret@epa.gov*.

List of Subjects in 40 CFR Part 62

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

Dated: August 12, 2008.

Walter W. Kovalick Jr.,

Acting Regional Administrator, Region 5.

■ Accordingly, the amendments to 40 CFR 62.3650, 62.3651, and 62.3652 to subpart P which published in the **Federal Register** on July 8, 2008 (73 FR 38925) on page 38928, and which were to become effective on September 8, 2008, are withdrawn as of August 21, 2008.

[FR Doc. E8–19416 Filed 8–20–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1987–0002; FRL–8706–5]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct Final Notice of Deletion of the Waste Inc. Landfill Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA), Region V is publishing a direct final Notice of Deletion of the Waste Inc. Landfill Superfund Site (Site), located in Michigan City, Indiana, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the State of Indiana, through the Indiana Department of Environmental Management (IDEM), because EPA has determined that all appropriate response actions under CERCLA, other than operation, maintenance, and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: This direct final deletion is effective October 20, 2008 unless EPA receives adverse comments by September 22, 2008. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–

SFUND–1987–0002, by one of the following methods:

- *E-mail:* Dion Novak, Remedial Project Manager, at *novak.dion@epa.gov* or Robert Paulson, Community Involvement Coordinator, at *paulson.robert@epa.gov*.
- *Fax:* Gladys Beard at (312) 886–4071.
- *Mail:* Dion Novak, Remedial Project Manager, U.S. Environmental Protection Agency (SR–6J), 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–4737, or Robert Paulson, Community Involvement Coordinator, U.S. Environmental Protection Agency (P–19J), 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–0272 or 1–800–621–8431.
- *Hand delivery:* Robert Paulson, Community Involvement Coordinator, U.S. Environmental Protection Agency (P–19J), 77 West Jackson Blvd., Chicago, IL 60604. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–1987–0002. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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 the hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at:

The Regional Office, U.S. Environmental Protection Agency, 77 W. Jackson Blvd., Chicago, IL, official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays. Michigan City Public Library, 100 E. Fourth St., Michigan City, IN 46360, (815) 939–4564, Monday through Thursday, 9 a.m. to 8 p.m., and Friday and Saturday, 9 a.m. to 6 p.m.

FOR FURTHER INFORMATION CONTACT: Dion Novak, Remedial Project Manager, U.S. Environmental Protection Agency (SR–6J), 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–4737, *novak.dion@epa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Site Deletion
V. Deletion Action

I. Introduction

EPA Region V is publishing this direct final Notice of Deletion of the Waste Inc. Landfill (Site) from the National Priorities List (NPL). The NPL constitutes Appendix B of 40 CFR part 300, which is the Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions if future conditions warrant such actions.

Because EPA considers this action to be noncontroversial and routine, this action will be effective October 20, 2008 unless EPA receives adverse comments by September 22, 2008. Along with this direct final Notice of Deletion, EPA is co-publishing a Notice of Intent to Delete in the ''Proposed Rules'' section of the **Federal Register**. If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely withdrawal of this direct final Notice of Deletion before the effective date of the deletion, and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Waste Inc. Landfill Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the state, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. the remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without

application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) EPA consulted with the State of Indiana prior to developing this direct final Notice of Deletion and the Notice of Intent to Delete co-published today in the ''Proposed Rules'' section of the **Federal Register**.

(2) EPA has provided the State 30 working days for review of this notice and the parallel Notice of Intent to Delete prior to their publication today, and the State, through the Indiana Department of Environmental Management, has concurred on the deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final Notice of Deletion, a notice of the availability of the parallel Notice of Intent to Delete is being published in a major local newspaper, The LaPorte County News-Dispatch. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Site from the NPL.

(4) The EPA placed copies of documents supporting the proposed deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely notice of withdrawal of this direct final Notice of Deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL:

A five-year review was completed on September 27, 2006, and the review concluded that the site remedy was protective of human health and the environment. The Site has achieved cleanup standards.

Site Background and History

Site Location

The Waste Inc. Landfill is located in LaPorte County, Indiana, at 1701 East U.S. Highway 12 in Michigan City, Indiana and the CERCLIS ID is IND980504005. The 32-acre site, which is comprised of the Waste Inc. and Lin-See, Ltd. properties, is bounded by U.S. Highway 12 to the northwest, Michigan Auto Builders and Sullair Corporation to the north and east, Trail Creek to the east and south, and Lake Aluminum Corporation (property owned by Northern Indiana Steel Supply Company, Inc.-NISSCO) to the west.

Site History

In 1939, prior to its development as a landfill, the Site consisted of agricultural land with some lowlands. A metal salvage and reclamation facility on the west side of the Site covered most of the wetland area present in 1939. A small disposal mound was located in the north central portion of the Site in 1954, and an abandoned meander appeared to contain debris. A long mound that consisted of debris, fill, and scrap metal wastes was located along the western perimeter. These mounds expanded over time, and additional mounding occurred in the southeast and southwest portions of the site. Portions of the Site were cleared in 1961 and 1965 to provide parking areas.

Dis-Pos-All Services Division, a division of NISSCO, operated the Site as a landfill from 1965 to 1972. NISSCO sold its disposal operation to Waste Inc. in 1972. Waste Inc. continued to operate the landfill until August 1982. The current owners of the facility are Lin-See Corporation and the County of LaPorte, Indiana.

Dis-Pos-all Services submitted a proposal to the Indiana Stream Pollution Control Board for operation of the landfill in November 1970. Under the proposal, the landfill would only accept paper, wood, and cardboard, with foundry sand used as cover material. The Board issued a non-objection letter to the proposal in 1971. Several subsequent inspections by the Indiana State Board of Health determined that the Site was accepting unapproved material for disposal and was not properly covering combustible material. The Site was ordered closed and covered with clay by the Board in a letter dated August 18, 1974.

Waste Inc. submitted an application to the Board in May 1975 for construction and operation permits. Although the application was denied, no hearing was held on the Waste Inc. appeal of the denial and the site continued to operate. An Agreed Order was executed between Waste Inc. and the Board in May 1981 that set conditions for continued operation of the landfill. A Consent Order was signed in August 1982 that closed the Site, but allowed the acceptance of foundry sand for disposal and allowed Waste Inc. Landfill to begin covering the Site with clay. In 1983, in response to State of Indiana enforcement actions, a Court Order demanded proper closure of the site.

In January 1985, an EPA hazard ranking system evaluation of the Site resulted in an overall hazard ranking score of 50.63. The Site was placed on the NPL in 1987. A Remedial Investigation/Feasibility Study was conducted from March 1987 to September 1993, pursuant to a consent order with EPA. A Record of Decision (ROD) documenting the required remedial action was signed on August 29, 1994. A Unilateral Order was issued on December 8, 1995, which became effective on January 8, 1996, for remedial design/remedial action/operation and maintenance activities.

Remedial Investigation and Feasibility Study (RI/FS)

The RI found that the principal sources of groundwater in the Site area are the unconsolidated deposits of Quaternary glacial drift. These can be divided into four units, including two sand and gravel aquifers and two confining glacial tills. At the Site, only the two shallowest units are present; a dune sand aquifer (depth approximately 17 feet) is underlain by a calcareous silty till (approximately 100 feet thick).

Soil samples collected at the Site were found to be contaminated with volatile organics up to levels of approximately 890,000 parts per billion (ppb), semi-volatile organics up to levels of approximately 6200 ppb, polychlorinated biphenols (PCBs) up to levels of 4400 ppb, and inorganics up to levels of 191,000 ppb.

Groundwater samples collected at the Site were found to be contaminated with volatile organics up to levels of 47 ppb, semi-volatile organics up to levels of 53 ppb, and inorganics up to levels of 1900 ppb.

A risk assessment was conducted and it was determined that there were possible carcinogenic (cancer causing) risks from exposure to contaminated soils (polynuclear aromatic hydrocarbons (PAHs), PCBs and arsenic); carcinogenic risks from

groundwater ingestion (carcinogenic PAHs); non-carcinogenic risks from groundwater ingestion (antimony); and carcinogenic and non-carcinogenic risks from ingestion of fish exposed to Site leachate.

The risk assessment for fish ingestion was completed with laboratory studies which simulated the exposure of fish to Site leachate concentrations. This exposure scenario is extremely conservative and the potential for concentrations of leachate to migrate to Trail Creek is no longer possible because the leachate collection trench is operating as designed and groundwater elevation data indicate containment. The likelihood that leachate concentrations would migrate undiluted into Trail Creek before the site remedy was implemented was also extremely unlikely. The resultant risk calculations demonstrated the need for groundwater containment at the Site property boundary but were never based on actual fish sampling, nor was this necessary due to the dilution impacts of the Creek and the identification of many other potential sources of discharge to the Creek that would be much more significant contributors to any Creek contamination issues.

Record of Decision Findings

The ROD for the Waste Inc. Landfill site was signed on August 29, 1994. The major components of the remedy selected in the ROD included the following:

(1) Installation of a Subtitle D cap, meeting the requirements of 329 Indiana Administrative Code (IAC) 2–14–19(3)(b) and 329 IAC 19(3)(a)–(c).

(2) Containment of site shallow groundwater and leachate via an installed collection trench with direct discharge to the Sanitary District of Michigan City.

(3) Collection of landfill gas.

(4) Rerouting the onsite storm sewer.

(5) Removal of an underground fuel storage tank.

(6) Abandonment of an onsite groundwater well.

(7) Posting of fish advisory signs on the site fence along Trail Creek.

(8) Monitoring of groundwater and surface water.

(9) Implementation of institutional controls such as fencing, deed restrictions, and groundwater monitoring.

Response Actions

The final Remedial Action (RA) workplan was submitted to EPA on August 28, 1996, which divided the remedial action into two phases to expedite the construction schedule and adequately prepare the Site so the landfill cover could be constructed under optimum conditions. Phase 1 included construction of various Site preparation tasks, in compliance with the performance specifications presented in the remedial design. These tasks were conducted from September 1996 to April 1997 and included clearing/grubbing of the Site, waste consolidation around the perimeter of the Site, removal of an on-site underground storage tank, abandonment of a water well and several monitoring wells, sliplining the existing concrete storm sewer, and installation of the leachate/shallow groundwater collection system.

Phase 2 was conducted from April 1997 to September 1997 and included construction of the landfill cover and associated landfill gas collection system. A pre-final inspection was performed on September 17, 1997 with construction found to be substantially complete. A final inspection was completed at the site on October 15, 1997. A Construction Completion Report was submitted by the Potentially Responsible Parties (PRPs) in November 1997 and EPA subsequently issued a Preliminary Close Out Report on December 18, 1997.

Cleanup Goals

The five-year review recommended the placement of institutional controls on both parcels; and this has been completed (Restrictive covenants were placed on the Waste Inc. Landfill property August 9, 2007 and the Lin-See property March 16, 2007). The landfill cap has been completed and prevents direct human contact with wastes in the soil. Confirmatory groundwater sampling has determined that the ROD goal of containment at the property boundary has been achieved.

The leachate and shallow groundwater collection trench is keyed into the underlying confining layer so that all shallow groundwater and leachate are collected by the trench and conveyed through dedicated piping to the Sanitary District pursuant to a permit for direct discharge. The trench is effectively containing the migration of Site groundwater as is demonstrated by the groundwater elevation information presented in the final closeout report. The District indicates that shallow groundwater and leachate sent to the District system meets the permit requirements for discharge, as outlined originally in the Site ROD and subsequently updated in permit renewals.

As outlined in the Final Close Out Report, a technical memorandum was developed that would address remediation of the deeper aquifer groundwater if monitoring determined that contamination was migrating to the deeper aquifer. Site monitoring data indicates that the contamination is confined to the shallow aquifer, which is being collected by the leachate trench and that there has been no contamination found in the deep aquifer. Monitoring will continue and if deep aquifer contamination is detected, the contingency actions in the technical memorandum will be implemented. This is required by and enforceable under the Site consent decree still in place for the Site.

Operation and Maintenance

Primary activities associated with Site Operation Maintenance (O&M), as performed by the Site PRP group include:

- Landfill cap maintenance.
- Groundwater and surface water monitoring.
- Landfill gas monitoring.
- Surface water controls—control of siltation and erosion of the landfill cap.
- Periodic mowing of the landfill cover vegetation.
- Coordination with the Sanitary District to provide leachate and shallow groundwater monitoring information to ensure that discharge permit conditions are satisfied.

Institutional Controls

Two of the property owners, Lin-See Corporation and LaPorte County, placed institutional controls on the parcels at the Site (March 16, 2007 and August 9, 2007, respectively). The institutional controls were to restrict land and groundwater uses of the site as restrictive covenants on both Site parcels. These restrictive covenants are enforceable by the Site PRPs, EPA, and IDEM, and the recorded instruments have been filed in LaPorte County. The fish advisory signs remain intact on the site fencing, as the fish advisory remains in effect for the entirety of Trail Creek. The signs will remain on the site fencing during the Operation and Maintenance (O&M) period as required by the ROD and Consent Decree (CD). The State monitors fish in Trail Creek as part of their periodic water quality assessment process, and the fish advisory will be modified according to the normal procedures of the State. As stated above, the site shallow groundwater and leachate are not migrating to Trail Creek so any current contamination issues in the Creek are the result of other sources.

Five-Year Review

EPA conducted five-year reviews of the Site in 2001 and 2006. In the reviews, EPA concluded that all remedial actions are complete. The next five-year review will be conducted in 2011. The latest five-year review called for the placement of restrictive covenants on both Site parcels and as outlined above, this is complete. The review also called for an analysis of the impacts of the revised Maximum Contaminant Level (MCL) for arsenic on the Site remedy. EPA has determined that the revised arsenic MCL has limited impact on the protectiveness of the Site remedy because the goal of the groundwater collection at the Site is to contain any off-site migration of Site groundwater and the only performance standard for the collected groundwater are the discharge requirements placed by the Sanitary District. As the District continues to allow discharge from the Site without the need for pretreatment and the Site groundwater is effectively controlled by the collection trench, the protectiveness of the Site remedy is not impacted by the revised MCL for arsenic and this will be further documented in the next five-year review.

Community Involvement

Public participation activities have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42 U.S.C. 9617. Documents in the deletion docket which EPA relied on for recommendation of the deletion of this Site from the NPL are available to the public in the information repositories, and at *www.regulations.gov.*

Determination That the Site Meets the Criteria for Deletion in the NCP

The NCP (40 CFR 300.425(e)) states that a site may be deleted from the NPL when no further response action is appropriate. EPA, in consultation with the State of Indiana, has determined that the responsible parties have implemented all response actions required.

V. Deletion Action

EPA, with concurrence of the State of Indiana through the Indiana Department of Environmental Management, has determined that all appropriate response actions under CERCLA (other than operation, maintenance, monitoring and five-year reviews) have been completed. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective October 20, 2008 unless EPA receives adverse comments by September 22, 2008. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final Notice of Deletion before the effective date of the deletion, and it will not take effect. EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: August 7, 2008

Walter W. Kovalick Jr.,

Acting Regional Administrator, Region V.

■ For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

■ 2. Table 1 of Appendix B to part 300 is amended under Indiana (IN) by removing the site name ''Waste Inc. Landfill'' and the corresponding City/County designation ''Michigan City''.

[FR Doc. E8–19256 Filed 8–20–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1986–0008, Notice 3; FRL–8706–1]

National Oil and Hazardous Substance Pollution Contingency Plan National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of Deletion of the Double Eagle Refinery Co. Superfund Site From the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 announces the deletion of the Double Eagle Refinery Co. Superfund Site (Site) located in Oklahoma City, Oklahoma, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Oklahoma, through the Oklahoma Department of Environmental Quality, have determined that all appropriate response actions under CERCLA, other than operation, maintenance, and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: *Effective Date:* This action is effective August 21, 2008.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–HQ–SFUND–1986–0008, Notice 3. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the site information repositories. Locations, contacts, phone numbers and viewing hours are:

U.S. EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, (214) 665–8157, by appointment only Monday through Friday 9 a.m. to 12 p.m. and 1 p.m. to 4 p.m.

Ralph Ellison Library, 2000 Northeast 23, Oklahoma City, Oklahoma 73111, (409) 643–5979, Monday through Wednesday 9 a.m. to 9 p.m., Thursday and Friday 9 a.m. to 6 p.m., Saturday 10 a.m. to 4 p.m.

Oklahoma Department of Environmental Quality (ODEQ), 707 North Robinson, Oklahoma City, Oklahoma 73101, (512) 239–2920, Monday through Friday 8 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Bartolome Canellas (6SF–RL), Remedial Project Manager, U.S. Environmental Protection Agency, Region 6, U.S. EPA, 1445 Ross Avenue, Dallas, Texas 75202, (214) 665–6662 or 1–800–533–3508 or *canellas.bart@epa.gov*.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Double

Eagle Refinery Co., Oklahoma City, Oklahoma. A Notice of Intent to Delete for this Site was published in the **Federal Register** on June 13, 2008.

The closing date for comments on the Notice of Intent to Delete was July 14, 2008. One public comment was received. The commenter questioned the completeness of the response action based on information found in non-EPA Internet Web sites. EPA believes the deletion is appropriate, since the response action has been implemented, as documented in the Deletion Docket. A responsiveness summary was prepared and placed in the docket, EPA–HQ–SFUND–1986–0008, Notice 3, on *http://www.regulations.gov*, and in the local repositories listed above.

EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Deletion from the NPL does not preclude further remedial action. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system. Deletion of a site from the NPL does not affect responsible party liability in the unlikely event that future conditions warrant further actions.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: August 12, 2008.

Richard E. Greene,

Regional Administrator, Region 6.

■ For reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

■ 2. Table 1 of Appendix B to part 300 is amended by removing the entry under OK for ''Double Eagle Refinery Co.'', ''Oklahoma City''.

[FR Doc. E8–19420 Filed 8–20–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1989–0008, Notice 4; FRL–8706–2]

National Oil and Hazardous Substance Pollution Contingency Plan National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of Deletion of the Fourth Street Abandoned Refinery Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 announces the deletion of the Fourth Street Abandoned Refinery Superfund Site (Site) located in Oklahoma City, Oklahoma, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Oklahoma, through the Oklahoma Department of Environmental Quality, have determined that all appropriate response actions under CERCLA, other than operation, maintenance, and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: *Effective Date:* This action is effective August 21, 2008.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–HQ–SFUND–1989–0008, Notice 4. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the site information repositories. Locations, contacts, phone numbers and viewing hours are:

U.S. EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, (214) 665–8157, by appointment only Monday through Friday 9 a.m. to 12 p.m. and 1 p.m. to 4 p.m.

Ralph Ellison Library, 2000 Northeast 23, Oklahoma City, OK 73111, (409) 643–5979, Monday through Wednesday 9 a.m. to 9 p.m., Thursday and Friday 9 a.m. to 6 p.m., Saturday 10 a.m. to 4 p.m.

Oklahoma Department of Environmental Quality (ODEQ), 707 North Robinson, Oklahoma City, Oklahoma 73101, (512) 239–2920, Monday through Friday 8 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Bartolome Canellas (6SF–RL), Remedial Project Manager, U.S. Environmental Protection Agency, Region 6, U.S. EPA, 1445 Ross Avenue, Dallas, Texas 75202, (214) 665–6662 or 1–800–533–3508 or *canellas.bart@epa.gov*.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Fourth Street Abandoned Refinery, Oklahoma City, Oklahoma. A Notice of Intent to Delete for this Site was published in the **Federal Register** on June 13, 2008.

The closing date for comments on the Notice of Intent to Delete was July 14, 2008. One public comment was received. The commenter questioned the completeness of the response action based on information found in non-EPA Internet Web sites. EPA believes the deletion is appropriate, since the response action has been implemented, as documented in the Deletion Docket. A responsiveness summary was prepared and placed in the docket, EPA–HQ–SFUND–1989–0008, Notice 4, on *http://www.regulations.gov*, and in the local repositories listed above.

EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Deletion from the NPL does not preclude further remedial action. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system. Deletion of a site from the NPL does not affect responsible party liability in the unlikely event that future conditions warrant further actions.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: August 12, 2008.

Richard E. Greene,

Regional Administrator, Region 6.

■ For reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

■ 2. Table 1 of Appendix B to part 300 is amended by removing the entry under OK for ''Fourth Street Abandoned Refinery'', ''Oklahoma City''.

[FR Doc. E8–19419 Filed 8–20–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405, 413, and 417

[CMS–1727–CN]

RIN 0938–AL54

Medicare Program; Provider Reimbursement Determinations and Appeals; Correction

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

ACTION: Correction of final rule.

SUMMARY: This document corrects technical errors that appeared in the final rule with comment period published in the **Federal Register** on May 23, 2008 entitled ''Provider Reimbursement Determinations and Appeals.''

DATES: *Effective Date:* August 21, 2008.

FOR FURTHER INFORMATION CONTACT: Morton Marcus, (410) 786–4477. Donald Romano, (410) 786–1401.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. E8–11227 of May 23, 2008 (73 FR 30190), there were a number of typographical and technical errors that are identified and corrected in the Correction of Errors section in section III. of this notice. The provisions of this correction notice are effective as if they had been included in the final rule published on May 23, 2008. Accordingly, the corrections are effective August 21, 2008.

II. Summary of Errors

We note that in section III. of this notice, we correct a number of typographical and technical errors. We note that the following are the more significant corrections:

On pages 30211 and 30250, we are correcting an error relating to the usage and filing of mandatory group appeals. We stated in the preamble and regulations text of § 405.1835(b)(4)(i) that a commonly-owned provider must state in its request for Board hearing that: ''* * * sano other provider related to it by common ownership or control has an individual or group appeal pending before the Board on the same issue for a cost reporting period that *falls* within the same calendar year.'' This statement was incorrect. To provide consistency with the regulations text at § 405.1837(b)(1)(i), the word ''falls'' needs to be replaced with the word ''ends.''

On page 30243, we are correcting a technical error in the regulations text at § 405.1801(b)(2). Following the publication of the final rule, we discovered that the regulations at § 405.1801(b)(2) failed to reference the longstanding exception at § 413.200(g). In the regulations text at § 405.1801(b)(2), we stated that a nonprovider entity is not entitled to an intermediary hearing or a Board hearing. (We discussed this issue in the preamble to the proposed rule published on June 25, 2004 (69 FR 35721).) However, the current text at § 413.200(g) reflects that an OPO (organ procurement organization) or histocompatibility laboratory is entitled to an intermediary hearing in accordance with the intermediary hearing procedures contained in subpart R. While OPOs (formerly referred to as organ procurement agencies or OPAs) and histocompatibility laboratories are nonprovider entities and not entitled to a hearing under section 1878 of the Act, they have always been an exception to the rule with respect to intermediary hearings and historically have received intermediary hearings under subpart R of the regulations. (See December 14, 1978, 43 FR 58370 through 58371, referencing the legislative history of Public Law 95–292 that Congress intended to provide an intermediary hearing for the OPOs and histocompatibility laboratories, and S. Rep. No. 95–714, 95th Cong. 2d Sess., 12–13 (1978); H. Rep. No. 95–549, 95th Cong. 1st Sess. 14 (1977)). We wanted to assure OPOs that they will continue to have intermediary hearing rights as they have always had in the past. Therefore, we are correcting § 405.1801(b)(2) by adding a reference to the exception for OPOs and histocompatibility laboratories at § 413.200(g) and thus clarifying that OPO hearing rights do not derive from section 1878 of the Act.

On page 30263, we are correcting an error in the regulations text for § 405.1875(d). In the final rule, we inadvertently included the sentence ''[T]he Administrator does not consider any communication that does not meet these requirements or is not submitted with the required time limits'' as the last sentence of paragraph (d)(3)(ii). However this statement is applicable to all of the provisions of paragraph (d). Therefore, we have removed the sentence from paragraph (d)(3)(ii) and after changing the word ''these'' to ''the following'' have added the sentence to the introductory text of paragraph (d).

We also note that the May 23, 2008 final rule referenced a First Circuit Court of Appeals decision, *MaineGeneral Medical Center* v. *Shalala*, 205 F. 3d 493 (1st Cir. 2000). In a number of instances throughout the preamble of the final rule, we misspelled ''*MaineGeneral*'' as ''*Maine General*.'' We are acknowledging these errors without specifically itemizing each error in the Correction of Errors section of this notice.

III. Correction of Errors

In FR Doc. E8–11227 of May 23, 2008 (73 FR 30190), make the following corrections:

A. Correction of Errors in the Preamble

1. On page 30192, second column, second paragraph, line 3, the phrase, ''CMS Reviewing official procedure'' is corrected to read ''CMS reviewing official procedure.''

2. On page 30197, third column,

a. First partial paragraph, line 4, the phrase ''are more appropriately borne by fiscal intermediaries'' is corrected to read ''are more appropriately borne by intermediaries.''

b. First full paragraph, lines 9 through 11, the phrase ''In *Maine General Medical Center* v. *Shalala*, 205 F. 3d 493 (1st Cir. 2000), the majority'' is corrected to read ''In *MaineGeneral*, the majority.''

3. On page 30206, first column, second paragraph, line 19, the phrase ''determinations are governed'' is corrected to read ''determinations is governed.''

4. On page 30208, first column, fourth paragraph, line 17, the phrase ''Rather, we believe that intermediary officers'' is corrected to read ''Rather, we believe that intermediary hearing officers.''

5. On page 30211, first column, first partial paragraph, line 32, the phrase ''a cost reporting period that falls within'' is corrected to read ''a cost reporting period that ends within.''

6. On page 30214, second column, first full paragraph, paragraph heading, ''K. Expediting Judicial Review (§ 405.1842)'' is corrected to read ''K.

Expedited Judicial Review (§ 405.1842).''

7. On page 30216, second column, third paragraph, line 6, the phrase ''which provides agency review of an'' is corrected to read ''which provides for agency review of an.''

8. On page 30219, first column, second paragraph, line 3, the phrase ''the requirement in section § 405.1853(a)'' is corrected to read ''the requirement in § 405.1853(a).''

9. On page 30222, second column, second paragraph, line 11, the phrase ''to 120 days of the'' is corrected to read ''to 120 days before the.''

10. On page 30237,

a. First column, second paragraph heading, that reads ''D. Provider Hearing Rights (§ 405.1803(d), § 405.1811, and § 405.1835))'' is corrected to read ''D. Provider Rights (§ 405.1803(d), § 405.1811, and § 405.1835).''

b. Third column, fifth bullet, line 2, the phrase ''revised § 405.1834(e)(1) to state'' is corrected to read ''revised § 405.1834(e)(1)(i) to state.''

11. On page 30239,

a. First column, first bulleted paragraph, line 3, the phrase ''(unless the time is extended by the Board)'' is corrected to read ''unless the time is extended by the Board.''

b. Third column, last bulleted paragraph, lines 1 and 2, the phrase ''Clarifying language has been added'' is corrected to read ''We added clarifying language''

12. On page 30240, second column, third bulleted paragraph, beginning with the phrase ''++Sixty days after'' and ending with the phrase ''§ 405.1835(c) apply'' is corrected to read as follows:

''++Sixty days after the expiration of the applicable 180-day period prescribed in § 405.1811(a)(3) (for intermediary hearing officer hearings) or § 405.1835(a)(3) (for Board hearings).

++Sixty days after the effective date of this rule.

• For appeals filed on or after the effective date of this rule, the provisions of § 405.1811(c) and § 405.1835(c) apply.''

B. Correction of Errors in Regulations Text

■ 1. On page 30243, third column, last paragraph,

■ a. Line 1, the phrase ''non-provider'' is corrected to read ''nonprovider.''

■ b. Line 5, the phrase ''These nonprovider entities'' is corrected to read ''Except as provided at § 413.200(g), these nonprovider entities.''

■ 2. On page 30246,

■ a. Third column, first paragraph, line 6, the word ''extend'' is corrected to read ''extends.''

■ b. Third column, seventh paragraph, line 3, the phrase ''the Secretary'' is corrected to read ''HHS.''

■ 3. On page 30247,

■ a. First column, last paragraph, line 5, the phrase ''or in part if applicable,'' is corrected to read ''or in part; if applicable.''

■ 4. On page 30248,

■ a. First column, third paragraph, line 4, the phrase ''conducts a hearing the intermediary'' is corrected to read ''conducts a hearing, the intermediary.''

■ b. Second column, first partial paragraph, lines 2 and 3, the phrase ''hearing and the intermediary unless'' is corrected to read ''hearing and on the intermediary, unless.''

■ c. Third column, third paragraph, line 6, the phrase ''section or § 405.1821(d)(2)'' is corrected to read ''section or in § 405.1821(d)(2).''

■ 5. On page 30250,

a. First column,

(1) Eighth paragraph, line 9, the phrase ''reporting period that falls within the'' is corrected to read ''reporting period that ends within the.''

(2) Ninth paragraph, lines 1 and 2, the phrase ''Such a pending appeal(s) exist(s), the'' is corrected to read ''Such a pending appeal(s) exist(s), and the.''

■ b. Second column, fifth paragraph, line 3, the phrase ''in writing it can'' is corrected to read ''in writing it could.''

■ 6. On page 30252, third column, sixth paragraph, line 12, the phrase ''appeal increases'' is corrected to read ''appeal would increase.''

■ 7. On page 30253,

■ a. First column, first partial paragraph, line 8, the phrase ''issue recurs in the appeal'' is corrected to read ''issue in the appeal recurs.''

■ b. First column, first paragraph, line 9, the phrase ''appeal increases'' is corrected to read ''appeal would increase.''

■ 8. On page 30254, second column,

■ a. First partial paragraph, line 6, the phrase ''this subpart explains'' is corrected to read ''this subpart, which explains.''

■ b. First full paragraph, line 5, the word ''Board'' is corrected to read ''Board.''

■ 9. On page 30255,

■ a. Second column, 11th paragraph, line 6, the phrase ''§ 405.1875(a)(2)(iii) and § 405.1875(e) or'' is corrected to read ''405.1875(a)(2)(iii), § 405.1875(e), and.''

■ b. Third column,

(1) Second paragraph, line 11, the phrase ''rendered nonfinal'' is corrected to read ''nonfinal.''

(2) Seventh paragraph, lines 4 and 5, the phrase ''Board (or the Administrator) is corrected to read ''Board or the Administrator.''

■ 10. On page 30258, first column,

■ a. Sixth paragraph, line 9, the phrase ''is directed or'' is corrected to read ''is directed, or.''

■ b. Seventh paragraph, line 4, the phrase ''of documents must'' is corrected to read ''of documents, must.''

■ c. Eighth paragraph, line 5, the phrase ''appeal and any nonparty subject to a discovery request a'' is corrected to read ''appeal, and any nonparty subject to a discovery request, a.''

11. On page 30259,

■ a. First column,

(1) First paragraph, the phrase ''for purposes of a—'' is corrected to read ''for purposes of—.''

(2) Second paragraph, the phrase ''(i) Discovery subpoena, 90 days'' is corrected to read ''(i) Discovery, 90 days.''

(3) Third paragraph, the phrase ''(ii) Hearing subpoena, whether'' is corrected to read ''(ii) An oral hearing, whether.''

■ c. Third column, last paragraph, line 5, the phrase ''until the time'' is corrected to read ''until such time.''

■ 12. On page 30260,

■ a. Second column,

(1) First paragraph,

(a) Line 5, the phrase ''materials to the'' is corrected to read ''materials submitted to the.''

(b) Line 11, the phrase '' Attorney Advisor and'' is corrected to read ''Attorney Advisor, and.''

(2) Third paragraph, lines 5 and 6, the phrase ''as well as, CMS Rulings'' is corrected to read ''as well as CMS Rulings.''

■ b. Third column, last paragraph, line 7, the phrase ''of this subpart or'' is corrected to read ''of this subpart, or.''

■ 13. On page 30261, first column, second paragraph, line 4, the phrase ''Board information'' is corrected to read ''Board, information.''

■ 14. On page 30262, second column, sixth paragraph, line 4, the phrase ''policy, and rules'' is corrected to read ''policy, or rules.''

■ 15. On page 30263, first column,

■ a. Tenth paragraph, ''(d) *Ex parte communications prohibited.* All communications from any party, CMS, or other affected nonparty, concerning a Board decision (or other reviewable action) that is being reviewed or may be reviewed by the Administrator must—'' is corrected to read ''(d) *Ex parte communications prohibited.* The Administrator does not consider any

communication that does not meet the following requirements or is not submitted within the required time limits. All communications from any party, CMS, or other affected nonparty, concerning a Board decision (or other reviewable action) that is being reviewed or may be reviewed by the Administrator must—''

■ b. Last paragraph, lines 1 through 3, through the second column, first paragraph, lines 1 through 4, the paragraph ''(ii) Written submissions regarding review submitted under paragraph (c)(4) of this section. The Administrator does not consider any communication that does not meet these requirements or is not submitted within the required time limits.'' is corrected to read ''(ii) Written submissions regarding review submitted under paragraph (c)(4) of this section.''

■ 16. On page 30267, first column, sixth full paragraph, lines 2 and 3, the phrase ''revising the last sentence in each of paragraphs (c)(1) and (c)(2)'' is corrected to read ''removing the last two sentences in paragraphs (c)(1) and (c)(2) and adding one sentence in their place in paragraphs (c)(1) and (c)(2).''

IV. Waiver of Proposed Rulemaking and 30-Day Delay in Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive this notice and comment procedure if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

We find it unnecessary to undertake notice and comment rulemaking because this notice merely provides typographical and technical corrections. The revisions do not represent changes in policy, nor do they have a substantive effect, and the public interest would be best served by timely correction of these technical and typographical errors. Therefore, we find good cause to waive notice and comment procedures.

Section 553(d) of the APA ordinarily requires a 30-day delay in effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued.

Because this correction notice does not make substantive changes to the final rule, and the public interest is served by quickly correcting these technical errors in order to improve the clarity of the regulation, we find good cause under section 553(d)(3) of the APA to waive the 30-day delay in effective date.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 15, 2008.

Ann C. Agnew,

Executive Secretary to the Department.

[FR Doc. E8–19295 Filed 8–20–08; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 315

[Docket No. MARAD 2008 0076]

RIN 2133–AB73

U.S. Citizenship for Contracts on RRF Vessels

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: This rulemaking clarifies Maritime Administration regulations which require that Agents (including Ship Managers) for the National Defense Reserve Fleet (NDRF) appointed by the Maritime Administration be United States citizens.

DATES: Effective August 21, 2008.

FOR FURTHER INFORMATION CONTACT: Jay Gordon, Office of the Chief Counsel, at (202) 366–5173, via e-mail at *Jay.Gordon@dot.gov*, or by writing to: Jay Gordon, Office of the Chief Counsel, Maritime Administration, MAR–221, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

This rulemaking clarifies title 46 CFR part 315.5, Appointment of an Agent, which requires that Agents (including Ship Managers) for the National Defense Reserve Fleet (NDRF) appointed by the Maritime Administration be United States citizens, as defined in § 315.3(b). This action is taken on the Maritime Administration's initiative.

Under existing authority, the Department of Defense (DOD) transfers vessels to the custody of the Maritime Administration for inclusion in the NDRF. Pursuant to that authority, eight Fast Sealift Ships (FSS) are being transferred from the Military Sealift Command (MSC) into the Ready Reserve Force (RRF) component of the NDRF, effective October 1, 2008. The eight FSS vessels are currently operated by Maersk Lines Limited (MLL) under contract with MSC. Under the terms of this transfer, MSC has delegated procuring contracting officer authority for the FSS contract to the Maritime Administration, which will provide oversight and direction for the remainder of the contract. Since the transferred vessels are being maintained and operated under a contract awarded by another federal agency, administration of that contract does not constitute the appointment of an Agent by the Maritime Administration under 46 CFR part 315.5.

This regulation clarifies the limited duration of performance under such contracts.

Program Description

In this rulemaking, the Maritime Administration is clarifying the U.S. citizenship requirements for certain contacts between the owners of vessels in the RRF program of the NDRF and the Maritime Administration, by the addition of a new section to 46 CFR part 315.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking is not significant under section 3(f) of Executive Order 12866, and as a consequence, OMB did not review the rule. This rulemaking is also not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979). It is also not considered a major rule for purposes of Congressional review under Public Law 104–121. We believe that the economic impact of this rulemaking does not warrant the preparation of a full regulatory evaluation since the rulemaking clarifies existing regulations set forth in 46 CFR part 315.

Executive Order 13132

We analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism'') and have determined that it does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. The regulations herein have no substantial

effects on the States, the current Federal-State relationship, or the current distribution of power and responsibilities among local officials. Therefore, we did not consult with State and local officials because it was not necessary.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires us to assess the impact that regulations will have on small entities. After analysis of this proposed rule, the Maritime Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

Environmental Assessment

We have analyzed this rule for purposes of compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and we have concluded that, under the categorical exclusions provision in section 4.05 of Maritime Administrative Order (MAO) 600–1, ''Procedures for Considering Environmental Impacts,'' 50 FR 11606 (March 22, 1985), neither the preparation of an Environmental Assessment, an Environmental Impact Statement, nor a Finding of No Significant Impact for this rulemaking is required. This rulemaking will not result in any impact on the environment.

Paperwork Reduction Act

This rule does not establish a new requirement for the collection of information. Thus, the Office of Management and Budget (OMB) will not be requested to review and approve the information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

Unfunded Mandates Reform Act

This rulemaking does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves this objective of U.S. policy. Department of Transportation guidance requires the use of a revised threshold figure of $136.1 million, which is the value of $100 million in 2008 after adjusting for inflation.

Consultation and Coordination With Indian Tribal Governments

Executive Order 13175—Consultation and Coordination with Indian Tribal Governments, dated November 6, 2000, seeks to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes. Executive Order 13175 does not apply to this regulation as it does not affect, directly or indirectly, Indian tribes.

Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

Privacy Act

You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–19478) or you may visit *www.regulations.gov.*

List of Subjects in 46 CFR Part 315

Government contracts, National defense, Vessels.

■ Accordingly, the Maritime Administration amends 46 CFR part 315 as follows:

PART 315—AGENCY AGREEMENTS AND APPOINTMENT OF AGENTS

■ 1. The authority citation for part 315 continues to read as follows:

Authority: 50 U.S.C. App. 1744; 49 CFR 1.66.

■ 2. Section 315.6 is added to read as follows:

§ 315.6 Transferred vessels and contracts.

The requirements of § 315.5(a)(1) shall not apply to a contractor managing vessels owned by the United States under a contract or contracts previously awarded by another Federal agency if the contract, and the vessels managed under such contract, are subsequently transferred to the Maritime Administration, provided the period of performance of the transferred contract does not exceed the period of performance of the original contract, including options.

By order of the Maritime Administrator.

Dated: August 14, 2008.

Leonard Sutter,

Secretary, Maritime Administration.

[FR Doc. E8–19255 Filed 8–20–08; 8:45 am]

BILLING CODE 4910–81–P

Proposed Rules

Federal Register
Vol. 73, No. 163
Thursday, August 21, 2008

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0903; Directorate Identifier 2008–NM–123–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Model 560 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Cessna Model 560 airplanes. The existing AD currently requires installing new minimum airspeed placards to notify the flightcrew of the proper airspeeds for operating in both normal and icing conditions. The existing AD also requires revising the airplane flight manual to provide limitations and procedures for operating in icing conditions, for operating with anti-ice systems selected ''on'' independent of icing conditions, and for recognizing and recovering from inadvertent stall. The existing AD also provides an optional terminating action for the placard installation. This proposed AD would require the previously optional terminating action. This proposed AD results from an evaluation of in-service airplanes following an accident. The evaluation indicated that some airplanes might have an improperly adjusted stall warning system. We are proposing this AD to prevent an inadvertent stall due to the inadequate stall warning margin provided by an improperly adjusted stall warning system, which could result in loss of controllability of the airplane.

DATES: We must receive comments on this proposed AD by October 6, 2008.

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

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

For service information identified in this AD, contact Cessna Aircraft Co., P.O. Box 7706, Wichita, Kansas 67277.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Bob Busto, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4157; fax (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0903; Directorate Identifier 2008–NM–123–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

On November 5, 2007, we issued AD 2007–23–13, amendment 39–15259 (72 FR 64135, November 15, 2007), for certain Cessna Model 560 airplanes. That AD requires installing new minimum airspeed placards to notify the flightcrew of the proper airspeeds for operating in both normal and icing conditions. That AD also requires revising the airplane flight manual to provide limitations and procedures for operating in icing conditions, for operating with anti-ice systems selected ''on'' independent of icing conditions, and for recognizing and recovering from inadvertent stall. That AD also provides an optional terminating action for the placard installation. That AD resulted from an evaluation of in-service airplanes following an accident. The evaluation indicated that some airplanes may have an improperly adjusted stall warning system. We issued that AD to prevent an inadvertent stall due to the inadequate stall warning margin provided by an improperly adjusted stall warning system, which could result in loss of controllability of the airplane.

Actions Since Existing AD Was Issued

The preamble to AD 2007–23–13 explains that we consider the requirements ''interim action'' and were considering further rulemaking to require a functional test of the angle-of-attack (AOA) system to adjust the calibration settings of the AOA system, which, in addition to the AFM revisions, would constitute terminating action for the placard installation required by this AD. The interim action was intended to heighten flight crew awareness as to the proper operational airspeeds, aircraft characteristics, and stall recovery techniques. We now have determined that further rulemaking is indeed necessary, and this proposed AD follows from that determination.

Relevant Service Information

We have reviewed Cessna Alert Service Letters ASL560–34–34 (for airplanes equipped with a single AOA system) and ASL560–34–35 (for airplanes equipped with a dual AOA system), both Revision 3, both dated

March 6, 2008, both including Attachments. We referred to Revision 1 of the alert service letters as the appropriate source of service information for doing the optional terminating action (*i.e.*, doing a functional test of the AOA system) specified in AD 2007–23–13. Revision 3 contains essentially the same procedures as Revision 1. Revision 3 includes changes to the cruise configuration tolerance and to the approach configuration, and standardizes certain nomenclature.

We have also reviewed Cessna Service Bulletin SB560–34–143, Revision 1, dated November 21, 2007. We referred to the original issue, dated September 7, 2007, as the appropriate source of service information for doing the placard installation specified in AD 2007–23–13. Revision 1 contains essentially the same procedures as the original issue and adds references to certain temporary changes (which are already specified in AD 2007–23–13).

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to develop on other airplanes of the same type design. For this reason, we are proposing this AD, which would supersede AD 2007–23–13 and would retain the requirements of the existing AD. This proposed AD would also require accomplishing the terminating action specified in the alert service letters described previously. This proposed AD would also require sending the functional test results to the manufacturer.

Costs of Compliance

There are about 538 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD. There are about 400 U.S. registered airplanes.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost per airplane	Fleet cost
AFM Revision (required by AD 2007–23–13)	1	$80	$80	$32,000
Placard Installation (required by AD 2007–23–13)	1	80	80	32,000
Functional Test (new proposed action)	8	80	640	256,000

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–15259 (72 FR 64135, November 15, 2007) and adding the following new airworthiness directive (AD):

Cessna Aircraft Company: Docket No. FAA–2008–0903; Directorate Identifier 2008–NM–123–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by October 6, 2008.

Affected ADs

(b) This AD supersedes AD 2007–23–13.

Applicability

(c) This AD applies to Cessna Model 560 airplanes, certificated in any category, serial numbers (S/Ns) 560–0001 through 0538 inclusive.

Unsafe Condition

(d) This AD results from an evaluation of in-service airplanes following an accident. The evaluation indicated that some airplanes may have an improperly adjusted stall warning system. We are issuing this AD to prevent an inadvertent stall due to the inadequate stall warning margin provided by an improperly adjusted stall warning system, which could result in loss of controllability of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Restatement of Requirements of AD 2007–23–13

Airplane Flight Manual (AFM) Revision

(f) Within 14 days after November 30, 2007 (the effective date of AD 2007–23–13), revise

the Operating Limitations, Normal Procedures, Emergency Procedures, and the Approach and Landing sections of the AFM to include the information in the temporary changes (TCs) identified in Table 1 of this AD, as applicable, except as required by paragraph (k) of this AD. These TCs provide limitations and procedures for operating in icing conditions, for operating with anti-ice systems selected ''on'' independent of icing conditions, and for recognizing and recovering from inadvertent stall. Operate the airplane according to the limitations and procedures in the applicable TCs.

Note 1: This may be done by inserting a copy of the applicable TCs into the applicable AFM. When these TCs have been included in the general revisions of the AFM, the general revisions may be inserted into the AFM (in lieu of the applicable TCs), provided the relevant information in the general revision is identical to that in the applicable TCs.

TABLE 1—CESSNA MODEL 560 TCS

Airplanes	Applicable TC
Model 560 airplanes, S/Ns 560–0001 through –0259 inclusive.	560FM TC–R13–08, dated August 31, 2007, to the Cessna Model 560 Citation V AFM.
	560FM TC–R13–09, dated August 31, 2007, to the Cessna Model 560 Citation V AFM.
	560FM TC–R13–10, dated August 31, 2007, to the Cessna Model 560 Citation V AFM.
	560FM TC–R13–12, dated August 31, 2007, to the Cessna Model 560 Citation V AFM.
	560FM TC–R13–13, dated August 31, 2007, to the Cessna Model 560 Citation V AFM.
	560FM TC–R13–14, dated October 2, 2007, to the Cessna Model 560 Citation V AFM.
	560FM TC–R13–15, dated October 2, 2007, to the Cessna Model 560 Citation V AFM.
	560FM TC–R13–16, dated October 2, 2007, to the Cessna Model 560 Citation V AFM.
	560FM TC–R13–17, dated October 2, 2007, to the Cessna Model 560 Citation V AFM.
	560FM TC–R13–18, dated October 2, 2007, to the Cessna Model 560 Citation V AFM.
	560FM TC–R13–19, dated October 2, 2007, to the Cessna Model 560 Citation V AFM.
	560FM TC–R13–20, dated October 2, 2007, to the Cessna Model 560 Citation V AFM.
Model 560 airplanes, S/Ns 560–0260 through –0538 inclusive.	56FMA TC–R11–16, dated August 31, 2007, to the Cessna Model 560 Citation Ultra AFM.
	56FMA TC–R11–17, dated August 31, 2007, to the Cessna Model 560 Citation Ultra AFM.
	56FMA TC–R11–19, dated August 31, 2007, to the Cessna Model 560 Citation Ultra AFM.
	56FMA TC–R11–20, dated August 31, 2007, to the Cessna Model 560 Citation Ultra AFM.
	56FMA TC–R11–21, dated August 31, 2007, to the Cessna Model 560 Citation Ultra AFM.
	56FMA TC–R11–23, dated October 2, 2007, to the Cessna Model 560 Citation Ultra AFM.
	56FMA TC–R11–24, dated October 2, 2007, to the Cessna Model 560 Citation Ultra AFM.
	56FMA TC–R11–25, dated October 2, 2007, to the Cessna Model 560 Citation Ultra AFM.
	56FMA TC–R11–26, dated October 2, 2007, to the Cessna Model 560 Citation Ultra AFM.
	56FMA TC–R11–27, dated October 2, 2007, to the Cessna Model 560 Citation Ultra AFM.
	56FMA TC–R11–28, dated October 2, 2007, to the Cessna Model 560 Citation Ultra AFM.
	56FMA TC–R11–29, dated October 2, 2007, to the Cessna Model 560 Citation Ultra AFM.
	56FMA TC–R11–30, dated October 2, 2007, to the Cessna Model 560 Citation Ultra AFM.

Placard Installation

(g) Within 30 days after November 30, 2007, install new minimum airspeed placards to notify the flightcrew of the proper airspeeds for operating in normal and icing conditions, in accordance with the Accomplishment Instructions of Cessna Service Bulletin SB560–34–143, dated September 7, 2007, including Attachment and Service Bulletin Supplemental Data; or Cessna Service Bulletin SB560–34–143, Revision 1, dated November 21, 2007. As of the effective date of this AD, only Revision 1 may be used. The placards must be installed above or near the pilot and copilot attitude indicators or primary flight displays and must be in clear view of the pilot and copilot. The placards may be removed when the actions specified in paragraphs (i) and (j) of this AD have been accomplished.

No Maintenance Transaction Report Required for Cessna Service Bulletin

(h) Although Cessna Service Bulletin SB560–34–143, dated September 7, 2007, including Attachment and Service Bulletin Supplemental Data; and Cessna Service Bulletin SB560–34–143, Revision 1, dated November 21, 2007; referred to in paragraph (g) of this AD, specify to submit a maintenance transaction report to the manufacturer, this AD does not include that requirement.

New Requirements of This AD

Terminating Action

(i) Within 6 months after the effective date of this AD, do a functional test of the angle-of-attack (AOA) system, and adjust the calibration settings of the AOA system as applicable, in accordance with Cessna Alert Service Letter ASL560–34–34 (for airplanes equipped with a single AOA system) or ASL560–34–35 (for airplanes equipped with a dual AOA system), both Revision 1, both dated October 2, 2007, both including Attachments, as applicable; or Cessna Alert Service Letter ASL560–34–34 or ASL560–34–35, both Revision 3, both dated March 6, 2008, both including Attachments, as applicable. As of the effective date of this AD, only Revision 3 may be used. Doing the functional test of the AOA system, adjusting the calibration settings of the AOA system as applicable, and submitting the AOA system test data as specified in paragraph (j) of this AD, terminates the placard installation required by paragraph (g) of this AD.

Note 2: Maintenance Manual Revision 24 of Cessna 560 Maintenance Manual 56MM has been changed to reflect the intent of the ASLs for the maintenance actions and periodic inspections of the AOA/Stall Warning System.

Reporting AOA System Test Data

(j) Submit the AOA system test data report for the functional test specified in paragraph (i) of this AD to Glenn Todd, Citation Customer Support Engineer, Department 572, P.O. Box 7706, Wichita, KS 67277–7706, e-mail: *gatodd@cessna.textron.com,* fax: 1–316–517–8500 or 1–316–206–2337. Submit the report at the applicable time specified in paragraph (j)(1) or (j)(2) of this AD. The report must include the AOA test data, the airplane serial number and registration number, and the number of landings and flight hours on the airplane. Under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) If the functional test was done after November 30, 2007: Submit the report within 30 days after doing the functional test.

(2) If the inspection was accomplished prior to November 30, 2007: Submit the report within 30 days after November 30, 2007.

Removal of Warning From the Limitations Section of the AFM

(k) For airplanes on which the actions required by paragraph (i) of this AD have been done: Within 30 days after doing the actions required by paragraph (i) of this AD or within 30 days after the effective date of this AD, whichever occurs later, revise the Limitations Section of the AFM by removing the following Warning statement:

''Warning: Stick Shaker May Not Activate Prior to Buffet/Roll-Off If Airspeed Is Reduced Below the Appropriate Minimum Speed.''

No Maintenance Transaction Report Required for Cessna Service Letters

(l) Cessna Alert Service Letters ASL560–34–34 and ASL560–34–35, both Revision 1, both dated October 2, 2007, both including Attachments; and Cessna Alert Service Letters ASL560–34–34 and ASL560–34–35, both Revision 3, both dated March 6, 2008, both including Attachments; specify to submit a maintenance transaction report to the manufacturer. This AD does not include that requirement.

Actions Accomplished According to Previous Issue of Service Bulletin

(m) Actions accomplished before the effective date of this AD in accordance with Cessna Alert Service Letter ASL560–34–34 or ASL560–34–35, both Revision 2, both dated January 11, 2008, both including Attachments, are considered acceptable for compliance with the corresponding action specified in paragraph (i) of this AD.

Alternative Methods of Compliance (AMOCs)

(n)(1) The Manager, Wichita Aircraft Certification Office (ACO), FAA, ATTN: Bob Busto, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita ACO, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4157; fax (316) 946–4107; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Issued in Renton, Washington, on August 12, 2008.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–19386 Filed 8–20–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0889; Directorate Identifier 2008–NM–092–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170 and ERJ 190 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

[E]scape slide system installation [was found with] * * * tie-down straps which are used for escape slide packing [having not been removed]. The non-removal of the tie-down straps does not allow the aircraft door to reach the fully open position and the consequent deployment of the escape slide system in a * * * emergency evacuation, affecting the occupying safety.

The unsafe condition is failure of an evacuation system, which could impede an emergency evacuation and increase the chance of injury to passengers and flightcrew during the evacuation. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by September 22, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Kenny Kaulia, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2848; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0889; Directorate Identifier 2008–NM–092–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued Brazilian Airworthiness Directives 2008–01–03 and 2008–01–04, both effective March 3, 2008 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

[E]scape slide system installation [was found with] * * * tie-down straps which are used for escape slide packing [having not been removed]. The non-removal of the tie-down straps does not allow the aircraft door to reach the fully open position and the consequent deployment of the escape slide system in a * * * emergency evacuation, affecting the occupying safety.

The unsafe condition is failure of an evacuation system, which could impede

an emergency evacuation and increase the chance of injury to passengers and flightcrew during the evacuation. The corrective action involves inspection of the forward and rearward doors' emergency evacuation slide packs for the presence of tie-down straps, and, if applicable, removal of the tie-down straps. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

EMBRAER has issued Service Bulletins 170–25–0088 and 190–25–0062, both dated December 21, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 144 products of U.S. registry. We also estimate that it would take about 2 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $23,040, or $160 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket No. FAA–2008–0889; Directorate Identifier 2008–NM–092–AD.

Comments Due Date

(a) We must receive comments by September 22, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes specified in paragraphs (c)(1) and (c)(2) of this AD.

(1) EMBRAER Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU, –200 LR, –200 STD, and –200 SU airplanes, serial numbers 17000002, 17000004 thru 17000013, and 17000015 thru 17000196, certificated in any category.

(2) EMBRAER Model ERJ 190–100 STD, –100 LR, –100 IGW, –100 ECJ, –200 STD, –200 LR, and –200 IGW airplanes, serial numbers 19000002, 19000004 thru 19000132, and 19000135, certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 25: Equipment/Furnishings.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

[E]scape slide system installation [was found with] * * * tie-down straps which are used for escape slide packing [having not been removed]. The non-removal of the tie-down straps does not allow the aircraft door to reach the fully open position and the consequent deployment of the escape slide system in a * * * emergency evacuation, affecting the occupying safety.

The unsafe condition is failure of an evacuation system, which could impede an emergency evacuation and increase the chance of injury to passengers and flightcrew during the evacuation. The corrective action involves inspection of the forward and rearward doors' emergency evacuation slide packs for the presence of tie-down straps, and, if applicable, removal of the tie-down straps.

Actions and Compliance

(f) Unless already done: Within 600 flight hours after the effective date of this AD, carry out a general visual inspection (GVI) of the emergency evacuation slide packs installed on the forward and rearward doors in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 170–25–0088, dated December 21, 2007; or 190–25–0062, dated December 21, 2007; as

applicable. If tie-down straps are found, they must be cut and removed from the slide pack before further flight.

Note 1: For the purposes of this AD, a general visual inspection (GVI) is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Kenny Kaulia, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2848; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI Brazilian Airworthiness Directives 2008–01–03 and 2008–01–04, both effective March 3, 2008; and EMBRAER Service Bulletins 170–25–0088 and 190–25–0062, both dated December 21, 2007; for related information.

Issued in Renton, Washington, on August 6, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–19366 Filed 8–20–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0887; Directorate Identifier 2007–NM–336–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAE 146 and Avro 146–RJ Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

During inspection of undercarriage main beam sidestays, bolts attaching the undercarriage main beam sidestay to frame 29 were found with the heads of the bolts sheared off. Loose bolt assemblies were also found.

If sheared or loose bolts are not detected and replaced, a possible consequence is the collapse of the main landing gear.

* * * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by September 22, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0887; Directorate Identifier 2007–NM–336–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2007–0277, dated November 5, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

During inspection of undercarriage main beam sidestays, bolts attaching the undercarriage main beam sidestay to frame 29 were found with the heads of the bolts sheared off. Loose bolt assemblies were also found.

If sheared or loose bolts are not detected and replaced, a possible consequence is the collapse of the main landing gear.

For the reasons described above, this Airworthiness Directive (AD) requires a one-time [rotating eddy current] inspection of the bolt bores and bore dimensions and the installation of replacement bolts, as necessary.

Corrective actions include contacting BAE Systems (Operations) Limited for repair instructions and repair, if necessary. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

BAE Systems (Operations) Limited has issued Inspection Service Bulletin ISB.53–194, dated January 10, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 1 product of U.S. registry. We also estimate that it would take about 24 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $1,000 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $2,920, or $2,920 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Docket No. FAA–2008–0887; Directorate Identifier 2007–NM–336–AD.

Comments Due Date

(a) We must receive comments by September 22, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all BAE Systems (Operations) Limited Model BAe 146–100A, –200A, and –300A series airplanes; and Model Avro 146–RJ70A, 146–RJ85A, and 146–RJ100A airplanes; certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 53: Fuselage.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

During inspection of undercarriage main beam sidestays, bolts attaching the undercarriage main beam sidestay to frame 29 were found with the heads of the bolts sheared off. Loose bolt assemblies were also found.

If sheared or loose bolts are not detected and replaced, a possible consequence is the collapse of the main landing gear.

For the reasons described above, this Airworthiness Directive (AD) requires a one-time [rotating eddy current] inspection of the bolt bores and bore dimensions and the installation of replacement bolts, as necessary.

Corrective actions include contacting BAE Systems (Operations) Limited for repair instructions and repair, if necessary.

Actions and Compliance

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

(1) Within 4,000 flight cycles or 5 years, whichever occurs first after the effective date of this AD, perform the inspections to detect defects (including sheared or loose bolts) and do the bolt replacements in accordance with

the instructions of paragraphs 2.C.(1) through 2.C.(3), and paragraphs 2.D.(1) through 2.D.(3), of the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–194, dated January 10, 2007, except as required by paragraphs (f)(2), (f)(3), and (f)(4) of this AD.

(2) If any defect is found during the inspection specified in paragraph (f)(1) of this AD, before further flight, replace the affected bolts in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–194, dated January 10, 2007, except as required by paragraph (f)(3) and (f)(4) of this AD.

(3) For airplanes on which replacement parts are not available during the replacement specified in paragraph (f)(2) of this AD, do the actions in paragraphs (f)(3)(i) and (f)(3)(ii) of this AD in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–194, dated January 10, 2007.

(i) Before further flight, temporarily reinstall removed oversized bolts, provided the bolts are serviceable.

(ii) Within 2,000 flight cycles after doing the inspection required by paragraph (f)(1) of this AD, replace all temporary oversized bolts that were installed in accordance with paragraph (f)(3)(i) of this AD.

(4) Where BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–194, dated January 10, 2007, specifies to contact BAE Systems (Operations) Limited if any defect is found in the second oversize fastener bore, before further flight, contact BAE Systems (Operations) Limited for repair instructions and do the repair.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2007–0277, dated November 5, 2007, and BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–194, dated January 10, 2007, for related information.

Issued in Renton, Washington, on August 6, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–19364 Filed 8–20–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0898; Directorate Identifier 2007–NM–200–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200 and 767–300 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 767–200 and 767–300 series airplanes. This proposed AD would require detailed inspections of the aft pressure bulkhead for damage, mid-frequency eddy current (MFEC) and low frequency eddy current (LFEC) inspections of radial web lap splices, tear strap splices, and super tear strap splices for cracking, and corrective actions if necessary. This AD results from analysis that indicates fatigue cracks of the web lap splice, tear strap splice, or super tear strap splice of the aft bulkhead are expected to occur on certain Boeing Model 767–200 and 767–300 series airplanes. We are proposing this AD to detect and correct fatigue cracks of the aft pressure bulkhead, which could result in rapid decompression of the passenger compartment and possible damage or interference with airplane control systems that penetrate the bulkhead, and consequent loss of controllability of the airplane.

DATES: We must receive comments on this proposed AD by October 6, 2008.

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

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

For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Tamara L. Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6421; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0898; Directorate Identifier 2007–NM–200–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

substantive verbal contact we receive about this proposed AD.

Discussion

We have previously issued AD 2005–03–11, amendment 39–13967 (70 FR 7174, February 11, 2005). (A correction of the rule was published in the **Federal Register** on March 11, 2005 (70 FR 12119, March 11, 2005).) That AD applies to certain Boeing Model 767–200 and 767–300 series airplanes, line numbers 1 through 175 inclusive. That AD was prompted by a report of multiple-site fatigue cracking (multiple-site damage) in two lap splices on the aft pressure bulkhead of one airplane. That AD currently requires repetitive detailed and eddy current inspections of the aft pressure bulkhead for damage and cracking, one-time detailed and high frequency eddy current inspections of any ''oil can'' located on the aft pressure bulkhead for damage and cracking, and related corrective actions if necessary.

Since the issuance of that AD, analysis indicates that fatigue cracks of the web lap splice, tear strap splice, or super tear strap splice of the aft bulkhead are expected to occur on Boeing Model 767–200 and 767–300 series airplanes having line numbers 176 through 423 inclusive that have accumulated 35,000 or more total flight cycles. There have been no reports of such fatigue cracks on these in-service airplanes. Such fatigue cracking, if not corrected, could result in rapid decompression of the passenger compartment and possible damage or interference with airplane control systems that penetrate the bulkhead, and consequent loss of controllability of the airplane.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 767–53A0147, dated August 16, 2007. The service bulletin describes procedures for:

- Doing an initial detailed inspection of the aft pressure bulkhead for damage such as dents, punctures, nicks, gouges, cracks, corrosion, and scratches, and repeating those inspections.
- Doing initial mid-frequency eddy current (MFEC) and low-frequency eddy current (LFEC) inspections of the radial web lap splices, tear strap splices, and super tear strap splices for cracking, and repeating those inspections.
- Contacting Boeing for inspection instructions where inspection is prevented by a repair common to the inspection area.
- Doing applicable corrective actions, which include repairing any damage that exceeds certain allowable limits, and contacting Boeing for repair instructions. The service bulletin specifies the following compliance times:
- For the initial inspections: 35,000 total flight-cycles, or 18 months or 3,000 flight-cycles after the date of the service bulletin, whichever occurs first.
- For the repetitive inspections: Within 3,000 flight-cycles of the initial inspection, and thereafter at intervals not to exceed 3,000 flight-cycles.
- For the applicable corrective actions: Before further flight.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between Proposed Rule and Service Bulletin.''

Differences Between Proposed Rule and Service Bulletin

The service bulletin specifies to contact the manufacturer for instructions on how to repair and inspect certain conditions, but this proposed AD would require repairing and inspecting those conditions in one of the following ways:

- Using a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization whom we have authorized to make those findings.

Clarification of Repetitive Inspections Specified in Service Bulletin

The Accomplishment Instructions of the service bulletin specifies to only repeat the inspections if no crack is found. However, Table 2 of paragraph 1.E, ''Compliance,'' of the service bulletin identifies repeat intervals for the inspections, regardless of inspection findings. The intent is that the inspections be repeated for all findings. Therefore, this proposed AD would require repetitive inspections at the applicable repeat intervals listed in Table 2 of paragraph 1.E., ''Compliance.''

Costs of Compliance

There are about 244 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 84 airplanes of U.S. registry. The proposed actions would take about 31 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $208,320, or $2,480 per airplane, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2008–0898; Directorate Identifier 2007–NM–200–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by October 6, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 767–200 and 767–300 series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 767–53A0147, dated August 16, 2007.

Unsafe Condition

(d) This AD results from analysis that indicates fatigue cracks of the web lap splice, tear strap splice, or super tear strap splice of the aft bulkhead are expected to occur on certain Boeing Model 767–200 and 767–300 series airplanes. We are proposing this AD to detect and correct fatigue cracks of the aft pressure bulkhead, which could result in rapid decompression of the passenger compartment and possible damage or interference with airplane control systems that penetrate the bulkhead, and consequent loss of controllability of the airplane.

Compliance

(e) Comply with this AD within the compliance times specified, unless already done.

Inspections and Applicable Related Investigative and Corrective Actions

(f) Except as provided by paragraphs (f)(1) and (f)(2) of this AD: At the applicable compliance time and repeat intervals listed in Tables 1 and 2 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 767–53A0147, dated August 16, 2007, do detailed inspections of the aft pressure bulkhead for damage, mid-frequency eddy current (MFEC) and low-frequency eddy current (LFEC) inspections of radial web lap splices, tear strap splices, and super tear strap splices for cracking and applicable corrective actions by accomplishing all the applicable actions specified in the Accomplishment Instructions of the service bulletin.

(1) Where Table 1 of paragraph 1.E., ''Compliance,'' of the service bulletin specifies a compliance time after the date on the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) Where the service bulletin specifies a compliance time of ''As given by Boeing'' or to contact Boeing for the appropriate action, this AD requires, before further flight, inspections of the area of repair and repair of any damaged/cracked part, as applicable, using a method approved in accordance with the procedures specified in paragraph (g) of this AD.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, ATTN: Tamara L. Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, 1601 Lind Avenue, SW., Renton, Washington, telephone (425) 917–6421; fax (425) 917–6590; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and the approval must specifically refer to this AD.

Issued in Renton, Washington, on August 8, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–19363 Filed 8–20–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0899; Directorate Identifier 2008–NM–022–AD]

RIN 2120–AA64

Airworthiness Directives; Honeywell Flight Management Systems (FMSs) Equipped with Honeywell NZ–2000 Navigation Computers and Honeywell IC–800 or IC–800E Integrated Avionics Computers; as Installed on Various Transport Category Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to all Honeywell FMSs served by Honeywell NZ–2000 navigation computers and IC–800 integrated avionics computers. The existing AD currently requires identifying affected computers by part number and software modification level and revising the Limitations section of applicable airplane flight manuals to provide procedures for retaining optimum position determination and intended navigation. This proposed AD would require uploading new software, which would terminate the existing requirements. This proposed AD results from reports of in-flight unannunciated shifts of computed position in airplanes with the subject FMS computers. We are proposing this AD to prevent a shift in the FMS computed position, which could result in uncommanded deviations from the intended flight path of the airplane and, if those deviations are undetected by the flight crew, compromised terrain/traffic avoidance.

DATES: We must receive comments on this proposed AD by October 6, 2008.

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

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

and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Honeywell, P.O. Box 21111, Phoenix, AZ 85036–1111.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: J. Kirk Baker, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5345; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0899; Directorate Identifier 2008–NM–022–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

On March 23, 2007, we issued AD 2007–07–12, amendment 39–15009 (72 FR 15818, April 3, 2007), for all Honeywell flight management systems (FMSs) served by Honeywell NZ–2000 navigation computers and IC–800 integrated avionics computers. That AD requires identifying affected computers by part number and software modification level and revising the Limitations section of applicable airplane flight manuals (AFM) to provide procedures for retaining optimum position determination and intended navigation. That AD resulted from reports of in-flight unannunciated shifts of computed position in airplanes with the subject FMS computers. We issued that AD to prevent a shift in the FMS computed position, which could result in uncommanded deviations from the intended flight path of the airplane and, if those deviations are undetected by the flight crew, compromised terrain/traffic avoidance.

Actions Since Existing AD Was Issued

The preamble to AD 2007–07–12 specified that we considered the requirements ''interim action'' and that the manufacturer was developing a modification to address the unsafe condition. That AD explained that we might consider further rulemaking if a modification is developed, approved, and available. The manufacturer now has developed such a modification, and we have determined that further rulemaking is indeed necessary; this proposed AD follows from that determination.

Relevant Service Information

We have reviewed Honeywell Alert Service Bulletin 7017300–22–A6112, dated June 22, 2007. This service bulletin describes procedures for uploading new software in a certain IC–800 or IC–800E integrated avionic computer (IAC), as applicable. We also have reviewed Honeywell Alert Service Bulletins 7018879–34–A6060, Revision 001, dated January 21, 2008; 7018879–34–6061, Revision 001, dated January 21, 2008; 7018879–34–A6062, dated June 12, 2007; and 7018879–34–A6063, dated July 6, 2007. These service bulletins describe procedures for uploading new software in certain NZ–2000 navigation computers (NAV computer). Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to develop on other products of the same type design. For this reason, we are proposing this AD, which would supersede AD 2007–07–12 and would retain the requirements of the existing AD. This proposed AD would require accomplishing the actions specified in service bulletins described previously, which would constitute terminating action for the retained requirements.

Differences Between Proposed Rule and Service Bulletins

Although the service bulletins recommend installing the new software ''as manpower and material are available,'' we have determined that this imprecise compliance time would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, we considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to upload the new software. In light of all of these factors, we find a compliance time of 12 months for completing the proposed actions to be warranted, in that it represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety.

Change to Existing AD

We find that Honeywell Model IC–800E IAC was not specifically identified by model name in the applicability of AD 2007–07–12. However, that IAC was identified by manufacturer's part number 7017300–56023 in the effectivity listing of Honeywell Technical Newsletter A23–6111–008, Revision 001, dated February 22, 2007, which was referenced in AD 2007–07–12 as the appropriate source of service information for accomplishing the required actions. Therefore, we have revised the applicability of this proposed AD to specifically reference Model IC–800E IAC in addition to Model IC–800 IAC, where appropriate.

Costs of Compliance

There are about 104 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hour	Average labor rate per hour	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
AFM revision (required by AD 2007–07–12)	1	$80	$80	77	$6,160
Terminating action (new proposed action)	1	80	80	77	6,160

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–15009 (72 FR 15818, April 3, 2007) and adding the following new airworthiness directive (AD):

Honeywell, Inc.: Docket No. FAA–2008–0899; Directorate Identifier 2008–NM–022–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by October 6, 2008.

Affected ADs

(b) This AD supersedes AD 2007–07–12.

Applicability

(c) This AD applies to all Honeywell NZ–2000 navigation computers and Honeywell IC–800 or IC–800E integrated avionics computers; as installed on transport category airplanes, certificated in any category, including but not limited to the airplanes identified in Table 1 of this AD.

TABLE 1—KNOWN AFFECTED AIRPLANES

Manufacturer	Model
Bombardier, Inc	CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604) airplanes.
Dassault Aviation	Mystere-Falcon 900 airplanes.
Gulfstream Aerospace Corporation	G–1159A and GV airplanes, and G–IV series airplanes.
Lockheed	382G series airplanes.
Hawker Beechcraft (formerly Raytheon Aircraft Company).	BAe.125 Series 800A (including C–29A and U–125) airplanes. Hawker 800XP and 1000 airplanes.

Unsafe Condition

(d) This AD results from in-flight unannunciated shifts of computed position in airplanes with the subject flight management system (FMS) computers identified in paragraph (c) of this AD. We are issuing this AD to prevent a shift in the FMS computed position, which could result in uncommanded deviations from the intended flight path of the airplane and, if those deviations are undetected by the flight crew, compromised terrain/traffic avoidance.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Requirements of AD 2007–07–12

Identification of Part Number/Modification Level

(f) Within 14 days after April 18, 2007 (the effective date of AD 2007–07–12): Determine if the installed NZ–2000 navigation computers and IC–800 or IC–800E integrated avionics computers serving FMSs have computer part numbers and software modification levels identified in Honeywell Technical Newsletter A23–6111–008, Revision 001, dated February 22, 2007. For purposes of this AD, airplanes with FMS computers having a part number and software modification level identified in the newsletter are ''affected airplanes.''

Revision of Airplane Flight Manual (AFM)

(g) For any affected airplane: Within 14 days after April 18, 2007, revise the Limitations section of the applicable AFM to incorporate the information included in Appendix A of Honeywell Technical

Newsletter A23–6111–008, Revision 001, dated February 22, 2007. This may be done by inserting a copy of Appendix A of the newsletter into the AFM.

New Requirements of This AD

Terminating Action

(h) Within 12 months after the effective date of this AD, upload applicable software as specified in Table 2 of this AD. After uploading the applicable software, the requirements of paragraphs (f) and (g) of this AD are no longer necessary, and the AFM revision required by paragraph (g) of this AD may be removed.

TABLE 2—TERMINATING ACTION

Upload new software in—	In accordance with the Accomplishment Instructions of—	For—
(1) The IC–800 or IC–800E integrated avionic computer (IAC), as applicable.	Honeywell Alert Service Bulletin 7017300–22–A6112, dated June 22, 2007.	The IAC identified in the service bulletin.
(2) The NZ–2000 navigation computer (NAV computer).	Honeywell Alert Service Bulletin 7018879–34–A6060, Revision 001, dated January 21, 2008.	The NAV computer identified in the service bulletin.
	Honeywell Service Bulletin 7018879–34–6061, Revision 001, dated January 21, 2008.	The NAV computer identified in the service bulletin.
	Honeywell Alert Service Bulletin 7018879–34–A6062, dated June 12, 2007.	The NAV computer identified in the service bulletin.
	Honeywell Alert Service Bulletin 7018879–34–A6063, dated July 6, 2007.	The NAV computer identified in the service bulletin.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Los Angeles Aircraft Certification Office, FAA, ATTN: J. Kirk Baker, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5345; fax (562) 627–5210; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Issued in Renton, Washington, on August 6, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–19361 Filed 8–20–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

DEPARTMENT OF THE INTERIOR

15 CFR Part 303

[Docket No. 080716841–8842–01]

RIN 0625–AA80

Changes in the Insular Possessions Watch, Watch Movement and Jewelry Programs 2008

AGENCIES: Import Administration, International Trade Administration, Department of Commerce; Office of Insular Affairs, Department of the Interior.

ACTION: Notice of Proposed Rulemaking and Request for Comments.

SUMMARY: The Departments of Commerce and the Interior (the Departments) propose to amend their regulations governing watch duty-exemption allocations and watch and jewelry duty-refund benefits for producers in the United States insular possessions (the U.S. Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands). The proposed rule would amend the regulations by updating the formula that is used to calculate the combined amount of individual and family health and life insurance per year that is creditable towards the duty refund benefit.

DATES: Written comments must be received on or before September 22, 2008.

ADDRESSES: Address written comments to Faye Robinson, Director, Statutory Import Programs Staff, Room 2104, U.S. Department of Commerce, 14th and Constitution Ave., NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Faye Robinson, (202) 482–3526, same address as above.

SUPPLEMENTARY INFORMATION: The insular possessions watch industry provision in Sec. 110 of Public Law No. 97–446 (96 Stat. 2331) (1983), as amended by section 602 of Public Law No. 103–465 (108 Stat. 4991) (1994), and additional U.S. Note 5 to chapter 91 of the Harmonized Tariff Schedule of the United States (''HTSUS''), as amended by Public Law 94–241 (90 Stat. 263) (1976) requires the Secretary of Commerce and the Secretary of the Interior (''the Secretaries''), acting jointly, to establish a limit on the quantity of watches and watch movements that may be entered free of duty during each calendar year. The law also requires the Secretaries to establish the shares of this limited quantity that may be entered from the Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands (''CNMI''). After the Departments have verified the data submitted on the annual application (Form ITA–334P), the producers' duty-exemption allocations are calculated from the territorial share in accordance with 15 CFR 303.14 and each producer is issued a duty-exemption license. The law further requires the Secretaries to issue duty-refund certificates to each territorial watch and watch movement producer based on the company's duty-free shipments and creditable wages paid during the previous calendar year.

Public Law 106–36 (113 Stat. 127) (1999) authorizes the issuance of a duty-refund certificate to each territorial jewelry producer for any article of jewelry provided for in heading 7113 of the HTSUS that is the product of any such territory. The value of the certificate is based on creditable wages paid and duty-free units shipped into the United States during the previous calendar year. Although the law specifically mentions the U.S. Virgin Islands, Guam and American Samoa, the issuance of the duty-refund certificate would also apply to the CNMI due to the Covenant to Establish a Commonwealth of the Northern Mariana

Islands in Political Union with the United States of America (Pub. L. 94–241), that states that goods from the CNMI are entitled to the same tariff treatment as imports from Guam. *See also* 19 CFR 7.2(a). In order to be considered a product of such territories, the jewelry must meet the U.S. Customs Service substantial transformation requirements (the jewelry must become a new and different article of commerce as a result of production or manufacture performed in the territory). To receive duty-free treatment, the jewelry must also satisfy the requirements of General Note 3(a)(iv) of the HTSUS and applicable Customs Regulations (19 CFR 7.3).

Section 1562 of Public Law 108–429 (2004), amended by Public Law 97–446, Public Law 103–465 and Public Law 106–36 authorizes the extension of the duty refund benefits to include the value of usual and customary health insurance, life insurance and pension benefits; raising the ceiling on the amount of jewelry that qualifies for the duty refund benefit; allowing new insular jewelry producers to assemble jewelry and have such jewelry treated as an article of the insular possessions for up to 18 months after the jewelry company commences assembly operations; allowing duty refund certificate holders to secure a duty refund on any articles that are imported into the customs territory of the United States by the certificate holder duty paid; and providing compensation to insular watch producers if tariffs on watches and watch movements are reduced.

Under the Department of Commerce's regulations, the combined creditable amount of individual health and life insurance per year may not exceed 100 percent of the ''weighted average'' yearly individual federal employee health insurance, and the combined creditable amount of family health and life insurance per year may not exceed 120 percent of the ''weighted average'' yearly family federal employee health insurance. The Department of Commerce's regulations combine the creditable amount of health and life insurance into one benefit calculation because most program companies purchase health and life insurance together in one plan or payment.

In March 2008, the Department of Commerce received a letter from the U.S. Virgin Islands Watch and Jewelry Manufacturers Association (V.I.M.A) requesting that we reexamine the methodology for determining the health benefit portion of the production incentive certificate (''PIC''). The V.I.M.A. stated that its members' health insurance costs have outpaced the current formula due to factors including the age of the staff and difficulty in getting local medical providers to accept the Virgin Islands card health plan. According to the V.I.M.A, the health insurance costs of two producers currently exceed the maximum allowable reimbursement, even though the health benefit plans remain unchanged.

During the Departments' audit in February 2008, Department officials discovered there had been substantial increases in combined health and life insurance costs for some program producers and that creditable limits had been exceeded for a few employees within two companies. One company exceeded the individual creditable limit and the other company exceeded the family creditable limit. In light of the upward trend in the costs of health and life insurance within the industry generally, as discussed above, we have reevaluated the creditable limits. Accordingly, we are proposing an increase in the formula for determining creditable health and life insurance benefits.

Proposed Amendments

We propose to amend § 303.2(a)(13)(ii), § 303.2(a)(13)(ii)(A), § 303.2(a)(14)(ii), § 303.2(a)(14)(ii)(A), § 303.16(a)(9)(ii), § 303.16(a)(9)(ii)(A), § 303.16(a)(10)(ii), and § 303.2(a)(10)(ii)(A) by increasing the percentage used to calculate the combined amount of individual and family health and life insurance per year that is creditable towards the duty refund benefit for watch and jewelry producers. Currently, the combined creditable amount of individual health and life insurance per year may not exceed 100 percent of the ''weighted average'' yearly individual federal employee health insurance, and the combined creditable amount of family health and life insurance per year may not exceed 120 percent of the ''weighted average'' yearly family federal employee health insurance. Under the proposed rule, the combined creditable amount of individual health and life insurance per year would not exceed 130 percent of the ''weighted average'' yearly individual federal employee health insurance, and the combined creditable amount of family health and life insurance per year would not exceed 150 percent of the ''weighted average'' yearly family federal employee health insurance.

Classification

Regulatory Flexibility Act. In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* the Chief Counsel for Regulation at the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the proposed rule, if promulgated as final, will not have a significant economic impact on a substantial number of small entities.

There are currently five companies participating in the insular watch and jewelry programs. The updating of the formula that is used to calculate the combined amount of individual and family health and life insurance per year that is creditable towards the duty refund benefit is being proposed to compensate for the increase in the cost of health insurance in the U.S. Virgin Islands, where all five of the watch and jewelry producers are located. Adoption of this rule would benefit producers by increasing the maximum amount of combined health and life insurance that would be eligible for the duty refund benefit. Under the proposed rule, the combined annual creditable amount of individual health and life insurance for calendar year 2008 would be increased by $1,571 and the combined annual creditable amount of family health and life insurance for calendar year 2008 would be increased by $3,567. There would be no adverse economic impact from this proposed change.

This proposed rule also would not change reporting or recordkeeping requirements. The changes in the regulations will also not duplicate, overlap or conflict with other laws or regulations. Consequently, the changes are not expected to meet the RFA criteria of having a ''significant'' economic effect on a ''substantial number'' of small entities, as stated in 5 U.S.C. 603 *et seq.* Therefore, a regulatory flexibility analysis was not prepared.

Paperwork Reduction Act. This proposed rulemaking does not contain revised collection of information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. Collection activities are currently approved by the Office of Management and Budget under control numbers 0625–0040 and 0625–0134.

Not withstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information unless it displays a currently valid OMB control number.

E.O. 12866. It has been determined that the proposed rulemaking is not

significant for purposes of Executive Order 12866.

List of Subjects in 15 CFR Part 303

Administrative practice and procedure, American Samoa, Customs duties and inspection, Guam, Imports, Marketing quotas, Northern Mariana Islands, Reporting and record keeping requirements, Virgin Islands, Watches and jewelry.

For reasons set forth above, the Departments propose to amend 15 CFR part 303 as follows:

PART 303—WATCHES, WATCH MOVEMENTS AND JEWELRY PROGRAMS

1. The authority citation for 15 CFR part 303 continues to read as follows:

Authority: Pub. L. 97–446, 96 Stat. 2331 (19 U.S.C. 1202, note); Pub. L. 103–465, 108 Stat. 4991; Pub. L. 94–241, 90 Stat. 263 (48 U.S.C. 1681, note); Pub. L. 106–36, 113 Stat. 167; Pub. L. 108–429, 118 Stat. 2582.

§ 303.2 [Amended]

2. Section 303.2 is amended as follows:

A. Remove ''100'' from the first sentence in paragraph (a)(13)(ii) and add ''130'' in its place.

B. Remove ''120'' from the first sentence in paragraph (a)(13)(ii)(A) and add ''150'' in its place.

C. Remove ''100'' from the first sentence in paragraph (a)(14)(ii) and add ''130'' in its place.

D. Remove ''120'' from the first sentence in paragraph (a)(14)(ii)(A) and add ''150'' in its place.

§ 303.16 [Amended]

3. Section 303.16 is amended as follows:

A. Remove ''100'' from the first sentence in paragraph (a)(9)(ii) and add ''130'' in its place.

B. Remove ''120'' from the first sentence in paragraph (a)(9)(ii)(A) and add ''150'' in its place.

C. Remove ''100'' from the first sentence in paragraph (a)(10)(ii) and add ''130'' in its place.

D. Remove ''120'' from the first sentence in paragraph (a)(10)(ii)(A) and add ''150'' in its place.

Dated: August 13, 2008.

David Spooner,

Assistant Secretary for Import Administration, Department of Commerce.

Dated: August 15, 2008.

Nikolao Pula,

Director, Office of Insular Affairs, Department of the Interior.

[FR Doc. E8–19411 Filed 8–20–08; 8:45 am]

BILLING CODE 3510–DS–P, 4310–93–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 18

RIN 1219–AB60

Conveyor Belt Combustion Toxicity and Smoke Density

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Request for information, reopening and extension of comment period.

SUMMARY: The Mine Safety and Health Administration is reopening the rulemaking record on the request for information entitled ''Conveyor Belt Combustion Toxicity and Smoke Density'' published in the **Federal Register** on June 19, 2008 (73 FR 35057) and extending the comment period to September 8, 2008.

DATES: All comments must be received by midnight eastern daylight time on September 8, 2008.

ADDRESSES: *Comments:* Comments must be clearly identified with ''RIN 1219–AB60'' and may be sent to MSHA by any of the following methods:

(1) *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

(2) *Electronic mail: zzMSHA-Comments@dol.gov.* Include ''RIN 1219–AB60'' in the subject line of the message.

(3) *Facsimile:* (202) 693–9441. Include ''RIN 1219–AB60'' in the subject.

(4) *Regular Mail:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2350, Arlington, Virginia 22209–3939.

(5) *Hand Delivery or Courier:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2350, Arlington, Virginia 22209–3939. Sign in at the receptionist's desk on the 21st floor.

Comments can be accessed electronically at *http://www.msha.gov* under the ''Rules and Regs'' link. MSHA will post all comments on the Internet without change, including any personal information provided. Comments may also be reviewed at the Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2350, Arlington, Virginia. Sign in at the receptionist's desk on the 21st floor.

MSHA maintains a listserve that enables subscribers to receive e-mail notification when rulemaking documents are published in the **Federal Register**. To subscribe to the listserve, go to *http://www.msha.gov/subscriptions/subscribe.aspx.*

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Blvd., Room 2350, Arlington, Virginia 22209–3939, *silvey.patricia@dol.gov* (e-mail), (202) 693–9440 (voice), or (202) 693–9441 (Fax).

SUPPLEMENTARY INFORMATION:

I. Introduction

On June 19, 2008, MSHA published a Request for Information (RFI) on conveyor belt combustion toxicity and smoke density (73 FR 35057). The comment period for the RFI closed on August 18, 2008. In a separate rulemaking, MSHA published on the same day a proposed rule on flame-resistant conveyor belts, fire prevention and detection, and use of air from the belt entry (73 FR 35026). The comment period for the proposed rule closes on September 8, 2008.

II. Extension of Comment Period

MSHA is reopening the rulemaking record for the RFI to be consistent with the proposed rule on flame-resistant conveyor belt, fire prevention and detection, and use of air from the belt entry. The comment period for the RFI closes on midnight eastern daylight time September 8, 2008. MSHA will consider all comments received through September 8, 2008, including those received between August 19 and the date of this notice.

Dated: August 15, 2008.

Richard E. Stickler,

Acting Assistant Secretary for Mine Safety and Health.

[FR Doc. E8–19391 Filed 8–20–08; 8:45 am]

BILLING CODE 4510–43–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2007–0382, EPA–R03–OAR–2008–0113; FRL–8707–4]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Emission Reductions From Large Stationary Internal Combustion Engines and Large Cement Kilns

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions for the Commonwealth of Virginia. These revisions, submitted by the Virginia Department of

Environmental Quality (VADEQ), pertain to nitrogen oxides (NO_X) emission reductions from large stationary internal combustion (IC) engines and large cement kilns from five sources located in the Commonwealth. The reductions allow Virginia to meet its remaining obligations under the NO_X SIP Call. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before September 22, 2008.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2007–0382 and EPA–R03–OAR–2008–0113 by one of the following methods:

A. *www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. *E-mail: Fernandez.Cristina@epa.gov*.

C. *Mail:* EPA–R03–OAR–2007–0382 and/or EPA–R03–OAR–2008–0113, Cristina Fernandez, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2007–0382 and/or EPA–R03–OAR–2008–0113. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, (215) 814–2308, or by e-mail at *powers.marilyn@epa.gov*.

SUPPLEMENTARY INFORMATION: The Virginia Department of Environmental Quality submitted four separate SIP revisions to meet the NO_X SIP Call requirement to address large stationary IC engines. These submissions were made on February 26, 2007 for Transcontinental Gas Pipeline (Transco) Station 165; March 5, 2007 for Transco Station 170; March 12, 2007 for Transco Station 175; and March 19, 2007 for Transco Station 180. On August 8, 2007, VADEQ submitted a SIP revision to meet the NO_X SIP Call requirement to address NO_X emissions from cement manufacturing in the Commonwealth.

I. Background

EPA issued the NO_X SIP Call (63 FR 57356, October 27, 1998) to require 22 Eastern states and the District of Columbia to reduce specified amounts of one of the main precursors of ground-level ozone, NO_X, in order to reduce interstate ozone transport. EPA found that the sources in these states emit NO_X in amounts that contribute significantly to nonattainment of the 1-hour ozone national ambient air quality standard (NAAQS) in downwind states. In the NO_X SIP Call, the amount of reductions required by states were calculated based on application of available, highly cost-effective controls on certain source categories of NO_X. These source categories included large fossil fuel-fired electric generating units (EGUs) serving a generator with a capacity greater than 25 MWe, fossil fuel-fired non-EGUs (such as large industrial boilers with a capacity greater than 250 MMBtu/hr), large stationary internal combustion engines, and large cement kilns. EPA established a model trading rule for large EGUs and non-EGUs that States could adopt to participate in the EPA-administered NO_X Budget Trading program.

The NO_X SIP Call, including the Technical Amendments which addressed the 2007 EGU budgets (64 FR 26298, May 14, 1999 and 65 FR 11222, March 2, 2000), was challenged by a number of state, industry, and labor groups. A summary of the NO_X SIP Call requirements, including details of the court decisions that were made in response to challenges to the rule and impacts of the court decisions on certain aspects of the rule may be found in EPA's rulemaking dated April 21, 2004 (69 FR 21604) entitled, ''Interstate Ozone Transport: Response to Court Decisions on the NO_X SIP Call, NO_X SIP Call Technical Amendments, and Section 126 Rules.'' The relevant portions of the April 21, 2004 rulemaking that affect Virginia's obligations under the NO_X SIP Call, and that pertain to the Commonwealth's requirements for Phase II, are discussed in this document to provide background on the SIP revisions for Phase II that were submitted by VADEQ.

On March 3, 2000, the United States Court of Appeals for the District of Columbia Circuit (DC Circuit) issued its decision on the NO_X SIP Call. *Michigan* v. *EPA,* 213 F.3rd 663 (DC Dir. 2000). While the DC Circuit ruled largely in favor of EPA in support of its requirements under the 1-hour ozone NAAQS, it also ruled, in part, against EPA on certain issues. The rulings against EPA included two areas of the NO_X SIP Call that were remanded and vacated, and two areas in which EPA was found to have failed to provide adequate notice of changes in the rule. In the latter case, the rulings included a failure to provide adequate notice of the change in the definition of EGU as applied to cogeneration units that supply electricity to a utility power distribution system for sale in certain specified amounts, and a failure to provide adequate notice of the change in the control level EPA assumed for large stationary internal combustion (IC) engines. The portions of the NO_X SIP Call that were upheld by the Court were termed ''Phase I'' of the rule. With the exception of the remand of the EGU

growth factors used in the NO_X SIP Call and the requirements for the 8-hour ozone NAAQS (which EPA stayed due to uncertainty created by the court rulings), those portions of the NO_X SIP Call that had been remanded back to EPA were finalized in the April 21, 2004 rulemaking (69 FR 21604) and termed ''Phase II'' of the rule.

The April 21, 2004 rule finalized specific changes to the definition of EGUs as applied to cogeneration units, finalized the control levels assumed for large stationary IC engines in the NO_X SIP Call, adjusted States' total budgets (as necessary) to reflect these changes, established a SIP submittal date of April 1, 2005 for states to address the Phase II portion of the budget, and set a compliance date of May 1, 2007 for all affected sources to meet Phase II. As a result of these changes, states that were not already meeting their total NO_X SIP Call emission reduction obligations were required to submit a SIP revision by April 1, 2005 to reduce ozone season NO_X emissions by an incremental amount equivalent to the reductions achieved by controlling IC engines to prescribed levels. The IC engines that comprise the subject States' Phase II inventory were compiled by EPA and termed the EPA's NO_X SIP Call Engine Inventory (65 FR 1222, March 2, 2000). As finalized in the April 21, 2005 rulemaking, the amount of the incremental reductions required was based upon the level of reductions that would occur if large natural gas-fired stationary IC engines were controlled to a level of 82 percent, and large diesel and dual fuel stationary IC engines were controlled to a level of 90 percent.

The change to the definition of cogeneration units did not have an impact on the Phase I budget previously established for Virginia. Therefore, in order to meet its Phase II obligations, the State was required only to achieve the incremental reductions that EPA calculated based on controlling stationary IC engines to prescribed levels. As in Phase I of the NO_X SIP Call, states have flexibility in how they achieve the incremental reductions required under Phase II.

In the NO_X SIP Call Engine Inventory, EPA identified 17 lean burn engines in Virginia that met the definition of large, natural gas-fired IC engines. EPA determined a reduction target of 3343 tons of NO_X based on a reduction level of 82 percent. In the NO_X SIP Call inventory, EPA identified five large cement kilns and determined a reduction target of 173 tons of NO_X based on a control level of 30 percent for this source category.

Virginia's Phase I NO_X SIP Call trading program was approved as part of the Virginia SIP on November 12, 2002 (67 FR 68544), with the exception of its flow control provision, which was conditionally approved. The conditional approval was converted to a full approval on August 25, 2004 (69 FR 52174). The Phase II change to the definition of cogen units did not affect the Phase I budget previously established for Virginia and will not be discussed in any detail here, but a full discussion may be found in the April 21, 2005 rulemaking. In order to meet its NO_X SIP Call Phase II obligations, the Commonwealth is required only to achieve the incremental reductions that EPA calculated based on a controlling large IC engines to prescribed levels.

In the November 12, 2002 approval, it was noted that the SIP revision did not establish requirements for cement manufacturing kilns and stationary internal combustion engines, and that Virginia was still obligated to submit SIP revisions for additional reductions required to meet the State's overall emissions budget.

II. Summary of SIP Revisions

The table below identifies the sources and the individual state operating permits that are the subject of this rulemaking, followed by a summary of the SIP revisions for each source category. The Technical Support Document (TSD) for this rulemaking contains additional details pertaining to EPA's analysis of the State submittals.

LARGE IC ENGINES AND CEMENT KILNS SUBJECT TO THE NO_X SIP CALL IN VIRGINIA

Source name	Location	Permit/order or registration No.	Source type
Transcontinental Gas Pipeline Corp. Station 165.	Pittsylvania County	Registration No. 30864	Large natural gas-fired internal combustion engine.
Transcontinental Gas Pipeline Corp. Station 170.	Appomattox County	Registration No. 30863	Large natural gas-fired internal combustion engine.
Transcontinental Gas Pipeline Corp. Station 175.	Fluvanna County	Registration No. 40789	Large natural gas-fired internal combustion engine.
Transcontinental Gas Pipeline Corp. Station 180.	Orange County	Registration No. 40782	Large natural gas-fired internal combustion engine.
Roanoke Cement Corporation	Botetourt County	Registration No. 20232	Cement manufacturing.

A. Large Stationary IC Engines

VADEQ determined that one company, Transco, owns all of the potentially affected sources in the State, and chose to impose 3343 tons of NO_X emission reductions from 19 engines located at four stations. VADEQ issued federally enforceable State operating permits for these Transco stations. The operating permit requirements for the engines include NO_X emission rate limits and limits on hours of operation during the ozone season to achieve the required emission reductions. The permits also include provisions for testing, parametric monitoring, reporting, and recordkeeping to ensure the terms of the permits are met.

B. Cement Manufacturing

Four long, dry cement kilns that were included as part of the 1995 NO_X SIP Call inventory were permanently shut down in 1996. The remaining preheater kiln was reconfigured and upgraded as a precalciner kiln to handle the capacity of the facility. VADEQ submitted a demonstration that the emissions from the reconfigured preheater/precalciner kiln in 2005 has resulted in at least a 30 percent reduction from the four long, dry kilns and one preheater kiln that existed in 1995. The demonstration shows that the kiln is maximizing fuel efficiency while minimizing NO_X emissions, consistent with EPA's ''Alternative Control Techniques Document—NO_X emissions from Cement Manufacturing'' (EPA–453/R94–004). The demonstration also shows that the overall emission rate change from 1995 to 2005 is well over 30 percent. In addition, low NO_X burners were installed on the kiln in 2006. VADEQ issued a State Operating Permit for the low NO_X burners on December 22, 2004, and on June 18, 2007 modified the operating permit to indicate that the preheater/precalciner configuration

with low NO_X burners implements the requirements of the NO_X SIP Call.

III. General Information Pertaining to SIP Submittals From the Commonwealth of Virgina

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. * * *'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

IV. Proposed Action

EPA's review of the submittals indicates that the Commonwealth of Virginia has met the additional emission reduction requirements to comply with its overall emissions budget under the NO_X SIP Call. The SIP revisions address Virginia's remaining obligations under the NO_X SIP Call, therefore, EPA proposes to approve them into the Virginia SIP. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

V. Statutory and Executive Order Reviews

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

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

In addition, this action proposing approval of Virginia's remaining emission reductions under the NO_X SIP Call does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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

Dated: August 14, 2008.

William T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. E8–19422 Filed 8–20–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1987–0002; FRL–8706–6]

National Oil and Hazardous Substance Pollution Contingency Plan National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent to Delete the Waste Inc. Landfill Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA), Region V is issuing a Notice of Intent to Delete the Waste Inc. Landfill Superfund Site (Site) located in Michigan City, Indiana from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Indiana, through the Indiana Department of Environmental Management (IDEM), have determined that all appropriate response actions under CERCLA, other than operation, maintenance, and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: Comments must be received by September 22, 2008.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1987–0002, by one of the following methods:

- *http://www.regulations.gov:* Follow on-line instructions for submitting comments.
- *E-mail:* Dion Novak, Remedial Project Manager, at *novak.dion@epa.gov* or Robert Paulson, Community Involvement Coordinator, at *paulson.robert@epa.gov*.
- *Fax:* Gladys Beard at (312) 886–4071.
- *Mail:* Dion Novak, Remedial Project Manager, U.S. Environmental Protection Agency (SR–6J), 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–4737, or Robert Paulson, Community Involvement Coordinator, U.S. Environmental Protection Agency (P–19J), 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–0272 or 1–800–621–8431.
- *Hand delivery:* Robert Paulson, Community Involvement Coordinator, U.S. Environmental Protection Agency (P–19J), 77 W. Jackson Blvd., Chicago, IL 60604. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–1987–0002. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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 statue. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at:

The Regional Office, U.S. Environmental Protection Agency, 77 W. Jackson Blvd., Chicago, IL 60604; official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays. Michigan City Public Library, 100 E. Fourth St., Michigan City, IN 46360, (815) 939–4564; Monday through Thursday, 9 a.m. to 8 p.m., and Friday and Saturday, 9 a.m. to 6 p.m.

FOR FURTHER INFORMATION CONTACT: Dion Novak, Remedial Project Manager, U.S. Environmental Protection Agency (SR–6J), 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–4737, *novak.dion@epa.gov*.

SUPPLEMENTARY INFORMATION: In the ''Rules and Regulations'' section of today's **Federal Register**, we are publishing a direct final Notice of Deletion of the Waste Inc. Landfill Superfund Site without prior Notice of Intent to Delete because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final Notice of Deletion, and those reasons are incorporated herein. If we receive no adverse comment(s) on this deletion action, we will not take further action on this Notice of Intent to Delete. If we receive adverse comment(s), we will withdraw the direct final Notice of Deletion, and it will not take effect. We will, as appropriate, address all public comments in a subsequent final Notice of Deletion based on this Notice of Intent to Delete. We will not institute a second comment period on this Notice of Intent to Delete. Any parties interested in commenting must do so at this time.

For additional information, see the direct final Notice of Deletion which is located in the *Rules* section of this **Federal Register**.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: August 7, 2008.

Walter W. Kovalick, Jr.,

Acting Regional Administrator, Region V.

[FR Doc. E8–19204 Filed 8–20–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[EPA–HQ–OPPT–2008–0382; FRL–8372–4]

RIN 2070–AJ40

Lead; Fees for Accreditation of Training Programs and Certification of Lead-Based Paint Activities and Renovation Contractors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is issuing this proposed rule to revise the existing fees for EPA's Lead-Based Paint Activities regulations and establish fees for the Renovation, Repair, and Painting rule. As specified in section 402 of the Toxic Substances Control Act (TSCA), EPA must establish and implement a fee schedule to recover for the U.S. Treasury the Agency's costs of administering and enforcing the standards and requirements applicable to lead-based paint training programs and contractors. Specifically, this proposed rule establishes the fees that will be charged, in those States and Indian Tribes without authorized programs, for training programs seeking accreditation under 40 CFR 745.225, for firms engaged in renovations seeking certification under 40 CFR 745.89, and for individuals or firms engaged in lead-based paint activities seeking certification under 40 CFR 745.226.

DATES: Comments must be received on or before September 22, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2008–0382, by one of the following methods:

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

• *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Hand Delivery*: OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2008–0382. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2008–0382. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line 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 regulations.gov or e-mail. The 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. 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 electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Marc Edmonds, National Program Chemicals Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 566–0758; e-mail address: *edmonds.marc@epa.gov*.

For authorization status information for States, Territories, and Indian tribes contact: National Lead Information Center (NLIC) at 1–800–424–LEAD.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you operate a training program required to be accredited under 40 CFR 745.225, if you are a firm who must be certified to conduct renovation activities in accordance with 40 CFR 745.89, or if you are a professional (individual or firm) who must be certified to conduct lead-based paint activities in accordance with 40 CFR 745.226.

This proposed rule applies only in States, Territories, and Indian Tribes that do not have authorized programs pursuant to 40 CFR 745.324. Potentially affected categories and entities may include, but are not limited to:

• Building construction (NAICS code 236), e.g., single family housing construction, multi-family housing construction, residential remodelers.

• Specialty trade contractors (NAICS code 238), e.g., plumbing, heating, and air-conditioning contractors, painting and wall covering contractors, electrical contractors, finish carpentry contractors, drywall and insulation contractors, siding contractors, tile and terrazzo contractors, glass and glazing contractors.

• Real estate (NAICS code 531), e.g., lessors of residential building and dwellings, residential property managers.

• Child day care services (NAICS code 624410).

• Elementary and secondary schools (NAICS code 611110), e.g., elementary schools with kindergarten classrooms.

• Other technical and trade schools (NAICS code 611519), e.g., training providers.

• Engineering services (NAICS code 541330) and building inspection services (NAICS code 541350), e.g., dust sampling technicians.

• Lead abatement professionals (NAICS code 562910), e.g., firms and supervisors engaged in lead-based paint activities.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in 40 CFR 745.89, 40 CFR 745.225, and 40 CFR 745.226. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

EPA is issuing this proposed rule for two reasons. First, EPA is proposing to revise the existing fees for training providers, firms, and individuals under the Lead-Based Paint Activities regulations. Second, EPA is proposing to establish fees for training providers and renovation firms under the recently issued Renovation, Repair, and Painting rule. As specified in TSCA section 402, EPA must establish and implement a fee schedule to recover for the U.S. Treasury the Agency's costs of administering and enforcing the standards and requirements applicable to lead-based paint training programs and contractors. Specifically, this proposed rule establishes the fees that will be charged, in those States and Indian Tribes without authorized programs, for training programs seeking accreditation under 40 CFR 745.225, for firms engaged in renovations seeking certification under 40 CFR 745.89, and for individuals or firms engaged in lead-based paint activities seeking certification under 40 CFR 745.226.

B. What is the Agency's Authority for Taking this Action?

This proposed rule is being issued under the authority of TSCA sections 402(a)(3) and 402(c)(3), 15 U.S.C. 2682(a)(3) and 2682(c)(3).

C. What Regulations Have Already Been Promulgated Under TSCA section 402?

In 1992, Congress found that low-level lead poisoning was widespread among American children, affecting, at that time, as many as 3,000,000 children under age 6; that the ingestion of household dust containing lead from deteriorating or abraded lead-based paint was the most common cause of lead poisoning in children; and that the health and development of children living in as many as 3,800,000 American homes was endangered by chipping or peeling lead paint, or excessive amounts of lead-contaminated dust in their homes. Congress further determined that the prior Federal response to this threat was insufficient and enacted Title X of the Housing and Community Development Act of 1992, Public Law 102–550 (also known as the Residential Lead-Based Paint Hazard Reduction Act of 1992) (Title X). Title X established a national goal of eliminating lead-based paint hazards in housing as expeditiously as possible and provided a leadership role for the Federal Government in building the infrastructure necessary to achieve this goal.

Title X added a new title to TSCA entitled ''Title IV–Lead Exposure Reduction.'' Most of EPA's responsibilities for addressing lead-based paint hazards can be found in this title, with TSCA section 402 being one source of the rulemaking authority to carry out these responsibilities. Section 402(a) of TSCA directs EPA to promulgate regulations covering lead-based paint activities to ensure persons performing these activities are properly trained, that training programs are accredited, and that contractors performing these activities are certified. These regulations must contain standards for performing lead-based paint activities, taking into account reliability, effectiveness, and safety. On August 29, 1996, EPA promulgated final regulations under TSCA section 402(a) that govern lead-based paint inspections, lead hazard screens, risk assessments, and abatements in target housing and child-occupied facilities (also referred to as the Lead-Based Paint Activities regulations) (Ref. 1). These regulations, codified at 40 CFR part 745, subpart L, contain an accreditation program for training providers and training and certification requirements for lead-based paint inspectors, risk assessors, project designers, abatement supervisors, and abatement workers. Work practice standards for lead-based paint activities are included. Pursuant to TSCA section 404, provision was made for interested States, Territories, and Indian Tribes to apply for and receive authorization to administer their own lead-based paint activities programs. Requirements applicable to State, Territorial, and Tribal programs are codified in 40 CFR part 745, subpart Q.

Section 402(a)(3) of TSCA directs the Agency to establish fees to recover the cost of administering and enforcing the standards and requirements established under TSCA section 402. Specifically, TSCA section 402(a)(3) requires EPA to impose fees on persons operating training programs accredited under Title IV of TSCA and contractors certified in accordance with TSCA section 402(a)(1). On June 9, 1999, 40 CFR part 745, subpart L, was amended to include a fee schedule for training programs seeking EPA accreditation and for individuals and firms seeking EPA certification (Ref. 2). These fees were established as directed by TSCA section 402(a)(3), which requires EPA to recover the cost of administering and enforcing the lead-based paint activities requirements in States without authorized programs.

Section 402(c) of TSCA pertains to renovation and remodeling activities. TSCA section 402(c)(3) requires EPA to revise the regulations issued under TSCA section 402(a), the Lead-Based Paint Activities regulations, to apply to renovation or remodeling activities that create lead-based paint hazards. On April 22, 2008, EPA issued a final regulation applying a revised version of the Lead-Based Paint Activities regulations to renovation, repair, and painting activities in target housing and child-occupied facilities (the Renovation, Repair, and Painting rule) (Ref. 3). Pursuant to the Renovation, Repair, and Painting rule, persons performing covered renovation activities must be properly trained, renovators and renovation firms must be certified, and persons who provide renovator training must be accredited. The requirements of the Renovation, Repair, and Painting rule become effective in stages with the entire rule becoming effective as of April 22, 2010.

D. How is EPA Proposing to Revise the Existing Fees?

40 CFR 745.238 contains the fee schedule established in 1999 for the Lead-Based Paint Activities regulations under TSCA section 402(a)(3). As discussed more fully in the economic analysis accompanying the final rule establishing the current fee schedule, EPA based a great deal of its administrative cost estimates on information from existing State lead-based paint certification and accreditation programs (Ref. 4). This was necessary because, at the time, EPA did not have direct experience in administering a lead-based paint accreditation and certification program. This is not the case today. EPA has been administering the Federal lead-based paint accreditation and certification program for nearly a decade. As a result, EPA has its own data upon which to rely to estimate the future costs of administering the program.

To estimate the costs of administering the accreditation and certification program, EPA followed the pattern used in the economic analysis for the 1999 fee schedule. EPA directly estimated total costs for enforcement activities and Headquarters administrative activities (e.g., the cost to maintain the Federal Lead-Based Paint Program (FLPP) database, the cost to enter data into the database), since these activities cannot be linked to specific applications. Enforcement cost estimates were generated based on the actual resources currently allocated for enforcement. EPA calculated the costs for Regional administrative activities on a per application basis, (e.g., the cost to review an application, the cost to issue a certificate), because these costs depend largely on the number and type of applications received. As described in the economic analysis for this proposed rule, the information pertaining to the Regional cost of processing applications was determined by observing and recording actual Regional application processing activities over a 30–day period (Ref. 5). The total program cost for EPA Regional administrative activities would be the sum of the EPA Regional administrative costs for each type of application multiplied by the total number of that type of application received.

Since 1999, EPA has made substantial changes in the way that it administers its accreditation and certification program. The transition to the FLPP database and the associated centralized data processing has resulted in a shift in processing costs from the Regions to Headquarters. Despite inflation that has increased the cost of government labor by 35 to 40% over this time interval, EPA's cost estimates for this proposed rule indicate that the overall costs of the abatement program have declined slightly in comparison to the estimates made in 1999. In addition, although the economic analysis for this proposed rule contains fee estimates broken down by particular discipline as well as by type of application, EPA's observation of Regional application processing activities indicated that there are not likely to be substantial differences in processing costs across the disciplines. Thus, EPA's initial estimates for the revised fees do not differentiate accreditation and certification fees by discipline (as is currently the case).

EPA's initial fee estimates are as follows, rounded to the nearest $10. These estimates are based on average Regional administrative costs by application type, and not by discipline, with the estimated enforcement costs and estimated Headquarters administrative costs apportioned equally across all activities.

- Accreditation for Initial Training Course—$730
- Accreditation for Refresher Training Course—$550
- Re-accreditation for Initial Training Course—$480
- Re-accreditation for Refresher Training Course—$430
- Initial firm certification—$410
- Firm re-certification—$410
- Individual certification—$410
- Individual re-certification—$410

EPA considered, but is not proposing to revise the existing fees to reflect these estimates. As discussed in this unit, EPA is proposing to adjust these estimates to lower individual certification and re-certification fees for workers and for Federally-recognized Indian Tribes and Tribal employees. Nevertheless, EPA requests comment on whether these estimated fees should be imposed without such an adjustment.

One reason that EPA is proposing to adjust its estimates to lower individual certification and re-certification fees is because commenters on the 1999 fee schedule expressed concern about the fee for individual worker certification. Several believed that the total impact of training, certification, and lost wages during training would be cost-prohibitive for workers, who are typically hourly wage-earners. Other commenters contended that workers would move from firm to firm and in and out of the business, which would make the proposed worker certification fee cost-prohibitive for firms. Finally, some commenters believed that the proposed worker certification fee has a disproportionately negative impact on efforts to train and certify low-income persons from the neighborhoods most affected by lead poisoning. As a result of these comments, EPA lowered the worker certification fee by adjusting the balance of administrative and enforcement costs not directly attributable to a particular application between workers and firms. Thus, in the final rule, the individual certification fees ranged from $520 for risk assessors to $280 for workers. Although EPA is not proposing to differentiate among the non-worker disciplines (i.e., between risk assessors and supervisors), EPA believes that the concerns pertaining to the worker discipline expressed by these commenters are likely to be equally applicable today.

In addition, EPA has received input from stakeholders that indicates that Indian Tribes may be having difficulty paying firm and individual certification fees. While TSCA section 402(a)(3) exempts State, local government, and non-profit training programs from Federal accreditation fees, it does not provide an exemption for certification fees. It is EPA's understanding that Indian Tribes typically incur certification fees for Tribal employees who perform lead-based paint inspections and risk assessments in Tribal housing. EPA estimates that only a small number of Indian Tribes and Tribal employees will seek certification each year to perform these activities. Accordingly, if EPA were to impose only a nominal certification fee on Tribal firms (Indian Tribes seeking firm certification) and Tribal employees, and apportion the remainder of the costs for these certifications across all of the other accreditation and certification activities, the impact on the resulting fee estimates for all of the other fee activities is negligible.

Therefore, in revising the existing fees, EPA is proposing to establish the fees for worker certification and re-certification at $100 less than other individual certifications and re-certifications. Because EPA must recover all of the estimated costs of operating the accreditation and certification program, this $100 reduction per expected worker certification or re-certification application must be recovered through fees charged for other applications. EPA believes that it would be more equitable to spread the costs represented by the $100 reduction over all of the fees charged to training course providers and firms. The proposed fee schedule set forth below does so. In addition, EPA is also proposing to establish nominal fees for firm certification and re-certification for Federally-recognized Indian Tribes and nominal fees for individual certification and re-certification for Tribal employees. Finally, EPA is also proposing to keep the certificate replacement fee at $15, the certification exam fee at $70 and the multi-jurisdiction registration fee at $35. Accordingly, EPA is proposing to revise the existing fees in 40 CFR 745.238 as follows:

- Accreditation for Initial Training Course—$870.
- Accreditation for Refresher Training Course—$690.
- Re-accreditation for Initial Training Course—$620.
- Re-accreditation for Refresher Training Course—$580.
- Initial firm certification—$550.
- Initial Tribal firm certification—$20.
- Firm re-certification—$550.
- Tribal firm re-certification—$20.
- Individual certification (for all disciplines except worker)—$410.
- Individual worker certification—$310.
- Individual Tribal certification (all disciplines)—$10.
- Individual re-certification (for all disciplines except worker)—$410.
- Individual worker re-certification—$310.
- Individual Tribal re-certification (all disciplines)—$10.

As discussed in the economic analysis for this proposed rule, the estimated enforcement costs and estimated Headquarters administrative costs are not directly attributable to a specific application. EPA considered apportioning those costs in such a way as to generate fee estimates that are more similar to the current fees. The fees in the following list are based on the average Regional administrative costs by application type with the estimated enforcement costs and estimated Headquarters administrative costs apportioned in a way that makes them similar to the current fees. Although EPA is not proposing to establish fees in this manner, such an apportionment results in the following estimates:

- Accreditation for Initial Training Course—$2,140.
- Accreditation for Refresher Training Course—$950.
- Re-accreditation for Initial Training Course—$1,350.
- Re-accreditation for Refresher Training Course—$650.
- Initial firm certification—$510.
- Firm re-certification—$410.
- Individual certification (for all disciplines except worker)—$440.
- Individual worker certification—$270.
- Individual re-certification (for all disciplines except worker)—$380.
- Individual worker re-certification—$230.

The apportionment of the estimated enforcement and Headquarters administrative costs in this way results in a substantially higher fee for accreditation and re-accreditation of training programs, as well as for firm certification. The individual certification and re-certification fees are correspondingly lower. EPA requests comment on whether the enforcement and Headquarters administrative costs should be apportioned this way to make the revised fees being proposed in this document more consistent with the existing fees.

E. What Renovation, Repair, and Painting Fees are being Proposed?

EPA interprets the language of TSCA section 402(c)(3), which requires EPA to revise the TSCA section 402(a) regulations to apply to renovation and remodeling activities that create lead-based paint hazards, to include the establishment of fees as directed by TSCA section 402(a)(3). Therefore, EPA is also proposing to establish fees for the accreditation and re-accreditation of persons who provide renovator or dust sampling technician training and fees for the certification and re-certification of renovation firms. In accordance with the Renovation, Repair, and Painting Rule, beginning on April 22, 2009, training course providers may apply to EPA for renovator or dust sampling technician course accreditation (Ref. 3). Renovation firms may begin applying for certification to perform renovation, repair, and painting activities on October 22, 2009.

EPA's method for estimating fees to recover the costs of administering the renovation, repair, and painting accreditation and certification program is similar to the method used to estimate the proposed revisions to the existing fees in 40 CFR 745.238. Because the training provider accreditation and firm certification processes are virtually identical under the Lead-Based Paint Activities regulations and the Renovation, Repair, and Painting rule, EPA used the same estimates for Regional administrative costs in calculating all of the fees being proposed in this action. However, because the substantive provisions of the Renovation, Repair, and Painting rule will not be fully implemented until April 2010, EPA does not have actual application totals upon which to base its estimates of the number of accreditation and certification applications that will be received in the future. In addition, EPA is not currently conducting enforcement activities related to the Renovation, Repair, and Painting Program, so the enforcement costs for the program must be estimated based on projected EPA resources to be devoted to enforcement of the program, rather than on actual enforcement activities. As for the initial estimates for the Lead-Based Paint Activities regulations accreditation and certification fees, the estimated enforcement costs and estimated Headquarters administrative costs for the Renovation, Repair, and Painting rule accreditation and certification program have been apportioned equally across all activities. A more detailed description of how these costs were calculated is presented

in the economic analysis for this proposed rule (Ref. 5). Based upon its estimate of the costs of administering the Renovation, Repair, and Painting Program, EPA is proposing to establish the following fees:

- Accreditation for Initial Renovator or Dust Sampling Technician Course—$560.
- Accreditation for Refresher Renovator or Dust Sampling Technician Course—$400.
- Re-accreditation for Initial Renovator or Dust Sampling Technician Course—$340.
- Re-accreditation for Refresher Renovator or Dust Sampling Technician Course—$310.
- Initial renovation firm certification—$300.
- Initial Tribal renovation firm certification—$20.
- Renovation firm re-certification—$300.
- Tribal renovation firm re-certification—$20.

EPA is not proposing to establish individual certification and re-certification fees because the Renovation, Repair, and Painting rule does not require individuals to apply to EPA for certification. Eliminating this requirement also eliminates a significant portion of the Regional and Headquarters administrative costs that would have to be recovered by a certification fee. The portion of the enforcement costs that would have been attributed to individuals has been distributed evenly across the Renovation, Repair, and Painting Program fees for training provider accreditation and firm certification.

EPA's economic analysis for this proposed rule calculates administrative and enforcement costs for the Lead-Based Paint Activities regulations separately from those costs for the Renovation, Repair, and Painting rule. This is primarily due to the differences in estimation methods necessary for an existing, mature program, the Lead-Based Paint Activities regulations, as compared to a new program for which implementation has not yet begun. This approach results in similar fees for firm certification and re-certification under the two programs, but the Renovation, Repair, and Painting Program accreditation and re-accreditation fees are considerably lower than the corresponding fees for the Lead-Based Paint Activities regulations. The administrative and enforcement cost estimates for these two programs could be combined to yield accreditation, re-accreditation, firm certification, and firm re-certification fees that are the same for both programs. EPA requests comment on whether the estimated costs for these two programs should be combined in such a manner. Commenters should keep in mind that the 212,000 renovation firm certification applications that EPA expects to receive in the first year of the Renovation, Repair, and Painting Program vastly outweigh the numbers of other types of applications under either regulation that EPA expects to receive in the same time period. As a result, modest adjustments in either direction to the renovation firm certification fees will result in dramatic changes to the accreditation fees.

Although EPA believes that this action will not have a significant economic impact on a substantial number of small entities, the Agency understands that many of the firms that must comply with the Renovation, Repair, and Painting rule will be sole proprietors, many of which earn low annual revenues. EPA estimates that, of the 211,721 firms seeking certification, approximately 104,712 of them are sole proprietorships with no employees. Because the fees associated with the rule will have the greatest impact on firms earning low revenues, the Agency is considering reducing the certification fee for renovation firms that have annual revenues below $25,000 based on gross receipts.

EPA requests comment on whether firms with annual revenues below $25,000 should pay a reduced firm certification fee of $100. This reduction would be offset by increasing the fees for the other firms and/or training providers. If the reduction is passed on to other firms that do not qualify for the lower fee, these firms would pay a certification fee of $370. EPA requests comment on reducing fees for certain small businesses, whether these fees would be appropriate, what level of revenue should trigger the lower fee, or whether a measure other than gross receipts, such as number of employees, should be used to determine who qualifies for the reduced fee. The Agency also requests comment on how the reduction in fees should be distributed between training providers and firms.

When EPA estimated the number of firms that would qualify for the reduced certification fee, the Agency used data from the U.S. Census Bureau and a study published by the Joint Center for Housing Studies of Harvard University for estimates of the total numbers of firms that are sole proprietorships and earn below $25,000 annually. EPA also relied on the following assumption from the Economic Analysis for the final Renovation, Repair, and Painting rule regarding which lessors and property managers would seek firm certification which states ''that only establishments with employees are expected to seek certification; non-employers are unlikely to have the time or manpower to perform renovations themselves and are more likely to hire an outside contractor for work that disturbs more than 6 square feet of a painted surface.'' EPA solicits comments on its numerical estimates of the numbers of lessors and property managers, including those without employees, that will require firm certification. The Agency is particularly interested in any data that would help in refining these estimates.

EPA also requests comments on whether the final rule should establish lower Federal fees for State and local governments seeking firm certification and their employees seeking individual certification. These governments are already exempt under TSCA section 402(a)(3) from paying Federal accreditation fees and EPA believes some additional cost savings may be justified. The Agency is aware that State and local governments may spend a significant portion of abatement program funds on certifications thereby reducing funds available for performing important public services related to abatements. To address this funding issue, EPA is considering lowering the Federal certification fees for State and local governments under the Lead-Based Paint Activities regulations and Renovation, Repair, and Painting rule. For example, governments could pay 50% of the firm and individual fees proposed in this action. If fees are decreased for governments then fees for non-government firms and individuals would have to be increased. At this time the Agency does not know how many State and local governments fall under this proposed rule and thus can not estimate how a decrease in fees for governments would effect other fees. Thus, EPA requests comment on whether certification fees should be lower for State and local governments and their employees, what those fees should be, and how to apportion the remainder of the costs for these certifications across all of the other accreditation and certification activities. The Agency also requests comment on how many State and local government firms and individuals must comply with the Lead-Based Paint Activities regulations and Renovation, Repair, and Painting rule. This information would help EPA determine the impact that lowering the fees for governments would have on accreditation and certification fees for non-government entities.

III. References

The following is a list of the documents that are specifically referenced in this proposed rule and placed in the public docket that was established under docket ID number EPA–HQ–OPPT–2008–0382. For information on accessing the docket, refer to the **ADDRESSES** unit.

1. EPA. Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities. Final Rule. **Federal Register** (61 FR 45778, August 29, 1996) (FRL–5389–9).
2. EPA. Lead; Fees for Accreditation of Training Programs and Certification of Lead-based Paint Activities Contractors. Final Rule. **Federal Register** (64 FR 31092, June 9, 1999) (FRL–6058–6).
3. EPA. Lead; Renovation, Repair, and Painting Program. Final Rule. **Federal Register** (73 FR 21692, April 22, 2008) (FRL–8355–7)
4. EPA. Office of Pollution Prevention and Toxics (OPPT). Economic Analysis of the Final TSCA Section 402(a)(3) Lead-based Paint Accreditation and Certification Fee Rule (February 1999).
5. EPA. OPPT. Economic Analysis for the TSCA Section 402 Lead-Based Paint Accreditation and Certification Fee Rule (June 2008).

IV. Statutory and Executive Order Reviews

A. Executive Order 12866

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993) and is therefore not subject to review under the Executive Order. EPA has prepared an economic analysis of the potential impact of this action. The impact of the fees for the Lead-based Paint Activities regulations is estimated to be $1.2 million per year, or $6.1 million over the next 5 years. The impact of the fees for the Renovation, Repair, and Painting Program is estimated to be $61 million in the first year, and $22 million in each of the following 4 years, or $150 million over the next 5 years. EPA's analysis is contained in a document entitled *Economic Analysis of the TSCA Section 402 Lead-Based Paint Accreditation and Certification Fee Rule*. This document is available as a part of the public docket for this action.

B. Paperwork Reduction Act

This action does not impose any new information collection burden because this proposal would merely establish fees associated with previously promulgated accreditation and certification application requirements. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in 40 CFR part 745, subpart E and subpart L, under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2070–0155 (EPA ICR number 1715). The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined in accordance with section 601 of RFA as:

1. A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201.
2. A small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000.
3. A small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities that are potentially directly regulated by this proposed rule include: Small businesses (including abatement and renovation contractors, environmental testing firms, and property owners and managers); small nonprofits (including day care centers, private schools, and advocacy groups); and small governments (local governments, school districts).

This proposal would result in a slight overall decrease in the fees currently assessed under the Lead-Based Paint Activities regulations. Fees for training providers will decrease with the exception of the project designer course refresher. Individual fees will decrease for the certification and recertification of risk assessors, and the certification of supervisors and project designers. Consequently, EPA estimates that this portion of the proposed rule will have no adverse impact on small entities; in fact the small entities affected by the proposed rule will incur cost savings. With respect to the fees for the Renovation, Repair, and Painting rule, EPA estimates that there are an average of 204,958 small entities that would be affected by this proposed rule. Of these, there are an estimated 179,820 small businesses with an average impact ranging from 0.007% to 0.220%, 18,088 small non-profits with an average impact ranging from 0.006% to 0.097%, and 7,050 small governments with an average impact ranging from 0.0004% to 0.002%.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this proposed rule on small entities. In response to concerns about impacts on abatement workers and the firms that employ them, EPA is proposing reduced fees for worker certification. However, TSCA section 402(a)(3) requires EPA to recover the costs of administering its lead training course provider accreditation and contractor certification program through fees. To the extent that EPA lowers accreditation or certification fees for small businesses (or some subset of small businesses), larger businesses would be required to contribute more. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 of UMRA do not apply when they are inconsistent with applicable law. Moreover, section 205 of UMRA allows

EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any 1 year. EPA has prepared an economic analysis of the potential impact of this action, which is estimated to be $156 million over the next 5 years which is an average of $31 million per year. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of UMRA.

In addition, EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. Small governments may perform lead-based paint inspections, risk assessments, or abatements, or operate schools that are child-occupied facilities. EPA generally measures a significant impact under UMRA as being expenditures, in the aggregate, of more than 1% of small government revenues in any 1 year. As explained in Unit III.C., the proposed rule is expected to result in small government impacts well under 1% of revenues. So EPA has determined that the proposed rule does not significantly affect small governments. Nor does the proposed rule uniquely affect small governments, as the proposed rule is not targeted at small governments, does not primarily affect small governments, and does not impose a different burden on small governments than on other entities that perform regulated activities.

E. Federalism

Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposal merely seeks to establish fees, as required by TSCA sections 402(a)(3) and 402(c)(3), to recover the costs of administering the previously promulgated Federal lead-based paint accreditation and certification programs. Thus, Executive Order 13132 does not apply to this proposed rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Tribal Implications

Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 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, because this proposal would only establish fees, as required by TSCA section 402(a)(3) and 402(c)(3), to recover the costs of administering the previously promulgated Federal Lead-Based Paint Accreditation and Certification Programs. Thus, Executive Order 13175 does not apply to this proposed rule. Nonetheless, EPA specifically solicits additional comment on this proposed rule from Tribal officials.

G. Children's Health Protection

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This proposal merely seeks to establish fees, as required by TSCA sections 402(a)(3) and 402(c)(3), to recover the costs of administering the previously promulgated Federal lead-based paint accreditation and certification programs.

H. Energy Effects

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. Technology Standards

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Environmental Justice

Executive Order 12898, entitled, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations

because it does not affect the level of protection provided to human health or the environment. This proposal merely seeks to establish fees, as required by TSCA sections 402(a)(3) and 402(c)(3), to recover the costs of administering the previously promulgated Federal lead-based paint accreditation and certification programs.

List of Subjects in 40 CFR Part 745

Environmental protection, Fees, Lead, Lead-based paint, Renovation.

Dated: August 13, 2008.

Stephen L. Johnson,

Administrator.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 745—[AMENDED]

1. The authority citation for part 745 would continue to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2681–2692 and 42 U.S.C. 4852d.

2. Section 745.92 is added to subpart E to read as follows:

§ 745.92 Fees for the accreditation of renovation and dust sampling technician training and the certification of renovation firms.

(a) *Persons who must pay fees.* Fees in accordance with paragraph (b) of this section must be paid by:

(1) *Training programs.* (i) All non-exempt training programs applying to EPA for the accreditation and re-accreditation of training programs in one or more of the following disciplines: Renovator, dust sampling technician.

(ii) *Exemption.* No fee shall be imposed on any training program operated by a State, federally recognized Indian Tribe, local government, or nonprofit organization. This exemption does not apply to the certification of firms or individuals.

(2) *Firms.* All firms applying to EPA for certification and re-certification to conduct renovations.

(b) *Fee amounts*—(1) *Certification and accreditation fees.* Initial and renewal certification and accreditation fees are specified in the following table:

CERTIFICATION AND ACCREDITATION FEE LEVELS

Training Program	Accreditation	Re-accreditation (every 4 years)
Initial Renovator or Dust Sampling Technician Course	$560	$340
Refresher Renovator or Dust Sampling Technician Course	$400	$310
Renovation Firm	Certification	Re-certification (every 5 years)
Firm	$300	$300
Tribal Firm	$20	$20

(2) *Lost certificate.* A $15 fee will be charged for the replacement of a firm certificate.

(c) *Certificate replacement.* Firms seeking certificate replacement must:

(1) Complete the applicable portions of the ''Application for Firms'' in accordance with the instructions provided.

(2) Submit the application and a payment of $15 in accordance with the instructions provided with the application package.

(d) *Failure to remit fees.* (1) EPA will not provide certification, re-certification, accreditation, or re-accreditation for any firm or training program that does not remit fees described in paragraph (b) of this section in accordance with the procedures specified in 40 CFR 745.89.

(2) EPA will not replace a certificate for any firm that does not remit the $15 fee in accordance with the procedures specified in paragraph (c) of this section.

3. Section 745.238 of subpart L is amended as follows:

a. Revise the table in paragraph (c)(1).

b. Remove the phrase ''to Conduct Lead-based Paint Activities'' in paragraph (d)(1)(ii).

c. Remove the phrase ''to Conduct Lead-based Paint Activities'' in paragraph (e)(1)(ii).

§ 745.238 Fees for accreditation and certification of lead-based paint activities.

* * * * *

(c) * * *

(1) * * *

CERTIFICATION AND ACCREDITATION FEE LEVELS

Training Program	Accreditation	Re-accreditation (every 4 years, see 40 CFR 745.225(f)(1) for details)
Initial Course		
Inspector	$870	$620
Risk assessor	$870	$620
Supervisor	$870	$620
Worker	$870	$620
Project Designer	$870	$620
Refresher Course		
Inspector	$690	$580
Risk assessor	$690	$580
Supervisor	$690	$580
Worker	$690	$580
Project Designer	$690	$580

CERTIFICATION AND ACCREDITATION FEE LEVELS—Continued

Training Program	Accreditation	Re-accreditation (every 4 years, see 40 CFR 745.225(f)(1) for details)
Lead-based Paint Activities—Individual	Certification	Re-certification (every 3 years, see 40 CFR 745.226(e)(1) for details)
Inspector	$410	$410
Risk assessor	$410	$410
Supervisor	$410	$410
Worker	$310	$310
Project designer	$410	$410
Tribal certification (all disciplines)	$10	$10
Lead-based Paint Activities—Firm	Certification	Re-certification (every 3 years, see 40 CFR 745.226(f)(7) for details)
Firm	$550	$550
Tribal Firm	$20	$20

* * * * *

[FR Doc. E8–19432 Filed 8–20–08; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 22

[Docket No: OST–2008–0236]

RIN 2105–AD50

Short-Term Lending Program (STLP)

AGENCY: Office of the Secretary (OST), Office of Small and Disadvantaged Business Utilization.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: In an effort to financially assist Disadvantaged Business Enterprises (DBEs) and other certified small and disadvantaged business (SDBs) in their execution of transportation related contracts at the local, state and federal levels, the Department of Transportation's (DOT) Office of Small and Disadvantaged Business Utilization (OSDBU) has developed the Short-Term Lending Program (STLP), under which DOT guarantees short-term lines of credit for said businesses. The program is administered through cooperative agreements between DOT's OSDBU and Participating Lenders and under the STLP's governing policies and procedures. This NPRM proposes new rules to govern the STLP.

DATES: Comments on the proposed rules must be received by October 20, 2008. Late comments will be considered to the extent practicable.

ADDRESSES: You may submit comments to this rule by any of the following methods:

- *Agency Web site: http://dms.dot.gov:* Follow the instructions for submitting comments on the Web site.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, U.S. Department of Transportation, 1200 New Jersey Ave., SE., West Building Ground Floor, Room 140, Washington, DC 20590.
- *Hand Delivery:* Room 140 on the ground floor of the West Building Ground Floor, 1200 New Jersey Ave., SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Nancy Strine, Financial Assistance Division Manager, U.S Department of Transportation, OSDBU, 1200 New Jersey Ave, SE., Room W56–497, Washington, DC 20590. Telephone: (800) 532–1169 ext. 65343 or (202) 366–5343.

SUPPLEMENTARY INFORMATION:

Background

The Director of DOT's OSDBU has been delegated to carry out the functions vested in the Secretary of Transportation by section 906 of the Railroad Revitalization and Regulatory Reform Act of 1976 (Pub. L. 940–210, as amended) known as the Minority Business Resource Center Program, which includes a guaranteed loan program. 49 U.S.C. 332 authorizes DOT's OSDBU to establish, under the Minority Resource Center, programs that would assist DBEs and SDBs in acquiring access to working capital and to debt financing, in order to obtain transportation-related contracts wholly or partially funded by DOT. To implement this authority, OSDBU developed its Short Term Lending Program (STLP) which offers DBE's and other certified small and disadvantaged businesses short term working capital loans at variable interest rates to perform on these transportation-related contracts.

Initially developed in 1989 as a direct loan program, the STLP was converted in 2001 to a loan guarantee program under which, private sector Participating Lenders (PLs) offer loans with a government guarantee of up to 75 percent for qualified applicants.

These loans are revolving lines of credit that provide working capital funds to assist the borrower in financing the direct labor and material costs of completing transportation contracts. The contracts that are funded are assigned to the loan as collateral, and the PL advances monies up to 85% of eligible and approved Accounts Receivable that arise from the Assigned Contract(s). The contracts must be transportation-related and receive DOT funding. Repayment comes in the form of a two-party check to the borrower and to the PL directly from the contract proceeds. The total length of time that an eligible borrower may remain in the program cannot exceed a total of five years.

DOT monitors these loans, which require contract assignments and direct joint payee check remittances for principal repayment, through its relationship with the transportation agencies and recipients that receive DOT funds and the Participating Lenders (PLs).

The STLP has undergone an extensive program review to improve its business processes and achieve operational and financial efficiencies. As part of this effort, DOT is proposing regulations to replace the internal policies and guidelines currently used to manage the program.

In recent years the total funds available for full principal amount of loans under the STLP has been limited to $18,367,000 per fiscal year.

Section-by-Section Analysis

The proposed regulations utilize objective, plain language in an attempt to make the regulations more understandable to Participating Lenders, Small and Disadvantaged Business Enterprises and other small and disadvantaged businesses.

Sec. 22.1 Purpose: The purpose of the DOT OSDBU STLP is to provide financial assistance in the form of a short-term loan from Participating Lenders that is guaranteed by DOT OSDBU, to DBE's and other certified small businesses for the execution of DOT funded and supported transportation related contracts.

Sec. 22.3 Definitions: This section contains definitions of common banking and lending terminology as included in STLP documents and the STLP Policy and Procedure Manual.

Sec. 22.11 Eligibility Criteria: Paragraph (a) defines those requirements needed in order to qualify for a STLP loan. Paragraph (b) clarifies what instrument qualifies as a ''transportation-related contract,'' and paragraph (c) explains the maximum length of time in which a qualified business may remain as an STLP borrower, as well as what circumstances and documentation are required on an annual basis in order to remain eligible.

Sec. 22.13 Loan Terms and Conditions: Section 22.13 describes the parameters of the Short Term Lending Program, including: maximum loan amount, interest rates, the term and structure of the loan, source of funds for loan repayment, allowable uses of the loan proceeds, how loan disbursements are made, as well as any personal guarantees, collateral or insurance.

Sec. 22.15 Delinquency on Federal, State, or Municipality Debt: This section provides that the borrower must be current on all federal, state, and local taxes to be able to participate in the program.

Sec. 22.17 Compliance with Child Support Obligations: Indicates that pursuant to the Office of Management and Budget (OMB) Circular No. A–129, Revised (Policies for Federal Credit Programs and Non-Tax Receivables), individuals that are subject to administrative offset to collect delinquent child support payments are not eligible for Federal financial assistance. Therefore, STLP applicants must submit a negative certification to this effect.

Sec. 22.19 Credit Criteria: Section 22.19 describes the required creditworthiness of an STLP applicant, and lists those aspects of creditworthiness that OSDBU will consider in its evaluation of an STLP application.

Sec. 22.21 Participation Criteria: Section 22.21 describes the criteria for banks in order to qualify as STLP Participating Lenders, including certifications, documentation, history of community involvement, loan experience, and the ability to implement, monitor and manage this loan program.

Sec. 22.23 Agreement: Section 22.23 describes the Cooperative Agreement that is executed between U.S. DOT and the Participating Lender that defines the relationship between the two, as well as the responsibilities and obligations of each party with regard to the STLP.

Sec. 22.25 Lender Deliverables and Delivery Schedule: This section describes the obligation of the Participating Lenders to adhere to established deadlines for actions such as, the submission of periodic reports and site visits.

Sec. 22.27 Eligible Reimbursements to PLs: Section 22.27 describes the fees and expenses that are eligible for reimbursement to the Participating Lenders.

Sec. 22.29 DOT OSDBU Access to PLs' Files: Section 22.29 describes the policy that governs DOT access to Participating Lender records and files.

Sec. 22.31 Suspension or Revocation of Eligibility to Participate: This section describes the circumstances under which the STLP eligibility of a Participating Lender may be suspended or revoked, and the notification procedure for such an action.

Sec. 22.33 Termination of Participation in STLP: Section 22.33 explains the situations, under which the cooperative agreement between DOT OSDBU and the Participating Lender may be terminated, by either party, and the notification procedure for such action.

Sec. 22.41 Application Procedures: Describes the complete STLP application process, the supporting documentation that must accompany the STLP application, and the submission process of the application to the Participating Lender.

Sec. 22.43 Approval or Denial: Section 22.43 describes what will occur when an application is approved or denied, and the method of notification.

Sec. 22.45 Allowable Fees to Borrowers: This section describes those fees that a Participating Lender may collect from the borrower.

Sec. 22.51 Loan Closing: Section 22.51 discusses the process that the Participating Lender must follow for the closing of an STLP loan.

Sec. 22.53 Loan Monitoring and Servicing Requirements: Section 22.53 describes what is required of the Participating Lender insofar as the monitoring and servicing of an STLP loan.

Sec. 22.57 Loan Reporting Requirements: Section 22.57 clarifies that the STLP loan is subject to the Federal Credit Reform Act of 1990, and describes those reporting requirements that a Participating Lender must undertake to keep DOT OSDBU informed of the borrower's compliance with the terms of the STLP loan.

Sec. 22.59 Loan Modifications: Describes the procedure that the Participating Lender must follow for any proposed modifications of the terms of the guarantee agreement between DOT OSDBU and the Participating Lender.

Sec. 22.61 Loan Guarantee Extensions: Section 22.61 describes the process under which an extension of the loan guarantee extension may be requested and granted.

Sec. 22.63 Loan Close Outs: Section 22. 63 describes the process for closing out a loan that has been fully repaid.

Sec. 22.65 Subordination: Section 22.65 describes the parameters of a subordination of the line of credit in which the debt guarantee of DOT OSDBU has priority over any other debt of the borrower.

Sec. 22.67 Delinquent Loans and Loan Defaults: This section describes the notification procedure that a Participating Lender must undertake whenever an STLP loan is delinquent. This section also indicates the possible collection or litigation processes that are available in the event of loan delinquency or default.

Sec. 22.69 Claim Process: Section 22.69 describes the action that the Participating Lender may take once all means for the collection of a delinquent debt have been exhausted.

Regulatory Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review)

This proposed 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 the Order, as it does not have an annual effect on the economy of $100 million or more, nor affect the economy adversely; does not interfere or cause a serious

inconsistency with any action or plan of another agency; does not materially alter the impact of entitlements, grants, user fees or loan programs; and does raise novel legal or policy issues.

Executive Order 12372 (Intergovernmental Review)

The STLP is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials that would provide the non-Federal funds for, or that would be directly affected by, proposed Federal financial assistance or direct Federal development, as the STLP program facilitates the participation of small and disadvantaged businesses in fully or partially federally funded local and state transportation projects.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the Department certifies that this rule will not have a significant economic impact on a substantial number of small entities. Some provisions published as a part of this rule are, in fact, a benefit to small entities. The STLP provides a loan guarantee for DBEs and SDBs who require financial assistance to perform on transportation-related contracts. Since this rule has no significant economic impact on a substantial number of small entities, a regulatory flexibility analysis was not performed.

Executive Order 13132 (Federalism)

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under the Order and have determined that it does not have implications for federalism, as the loan program creates relationships and obligations between a borrower (usually a sub-contractor), a prime contractor, a Participating Lender and DOT/OSDBU only.

Paperwork Reduction Act

DOT/OSDBU invites public comment about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under Supplementary Information. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act (PRA) of 1995.

It is estimated that the total burden hours for 100 Participating Lenders to qualify as such, monitor loans, comply with monthly reporting and retain loan records to be approximately 8,000 hours per year. It is estimated that the total burden hours for 100 borrowers to complete the STLP application, with supporting documentation, loan renewals and the submission of the same, to be approximately 2,700 hours.

Title: Short Term Lending Program—Participating Lenders—Qualifying Criteria

Background: OSDBU's Short Term Lending Program (STLP) offers certified Disadvantaged Business Enterprises (DBEs) and other Certified Small Businesses (8a, women-owned, small disadvantaged, HubZone, veteran-owned, and service-disabled veteran-owned) the opportunity to obtain short-term working capital at prime interest rates for transportation-related projects. The STLP provides up to a 75% guaranteed revolving line of credit for a maximum of $750,000 to finance accounts receivable arising from transportation-related contracts. The primary collateral consists of the proceeds of the transportation-related contracts. These loans are provided through banks that serve as STLP Participating Lenders (PL).

PL Qualifying Criteria

As a requirement for approval as a PL, banks must submit documentation that demonstrates:

(A) Their philosophy and history of lending to small and disadvantaged businesses in their communities. As part of their submission, the bank must show these efforts in relationship to its overall lending portfolio.

Respondents: 100.
Frequency: Once.
Estimated Average Burden per Response: 3 hours.
Estimated Total Annual Burden Hours: 300 hours.

(B) Their experience in administering monitored lines of credit, such as construction loans, accounts receivable financing, and/or contract financing for at least two years. Such experience should be held by any PL representative managing, reviewing or authorizing STLP loan portfolios.

Respondents: 100.
Frequency: Once.
Estimated Average Burden per Response: ½ hour.
Estimated Total Annual Burden Hours: 50 hours.

(C) At least two (2) years experience with other federal government lending programs such as U.S. Small Business Administration (SBA), Agriculture Rural Development, Bureau of Indian Affairs (BIA), Economic Development Administration (EDA), Department of Housing and Urban Development (HUD), Export Import Bank of the United States and/or state loan programs.

Respondents: 100.
Frequency: Once.
Estimated Average Burden per Response: ½ hour.
Estimated Total Annual Burden Hours: 50 hours.

(D) At least a satisfactory or better Community Reinvestment Act (CRA) rating.

Respondents: 100.
Frequency: Once.
Estimated Average Burden per Response: 15 minutes.
Estimated Total Annual Burden Hours: 25 hours.

(E) The ability to implement, monitor and manage a two-party payee check system, in which the PL and borrower are joint payees of any checks paid to the borrower for performance under the assigned contract(s).

Respondents: 100.
Frequency: Once.
Estimated Average Burden per Response: 15 minutes.
Estimated Total Annual Burden Hours: 25 hours.

(F) That it is not currently debarred or suspended from participation in a government contract or delinquent on a government debt by submitting a current SBA Form 1624 or its equivalent. The SBA Form 1624 is available at *http://www.sba.gov/sbaforms/sba1624.pdf.* (see Appendix E)

Respondents: 100.
Frequency: Once.
Estimated Average Burden per Response: 15 minutes.
Estimated Total Annual Burden Hours: 25 hours.

(G) That it is a drug-free workplace by executing a Certification of Compliance concerning a drug-free workplace. The Certification is provided by OSDBU. (see Appendix C)

Respondents: 100.
Frequency: Once.
Estimated Average Burden per Response: 15 minutes.
Estimated Total Annual Burden Hours: 25 hours.

(H) That no Federal funds will be utilized for lobbying by executing a Certificate Regarding Lobbying in compliance with Section 1352, Title 21, of the U.S. Code. The Certificate is provided by OSDBU. (see Appendix D)

Respondents: 100.
Frequency: Once.
Estimated Average Burden per Response: 15 minutes.
Estimated Total Annual Burden Hours: 25 hours.

PL Record Retention

A PL must allow the authorized representatives of OSDBU, as well as representatives of the Office of Inspector General (OIG) and General Accountability Office (GAO), access to its STLP loan files to review, inspect, and copy all records and documents pertaining to OSDBU guaranteed loans. The PL shall retain all documents, files, books, and records relevant to the execution and implementation of the terms of their Cooperative Agreement with OSDBU for a period of not less than three years from the date of termination of the Cooperative Agreement or payment in full from the borrower; except, if any litigation, collection action, or audit is commenced. In these cases, records and other materials shall be retained until the litigation, collection action, or audit is judicially or administratively final.

Respondents: 100.

Frequency: Annually.

Estimated Average Burden per Response: ½ hour.

Estimated Total Annual Burden Hours: 50 hours.

PL Reporting Requirements

The STLP is subject to the requirements of the Federal Credit Reform Act of 1990 (FCRA) that includes certain budgeting and accounting requirements for Federal credit programs. The PL must undertake processes to activate, monitor, service and close-out STLP loans. To fulfill the requirements of FCRA, the PL must submit regular reports and required documentation to OSDBU on these processes.

(A) Loan Activation: The PL must submit to OSDBU a Loan Activation Form that indicates the date in which the loan has been activated/funded. The form is provided by OSDBU. (see Appendix A)

Respondents: 100.

Frequency: Annually, up to five years.

Estimated Average Burden per Response: ½ hour.

Estimated Total Annual Burden Hours: 50 hours.

(B) Loan Close-out: The PL must submit to OSDBU a Loan Close-out Form upon full repayment of the STLP loan, or upon expiration of the loan guarantee. The form is provided by OSDBU. (See Appendix B.)

Respondents: 100.

Frequency: Annually.

Estimated Average Burden per Response: ½ hour.

Estimated Total Annual Burden Hours: 50 hours.

(C) Monthly Reporting Requirement: PL must submit each month to OSDBU a status report of pending loans and guaranteed loans including the previous month's activity for these loans. The forms are provided by OSDBU.

Respondents: 100.

Frequency: Monthly.

Estimated Average Burden per Response: 1 hour.

Estimated Total Annual Burden Hours: 1200 hours.

(D) Call Reports or Thrift Financial Reports: PLs shall provide two copies of their quarterly Reports of Condition and Income (Federal Financial Institutions Examination Council—FFIEC Form 041), or quarterly Thrift Financial Reports (Office of Thrift Supervision—OTS Form 1313) within 60 days after the close of each calendar quarter.

Respondents: 100.

Frequency: Quarterly.

Estimated Average Burden per Response: 15 minutes.

Estimated Total Annual Burden Hours: 100 hours.

(E) Credit verification: When a PL submits to OSDBU an approved loan package, the same must be accompanied by the PL's internal credit approval memo, credit analysis, and any other third-party credit verifications obtained for the processing of the loan application.

Respondents: 100.

Frequency: For each loan submitted (minimum 1, approximate maximum 5).

Estimated Average Burden per Response: 12 hours.

Estimated Total Annual Burden Hours: (1200, 6000).

(F) Loan Guarantee Extension: An extension of the original loan guarantee for a maximum period of ninety (90) days may be requested, in writing, by the PL using the STLP Extension Request Form. The form is provided by OSDBU. (See Appendix F.)

Respondents: 100.

Frequency: Annually.

Estimated Average Burden per Response: ½ hour.

Estimated Total Annual Burden Hours: 50 hours.

Loan Application Process—Loan Renewal

A current STLP participant may submit a guaranteed loan renewal application package, comprised of an updated loan application, with supporting documentation.

(A) Updated loan application form. The application may be obtained directly from OSDBU, from a current PL, or online from the agency's Web site currently at *http://osdbu.dot.gov/documents/pdf/stlp/stlpapp.pdf.*

Respondents: 100.

Frequency: Annually, up to five years.

Estimated Average Burden per Response: 8 hours.

Estimated Total Annual Burden Hours: 800 hours.

(B) Application supporting documentation. Supporting documentation may include, but is not limited to, the following items:

a. Current job performance reference letter (within the past 12 months);

b. Evidence of current DBE and/or other eligible certification;

c. Business tax returns for the most recent fiscal year;

d. Business financial statements for the most recent fiscal year;

e. If the business' last fiscal year has ended longer than 90 days at the time of application, then applicant must submit interim business financial statements to include balance sheet, P&L and updated aging reports of both receivables and payables;

f. Current work in progress schedule or statement;

g. Personal income tax returns;

h. Personal financial statements;

i. Signed and dated copy of transportation-related contracts to be used as collateral; and

j. Updated cash flow projections;

Respondents: 100.

Frequency: Annually, up to five years.

Estimated Average Burden per Response: 4 hours.

Estimated Total Annual Burden Hours: 400 hours.

New Loan Application Process

A potential STLP participant must submit a guaranteed loan application package, comprised of a loan application, with supporting documentation.

(A) Completed loan application form. The application may be obtained directly from OSDBU, from a current PL, or online from the agency's Web site currently at *http://osdbu.dot.gov/documents/pdf/stlp/stlpapp.pdf.*

Respondents: 100.

Frequency: Once.

Estimated Average Burden per Response: 2 hours.

Estimated Total Annual Burden Hours: 200 hours.

(B) New loan application supporting documentation may include, but is not limited to, the following items:

a. Business, trade or job performance reference letters;

b. DBE or other eligible certification letters;

c. Signed and dated borrower certification that all federal, state and local taxes are current;

d. Business tax returns;

e. Business financial statements;

f. Personal income tax returns;

g. personal financial statements;
h. Schedule of work in progress;
i. Signed and dated copy of transportation-related contracts to be used as collateral;
j. Business debt schedule;
k. Income and cash flow projections;
l. Evidence of bonding and insurance.

Respondents: 100.
Frequency: Once.
Estimated Average Burden per Response: 12 hours.
Estimated Total Annual Burden Hours: 1200 hours.

(e) Loan package submission: Application packages are submitted directly to a PL in the applicant's geographic area. The list of PLs is available on the OSDBU Web site: *http://osdbu.dot.gov/Default.aspx?tabid=72.* In the event that there is no PL in the applicant's geographic area, the loan application package may be sent directly to OSDBU at 400 Seventh Street, SW., Room 9414, S–40, Attention STLP, Washington, DC 20590.

Respondents: 100.
Frequency: Once.
Estimated Average Burden per Response: 1 hour.
Estimated Total Annual Burden Hours: 100 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the OSDBU's performance; (2) the accuracy of the estimated burdens; (3) ways for OSDBU to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burdens could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

List of Subjects in 49 CFR Part 22

Loan programs—Business and Industry, Programs, Small Business, Transportation, Commerce.

Issued this 24th day of July, 2008, at Washington, DC.

Mary E. Peters,
Secretary of Transportation.

For the reasons set forth in the preamble, 49 CFR part 22 is proposed to be added to read as follows:

PART 22—SHORT-TERM LENDING PROGRAM (STLP)

Subpart A—General

Sec.
22.1 Purpose.
22.3 Definitions.

Subpart B—Policies Applying to STLP Loans

22.11 Eligibility criteria.
22.13 Loan terms and conditions.
22.15 Delinquency on Federal, State, and municipal debt.
22.17 Compliance with child support obligations.
22.19 Credit criteria.

Subpart C—Participating Lenders

22.21 Participation criteria.
22.23 Agreements.
22.25 Lender deliverables and delivery schedule.
22.27 Eligible reimbursements to PLs.
22.29 DOT OSDBU access to PL files.
22.31 Suspension or revocation of eligibility to participate.
22.33 Termination of participation in the STLP.

Subpart D—Loan Application Process

22.41 Application procedures.
22.43 Approvals and denials.
22.45 Allowable fees to borrowers.

Subpart E—Loan Administration

22.51 Loan closings.
22.53 Loan monitoring & servicing requirements.
22.57 Loan reporting requirements.
22.59 Loan modifications.
22.61 Loan guarantee extensions.
22.63 Loan close outs.
22.65 Subordination.
22.67 Delinquent loans and loan defaults.
22.69 Claims process.
Appendix A to Part 22—Bank Verification Loan Activation Form
Appendix B to Part 22—Bank Acknowledgement Loan Close-out Form
Appendix C to Part 22—Drug-Free Workplace Act Certification
Appendix D to Part 22—Certification Regarding Lobbying
Appendix E to Part 22—Certification Regarding Debarment, Suspension
Appendix F to Part 22—Bank Verification Extension Request Form
Appendix G to Part 22—Cooperative Agreement
Appendix H to Part 22—Guarantee Agreement

Authority: 49 U.S.C. 332.

Subpart A—General

§ 22.1 Purpose.

The purpose of the DOT OSDBU STLP is to provide financial assistance in the form of a short-term loan from Participating Lenders that is guaranteed by DOT OSDBU, to DBE's and SDBs for the execution of DOT funded and supported transportation related contracts.

§ 22.3 Definitions.

Accounts Receivable means monies that are due to the borrower for work performed or services rendered under a contract, subcontract, or purchase order.

Activation Date means the date that the STLP loan is established on the PL's books and recorded as an open loan. It is also the date that the borrower can begin to drawn funds form the line of credit. Activation date is also the date in which the DOT OSDBU guarantee becomes effective.

Assigned Contract means the transportation-related contract(s), subcontract(s), and/or purchase order(s) that has been pledged as collateral to a STLP loan and perfected through an assignment form executed by all appropriate parties.

Borrower is the obligor of a DOT OSDBU guaranteed loan.

Cooperative agreement is the written agreement between DOT OSDBU and a PL that outlines the terms and conditions under which the lender may submit eligible loan requests to DOT OSDBU for consideration of its loan guarantee. The cooperative agreement further outlines the responsibilities and requirements of the lender in order to participate in the STLP.

Director means Director, Office of Small and Disadvantaged Business Utilization, U.S. Department of Transportation.

Disadvantaged business enterprise or DBE means a business that is certified as such by a recipient of DOT financial assistance as provided in 49 CFR part 23 or 49 CFR part 26.

Guarantee Agreement means DOT OSDBU's written agreement with a PL that provides the terms and conditions under which DOT OSDBU will guarantee a STLP loan. It is not a contract to make a direct loan to the borrower.

Loan Guarantee means the agreement of DOT OSDBU to issue a guarantee of payment of a specified portion of an approved STLP loan to the PL, under DOT OSDBU stated terms and conditions, in the event that the borrower defaults on the loan.

Loan purpose means the approved uses for STLP loan proceeds. That is, only for short-term working capital needs related to the direct costs of an eligible transportation-related contract.

Other Eligible Certifications mean the following certifications obtained by a borrower through the U.S. Small Business Administration (SBA): Small Disadvantaged Business (SDB); Section 8(a) Program participant; HUBZONE Empowerment Contracting Program; and Service-Disabled Veteran Program (SDV).

Participating Lender (PL) is a bank or other lending institution that has agreed to the terms of a cooperative agreement and has been formally accepted into the STLP by DOT OSDBU.

Small and disadvantaged business (SDB) includes 8(a); small disadvantaged business; women-owned business, HubZone, and service-disabled veteran-owned business.

Socially and economically disadvantaged individual has the same meaning as stated in 49 CFR 26.5.

Technical Assistance means service provided by the PL to the DBE or SDB that will enable the DBE or SDB to become more capable of managing its transportation-related contracts. Technical assistance can be provided by collaborating with agencies that offer small business management counseling such as the SBA, the U.S. Department of Commerce's Minority Business Development Centers (MBDCs), the Service Corps of Retired Executives (SCORE), Procurement Technical Assistance Centers (PTACs), and Small Business Development Centers (SBDCs).

Transportation-related contract means a contract, subcontract, or purchase order, at any tier, for the maintenance, rehabilitation, restructuring, improvement, or revitalization of any of the nation's modes of transportation that receive DOT funding.

Work-out means a plan that offers options to avoid loan default or collateral foreclosure and/or liquidation that is intended to resolve delinquent loans or loans in imminent default, which may include, but not limited to: deferring or forgiving principal or interest, reducing the borrower's interest rate, extending the loan maturity and the government guarantee to the PL, or postponing collection action.

Subpart B—Policies Applying to STLP Loans

§ 22.11 Eligibility criteria.

(a) *Eligible borrower.* To be eligible to apply for a STLP loan guarantee, a borrower must meet the following requirements:

(1) Be a for-profit entity;

(2) Have an eligible transportation-related contract;

(3) Demonstrate an eligible use for the desired credit;

(4) Be an established business with experience in the transportation industry and trade for which the STLP loan is sought;

(5) Be certified as a DBE or have another eligible certification issued by the SBA; and

(6) Be current on all federal, state, and local tax liabilities.

(b) *Eligible Transportation-related Contract.* Any fully-executed transportation-related contract, subcontract, or purchase order held directly with DOT or with grantees and recipients receiving federal funding from DOT for the maintenance, rehabilitation, restructuring, improvement or revitalization of any of the nation's modes of transportation shall be considered an eligible contract.

(c) *Eligibility Period.* A borrower is eligible for participation in the STLP for a period up to a total of five (5) years. The STLP renewal is not automatic. The borrower has to demonstrate its continued eligibility and creditworthiness for STLP and must submit a complete application package.

(1) The continued eligibility of any borrower who would exceed the period limit in paragraph (c) of this section will be determined on a case-by-case basis by the OSDBU Director and is subject to the following provisions:

(i) The STLP loan guarantee may be reduced; and

(ii) The STLP loan interest rate may be increased.

(2) Should any borrower currently in the STLP become ineligible per paragraph (a) of this section during the term of a STLP loan, the failure to comply with a specific requirement must be brought to the immediate attention of all remaining parties.

(3) Borrower ineligibility may result in a termination of the current guarantee.

§ 22.13 Loan terms and conditions.

(a) *Amount.* The maximum face amount for an individual STLP loan may not exceed seven hundred and fifty thousand ($750,000) dollars, unless the requested increased amount is authorized by the OSDBU Director.

(b) *Interest Rates.* All STLP loans shall have a variable interest rate.

(1) *Initial Interest Rate.* The base rate guideline for STLP loans is the prime rate in effect on the first business day of the month in which the STLP loan guarantee is approved by DOT OSDBU. The prime rate is the rate printed in a national financial newspaper published each business day. The PL may increase the base rate by the maximum allowable percentage points currently allowed by STLP policies and procedures and as communicated in subsequent DOT OSDBU notices.

(2) *Frequency of Change.* The first change may occur on the first calendar day of the month following the initial loan disbursement, using the above base rate in effect on the first business day of the month. Subsequent interest rate changes may occur no more than monthly.

(c) *Loan Structure and Term.* A STLP loan shall be set up as a revolving line of credit. The line permits the borrower to request principal advances, pay them back, and then re-borrow, not to exceed the face value of the line of credit. PLs are required to provide DOT OSDBU written notification of the activation date of each line of credit under the STLP. The term of the federal guarantee of the line of credit commences on the activation date.

(d) *Repayment.* Interest payments must be made monthly. The principal of the loan is repaid as payment from approved accounts receivable are received by the PL through a joint payee check system. The assigned contract supporting the STLP loan is the primary source of repayment.

(e) *Use of Loan Proceeds.* STLP loans must be used to finance short-term working capital needs, specifically direct costs generated by the assigned contract. Proceeds may not be used for the following purposes:

(1) For long term working capital;

(2) To repay delinquent State or Federal withholding taxes, local taxes, sales taxes or similar funds that should be held in trust or escrow; and/or

(3) To provide funds for the distribution or payment to the owners, partners or shareholders of the business; and/or

(4) To retire short or long-term debt.

(f) Non-compliance by the DBE in using the STLP loan for purposes not consistent with these regulations will result in a non-renewal of the STLP loan and in forfeiture of the STLP loan guarantee to the PL on any ineligible principal advances requested by the borrower and made by the PL.

(g) *Disbursements.* STLP funds may only be released to an eligible borrower upon the submission and verification of a valid written accounts receivable invoice, showing labor and/or materials amounts due for completed work on the contract. The PL must verify the accuracy of the invoice with the paying transportation government agency, if the borrower is a prime contractor, and/or with the prime contractor, if the borrower is a subcontractor. This verification must be obtained by the PL prior to advancing funds. No more than 85% of an approved accounts receivable invoice shall be advanced to the borrower by the PL.

(1) Processing time. Disbursement of STLP funds to the borrower should be accomplished within three (3) business days of an accounts receivable invoice approval by the paying agency and/or prime contractor.

(2) Electronic funds transfer. If the disbursement of STLP funds is being sent to the borrower through a local participating PL, the disbursement should be made by electronic funds

transfer with the preferred method of payment being the Automated Clearing House (ACH) system.

(3) Wire transfers. Wire transfers can be used if the ACH system is not available or if a same day disbursement is required.

(4) Joint payee check system. A two-party payee check system is required in which the PL and the borrower will be the co-payees of any checks paid to the borrower for performance under the assigned contract. Alternative payment methods must have prior written approval by DOT OSDBU.

(h) *Personal Guarantees.* Individuals who own at least a 20% ownership interest in the borrower shall personally guarantee the STLP loan. DOT OSDBU, in its discretion and in consulting with the PL, may require other appropriate guarantees for the loan as well.

(i) *Collateral.* All advances under the STLP loan must be secured, at a minimum, by the assignment of the proceeds due under the transportation-related contract(s) being funded with loan proceeds (the Assigned Contract). The PL must have first lien position on the Accounts Receivable generated by the Assigned Contract. The PL and/or DOT OSDBU may request additional collateral on any loan request or loan guarantee request in order to mitigate the credit risk and reduce potential defaults and loan losses.

(j) *Key person life insurance.* The assignment of existing life insurance policies of personal guarantors or other individuals critical to the borrower's operations may be required by the PL and/or DOT OSDBU in certain instances; and it is encouraged for those business applicants that do not have a management succession plan clearly in place or where a personal guarantee provides nominal financial strength to the credit.

§ 22.15 Delinquency on Federal, State, or municipality debt.

(a) The borrower must not be delinquent on any Federal, State, or municipality debt, including tax debts. Further, none of the principals and/or owners of the borrower can be delinquent on any federal, state, or municipality debt, including personal tax debt. The borrower must acknowledge its status in writing as part of any STLP loan guarantee application. PLs and the DOT OSDBU must verify the borrower's status through the use of business and personal credit reports, as well as other appropriate federal and state databases.

(b) If any delinquencies are determined during the application process, consideration of the request must be suspended until the delinquency is satisfactorily resolved, as determined and approved by the Director. If the delinquency cannot be resolved within a reasonable amount of time, the loan request must be declined.

§ 22.17 Compliance with child support obligations.

Any holder of 50% or more of the ownership interest in the recipient of a STLP Loan must certify that he or she is not more than 60 days delinquent on any obligation to pay child support arising under:

(a) An administrative order;

(b) A court order;

(c) A repayment agreement between the holder and a custodial parent; or

(d) A repayment agreement between the holder and a State agency providing child support enforcement services.

§ 22.19 Credit criteria.

An applicant for a STLP loan must be creditworthy and demonstrate an ability to repay the loan as well as satisfactory handling of the repayment of past and current debts. The PL and DOT OSDBU shall consider:

(a) Character, reputation, and credit history of the applicant, its principals and owners, and all other guarantors;

(b) Experience and depth of key management in the industry;

(c) Financial strength of the business;

(d) Past earnings, projected earnings and cash flow, and work in progress;

(e) Ability to repay the loan;

(f) Sufficient equity to operate on a sound financial basis; and

(g) Capacity to perform under the transportation-related contract(s).

Subpart C—Participating Lenders

§ 22.21 Participation criteria.

A lender who participates in the STLP must meet the following criteria:

(a) It must operate as a lending institution certified by the Federal Deposit Insurance Corporation (FDIC), Federal Reserve Board, Office of the Comptroller of the Currency, Office of Thrift Supervision, Community Development Corporation (CDC), or Community Development Financial Institution (CDFI), for at least five (5) years;

(b) It must demonstrate a philosophy and history of lending to small, disadvantaged and women-owned businesses in their communities. Information will be requested by the Director on the number of short-term loans made to companies listed in § 22.11(a)(5). The PL shall submit information showing its efforts in relationship to its overall portfolio;

(c) It must demonstrate experience in administering monitored lines of credit, such as construction loans, accounts receivable financing, and/or contract financing. for at least two years. Such experience should be held by any PL representative managing, reviewing or authorizing STLP loan portfolios;

(d) It must have at least two (2) years experience with other federal government lending programs such as U.S. Small Business Administration (SBA), Agriculture Rural Development, Bureau of Indian Affairs (BIA), Economic Development Administration (EDA), Department of Housing and Urban Development (HUD), Export Import Bank of the United States and/or state loan programs.

(e) It must have at least a satisfactory or better Community Reinvestment Act (CRA) rating;

(f) It must designate a PL representative to effectively administer the STLP loan portfolio;

(g) It must have the ability to evaluate, process, close, disburse, service and liquidate STLP loans;

(h) It must demonstrate the ability to implement, monitor and manage a two-party payee check system, in which the PL and borrower are joint payees of any checks paid to the borrower for performance under the assigned contract(s);

(i) It must submit a current SBA Form 1624 or equivalent, stating that the lender is not currently debarred or suspended from participation in a government contract or delinquent on a government debt (see appendix E to part 22);

(j) It must execute a certification of compliance concerning a drug-free workplace (see Appendix C to Part 22); and

(k) It must execute a Certificate Regarding Lobbying in compliance with Section 1352, Title 21, U.S. Code (see appendix D to part 22).

§ 22.23 Agreements.

(a) DOT OSDBU may enter into a cooperative agreement with a lender that meets the criteria defined in § 22.21 in order for the lender to become a participant in the STLP. Such an agreement does not obligate DOT OSDBU to participate in any specific proposed loan that a lender may submit. The existence of a cooperative agreement does not limit the rights of DOT OSDBU to deny a specific loan or establish general policies. (See appendix G to part 22).

(b) The cooperative agreement is generally for a minimum period of twenty-four (24) months. DOT OSDBU will consider the cooperative agreement for renewal at the end of the designated term. If a cooperative agreement has

expired, no further applications for the STLP shall be submitted to DOT OSDBU by the PL until a new cooperative agreement is executed by both parties.

(c) Unless instructed otherwise by DOT OSDBU, after the expiration of the cooperative agreement, the PL will complete the documentation of any loans which have been given final DOT OSDBU approval prior to expiration of the cooperative agreement.

(d) Following the expiration of the cooperative agreement, the PL may, subject to the written concurrence of DOT OSDBU, sell its STLP loans to another bank or to another PL that assumes the original rights and responsibilities to fund, service and collect the loan or loans.

§ 22.25 Lender deliverables and delivery schedule.

All PLs must adhere to certain required periodic reports, submissions, and other actions that are outlined in the cooperative agreement and the loan guarantee agreements, as well as to the required due dates to DOT OSDBU.

§ 22.27 Eligible reimbursements to PLs.

PLs will be reimbursed by DOT OSDBU for reasonable expenses and costs that are incurred in the processing, administration, and monitoring of a STLP loan. The PL will be reimbursed as follows:

(a) *Processing/Underwriting fee.* A fee, as specified in the cooperative agreement will be reimbursed by DOT OSDBU, with a minimum fee of not less than one thousand ($1,000), per approved STLP loan guarantee, provided that DOT OSDBU receives proper notification of the activation date of the STLP loan.

(b) *Additional Administrative fee:* For total loan amounts of $150,000.00 or less, the PL can request an additional one-half (½) percent administrative fee for the increased loan monitoring and administrative assistance required to process the loan. The request must be supported with the information specified in the cooperative agreement.

(c) *Travel expenses.* For any pre-approved travel expenses, the PL will be reimbursed for certain costs, provided that paragraphs (c)(1), (2), and (3) of this section are met:

(1) A written request for travel, along with a statement of the purpose of the travel and proposed cost estimate, is submitted for DOT OSDBU for its approval no less than ten (10) business days prior to travel; and

(2) A travel invoice accompanied by a written report explaining the findings of the travel is submitted to DOT OSDBU no later than thirty (30) days following the approved travel.

(3) Payment or reimbursement for travel shall be in accordance with the Joint Travel Regulations, Federal Travel Regulations and DOD FAR 31.205.46.

(d) *Attorney fees.* Legal fees incurred by the PL may be eligible for reimbursement. Prior written approval from DOT OSDBU is required. Attorney fees will be reimbursed on a pro-rata basis in proportion to the percentage of the government loan guarantee in relation to the total loan amount.

§ 22.29 DOT OSDBU access to PLs files.

A PL must allow the authorized representatives of DOT OSDBU, as well as representatives of the Office of Inspector General (OIG) and General Accountability Office (GAO), access to its STLP loan files to review, inspect, and copy all records and documents pertaining to DOT OSDBU guaranteed loans. Record retention of all relevant documents and other materials is specified in the cooperative agreement between DOT OSDBU and the PL.

§ 22.31 Suspension or revocation of eligibility to participate.

(a) DOT OSDBU may suspend or revoke the eligibility of a PL to participate in the STLP by giving written notice in accordance with the terms and conditions cited in the cooperative agreement. Such notice may be given because of a violation of DOT OSDBU regulations; a breach of any agreement with DOT OSDBU; a change of circumstance resulting in the PL's inability to meet operational requirements; or a failure to engage in prudent lending practices. A suspension or revocation will not invalidate a loan guarantee previously approved by DOT OSDBU, providing that the specific loan was handled in accordance with its guarantee agreement, the cooperative agreement and/or these regulations.

(b) The written notice to suspend or revoke participation in the STLP will specify the corrective actions that the PL must take, as well as the time period allowed for cure, prior to DOT OSDBU considering a termination of the cooperative agreement.

§ 22.33 Termination of participation in the STLP.

(a) *DOT OSDBU Termination for Convenience.* DOT OSDBU may terminate a cooperative agreement for the convenience of the government, and without cause, upon prior written notice of thirty (30) days of its intent to terminate. Upon termination, DOT OSDBU shall remain liable on the pro-rata share of the loan guarantee(s) received by the PL which received the Director's final approval, prior to the effective date of termination.

(b) *Participating Lender's Termination.* The PL may terminate a cooperative agreement with written notice of sixty (60) days to DOT OSDBU of its intent to terminate. Upon termination, DOT OSDBU shall remain liable on the pro-rata share of the loan guarantee(s) received by the PL which received the Director's final approval, prior to the effective date of termination.

(c) *DOT OSDBU Termination for Cause.* DOT OSDBU may terminate a cooperative agreement, in whole or in part, at any time before the expiration of the term of the cooperative agreement or the expiration of any renewal term of the cooperative agreement, and without allowing any cure period as described in § 22.23 of this part, if it determines that the PL failed to comply with any terms and conditions of its cooperative agreement and such failure cannot be reasonably addressed. DOT OSDBU shall promptly notify the PL in writing of this determination and the reasons for the termination, together with the effective date of termination.

(d) DOT OSDBU may also terminate for cause any cooperative agreement with a PL that fails to comply with the corrective actions requested in a written notice of suspension of revocation within the specified cure period, in accordance with the terms and conditions further described in the cooperative agreement.

Subpart D—Loan Application Process

§ 22.41 Application procedures.

(a) A STLP loan guarantee request application package shall consist of the DOT OSDBU Application for Loan Guarantee and supporting documentation as outlined below at (b). The application can be obtained directly from the office of DOT OSDBU, from a current PL, or online from the agency's Web site currently at *http://osdbu.dot.gov/documents/pdf/stlp/stlpapp.pdf.*

(b) Supporting documentation may include, but is not limited to, the following items: Business, trade or job performance reference letters; current DBE or SDB eligibility certification letters and/or affidavit; signed and dated borrower certification that all federal, state and local taxes are current; business tax returns; business financial statements; personal income tax returns; personal financial statements; schedule of work in progress; signed and dated copy of transportation-related contracts; business debt schedule; income and cash flow projections; and evidence of bonding and insurance. It also includes, from the PL, the lender's internal credit

approval memo and analysis; and other third-party credit verifications obtained.

(c) Application packages are submitted directly to a PL, which will perform its own credit review. The PL must initially approve or decline the loan based upon its internal analysis of the request. Loans approved by the PL are then forwarded to DOT OSDBU for its STLP eligibility review and independent credit review, and for presentation to the DOT OSDBU Loan Committee. All loan approvals shall require the final approval of the Director, or the Director's designee, for the issuance of a Government Loan Guarantee.

§ 22.43 Approval or denial.

If a loan guarantee is approved by DOT OSDBU, a Guarantee Agreement will be issued to the PL. If a loan guarantee is declined by the PL, the PL is responsible for communicating the reasons for the decline to the applicant. If a loan guarantee is declined by the DOT OSDBU, DOT OSDBU will be responsible for communicating the reasons for the decline to the applicant. The PL must notify the applicant, in writing, the reasons for the decline; and a copy of this notification must be sent to DOT OSDBU. (see form DOT # F 2314–1)

§ 22.45 Allowable fees to borrowers.

(a) *Application fees.* The PL may charge the applicant a non-refundable loan application fee, as determined from time to time by DOT OSDBU, for each STLP loan application processed, whether a new loan request or a renewal request.

(b) *Reasonable closing expenses.* The PL may collect reasonable closing expenses from the borrower, provided that full disclosure of such fees is made to the borrower prior to the loan closing date. These expenses include necessary out-of-pocket expenses to third parties such as filing and recordation fees, as well as loan closing document preparation fees, whenever the PL charges similar fees to its non STLP borrowers.

Subpart E—Loan Administration

§ 22.51 Loan closings.

(a) The PL must promptly close all STLP loans in accordance with the terms and conditions approved by DOT OSDBU in its Guarantee Agreement. The PL must report circumstances concerning any STLP loans not closed within a reasonable time period after DOT OSDBU approval.

(b) The PL uses its own internal loan closing documents and must use standard banking practices and procedures to ensure proper execution of the debt and perfection of the collateral. The PL must forward copies of all executed closing documents and filings to DOT OSDBU within the time period specified in the cooperative agreement.

§ 22.53 Loan monitoring and servicing requirements.

The PL must review STLP principal advance requests, process loan disbursements, and payments, and maintain contact with the borrower during the term of the loan. The PL must monitor the progress of the project being financed and the borrower's continued compliance with the terms and conditions of the loan. The PL must promptly report any material adverse change in the financial condition or business operations of the borrower to DOT OSDBU.

§ 22.57 Loan reporting requirements.

The STLP is subject to the requirements of the Federal Credit Reform Act of 1990 (FCRA) that includes certain budgeting and accounting requirements for Federal credit programs. To fulfill the requirements of FCRA, the PL must provide DOT OSDBU prompt written notification of the activation date (form # DOT F 2302–1), and the date the loan is repaid and closed (form # DOT F 2304–1). To fulfill this requirement, the PL must submit a monthly report to the DOT OSDBU covering the previous month's STLP loans in process and those that are active.

§ 22.59 Loan modifications.

Any modification to the terms of the DOT OSDBU guarantee agreement must have prior written approval of the Director, and executed in writing as an Addendum to the original guarantee agreement.

§ 22.61 Loan guarantee extensions.

An extension of the original loan guarantee may be requested, in writing, by the PL using form # DOT F 2310–1. The request must comply with the terms and conditions described in the guarantee agreement and with the STLP policies and procedures. All extension requests must be approved by the Director. The maximum extension period for a loan guarantee is ninety (90) days.

§ 22.63 Loan close outs.

Upon full repayment of the STLP loan, or upon expiration of the loan guarantee, the PL must submit an executed loan guarantee close-out form # DOT F 2304–1 to DOT OSDBU.

§ 22.65 Subordination.

DOT OSDBU must not be placed in a subordinate position to any other debt.

§ 22.67 Delinquent loans and loan defaults.

(a) The PL must bring to the immediate attention of the Director and delinquent STLP loans. The PL and DOT OSDBU are jointly responsible for establishing collection procedures and must exercise due diligence with respect to collection of delinquent debt. The PL is responsible for initiating actions to recover such debt. DOT OSDBU must approve any compromise of a claim, resolution of a dispute, suspension or termination of collection action, or referral for litigation. A work-out solution will only be considered if it is expected to minimize the cost to the federal government in resolving repayment delinquencies and/or loan default. They must only be used when the borrower is likely to be able to repay the loan under the terms of the work-out, and if the cost of establishing the work-out plan is less than the costs of loan default and/or foreclosure.

(b) In an appropriate situation, DOT OSDBU may authorize the PL to undertake legal action deemed necessary to collect delinquent loans and DOT will reimburse the PL on a pro rata basis in proportion to the loan guarantee percentage for the associated fees and costs, with prior authorization from the Director. Penalties and late fees are not eligible for reimbursement. Any legal action undertaken by the PL without OSDBU authorization, will not be eligible for a pro rata basis reimbursement of the associated fees and costs. Net recoveries applicable to accrued interest must be applied on a pro rata basis in proportion to the formula used during the term of the loan.

§ 22.69 Claim process.

After reasonable efforts have been exhausted to collect on a delinquent debt, the PL may demand in writing that DOT OSDBU honor its loan guarantee, provided however that the maximum liability of DOT OSDBU shall not at any time exceed the guaranteed amount. The borrower must be in default for no less than thirty (30) days, and the PL must have made written demand for payment from the borrower, in accordance with the guarantee agreement.

BILLING CODE 4910–9X–P

Appendix A to Part 22--Bank Verification Loan Activation Form

Office of Small and Disadvantaged Business Utilization

SHORT TERM LENDING PROGRAM
BANK VERIFICATION
LOAN ACTIVATION FORM

Participating Lender	
Borrower	
State _____	City _____
Loan Amount	$ _____
DOT Guarantee Amount	$ _____
Loan has been activated this date:	_____
Bank Representative (print)	_____
Signature	_____
Do Not Write Below – For Internal Use Only	
Date Received _____	
Administrative Fee $_____	**04A0155060.2007.3407100000.0044000000.41000**
	S-40 _____ Date _____ S-40 _____ Date _____ Director _____ Date _____

	B-10 _____ Date _____

Appendix B to Part 22 --Bank Acknowledgement Loan Close-out Form

Office of Small and Disadvantaged Business Utilization

SHORT TERM LENDING PROGRAM
BANK ACKNOWLEDGEMENT
LOAN CLOSE-OUT FORM

Participating Lender	
Borrower	
City _____ State _____	Bank Loan Identification Number _____
Loan Amount $ _____	Loan Activation Date _____
DOT Guarantee Amount	$ _____
Loan Close-Out Date:	_____
Bank Representative (print)	_____
Signature	_____

Do Not Write Below - For Internal Use Only	
STLP Loan Number _____ Cohort _____ Subsidy Rate _____	Expected STLP Graduation Date _____

Appendix C to Part 22—Drug–Free Workplace Act Certification

DRUG-FREE WORKPLACE ACT CERTIFICATION FOR A GRANTEE OTHER THAN AN INDIVIDUAL

1. The _____
(Name of Applicant for a Grant or Cooperative Agreement)
certifies that it will establish and continue to provide a drug-free workplace by:

a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Applicant's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

b. Establishing an ongoing drug-free awareness program to inform employees about--

1. The dangers of drug abuse in the workplace;
2. The Applicant's policy of maintaining a drug-free workplace;
3. Any available drug counseling, rehabilitation, and employee assistance programs; and,
4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

c. Making it a requirement that each employee to be engaged in the performance of the grant or cooperative agreement be given a copy of the statement required by paragraph (a).

d. Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant or cooperative agreement, the employee will--

1. Abide by the terms of the statement; and,
2. Notify the employer in writing of his or her conviction for a violation of a criminal drug statue occurring in the workplace no later than five (5) calendar days after such conviction;

e. Notifying the Federal agency in writing, within ten (10) calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction, Employers of convicted employees must provide notice, including position title, to every project officer or other designee on whose project activity the convicted employee was working. Notice shall include the identification number(s) of each affected grant or cooperative agreement.

f. Taking one of the following actions, within thirty (30) calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

1. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

g. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

2. The Applicant's headquarters is located at the following address. The addresses of all workplaces maintained by the Applicant are provided on an accompanying list.

Name of Applicant: _____

Address: _____

City: _____

County: _____

State: _____

Zip Code: _____

_____
(Signature of Authorized Official)

_____
(Title of Authorized Official)

_____
(Name of Applicant)

_____
(Date)

Appendix D to Part 22—Certification Regarding Lobbying

CERTIFICATION REGARDING LOBBYING

FOR

CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any Federal contract grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure of Lobbying Activities" in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 21, U.S. Code. Any Person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Name of Organization: _____

Address: _____

City: _____

State: _____

Zip Code: _____

_____
(Signature of Authorized Official)

_____
(Title of Authorized Official)

_____
(Date)

Appendix E to Part 22—Certification Regarding Debarment, Suspension

OFFICE OF SMALL AND DISADVANTAGED BUSINESS UTILIZATION
U.S. DEPARTMENT OF TRANSPORTATION

SHORT TERM LENDING PROGRAM

Certification Regarding Debarment, Suspension

This certification is required the Office of Budget and Management (OMB) Circular No. A-129, Revised, Policies for Federal Credit Programs and Non-Tax Receivables.

The participating lender certifies, by submission of this document, that neither it nor its principals are presently debarred, suspended, proposed for debarment, or declared ineligible from participation in a Government contract or delinquent on a Government debt.

Participating Lender Institution: _____

Date: _____ **By:** _____
Name and Title of Authorized Representative

_____
Signature of Authorized Representative

Appendix F to Part 22—Bank Verification Extension Request Form

Office of Small and Disadvantaged Business Utilization
SHORT TERM LENDING PROGRAM
BANK VERIFICATION
EXTENSION REQUEST FORM

Request Date:	
Participating Lender	
Borrower	
Loan Amount	$_____
DOT Guarantee Amount	$_____
Loan Guarantee expires this date:	_____
Current Loan Balance: As of date:	_____
Extension Date Requested: (Note Participating Lenders may request an extension period no greater than 90 days from the original expiration date)	

Reason for Extension Request: _____
_____
_____

Bank Representative (print)	_____
Signature	_____
Do Not Write Below - For Internal Use Only	
Date Received _____	STLP Loan Number _____

Attachment G to Part 22—Cooperative Agreement

COOPERATIVE AGREEMENT BETWEEN THE UNITED STATES DEPARTMENT OF TRANSPORTATION AND [BANK]____

1. Recital of Purpose

The principal purpose of this Agreement is to carry out the United States Department of Transportation (DOT)'s Short Term Lending Program (STLP), a loan guarantee program to enhance the lending opportunities for disadvantaged business enterprises (DBEs) and other certified small and disadvantaged businesses (SDBs) in order to increase the number of DBEs and SDBs that engage in transportation-related contracts and to strengthen the competitive and productive capabilities of the DBEs and SDBs that currently do business with DOT, its grantees, recipients, their contractors and subcontractors. This Agreement is not intended to and does not create any rights in third parties to receive loans or any other funds from [BANK] or DOT. All rights and obligations under the Agreement run only to the parties.

This Agreement is intended by the parties to be construed as a Cooperative Agreement, under 31 United States Code (U.S.C.), Section 6305, and shall be in no way construed as a procurement contract.

2. Authority

DOT is authorized under 49 U.S.C. 332, to develop support mechanisms, including financial assistance programs that will enable DBEs and SDBs to take advantage of transportation-related business opportunities. [BANK] is authorized under its charter and by-laws to enter into this Cooperative Agreement.

3. Definitions

3.1 For the purpose of this Agreement, the term ''Disadvantaged Business Enterprise'' (''DBE''), includes a for profit small business concern that is owned and controlled by a socially and economically disadvantaged individual, including women and, is set forth at 49 Code of Federal Regulations (CFR) (23 and 26); Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU); and corresponding sections of the Aviation Investment and Reform Act for the 21st Century, as amended by any regulations and interpretations issued there-under. For the purpose of the Agreement, the term Small and Disadvantaged Business (''SDB'') includes: Small disadvantaged business (SDB), Section 8 (a) program; HUBZONE Empowerment Contracting Program, and Service Disabled Veteran owned business, under the U.S. Small Business Administration.

3.2 For the purpose of this Agreement, the term ''transportation-related contract'' is defined as a contract for the maintenance, rehabilitation, restructuring, improvement, or revitalization of any of the nation's modes of transportation with any public or commercial provider of transportation through any Federal, State or local transportation agency. The transportation contract can be a prime contract or subcontract at any tier, awarded by DOT or by a State or local recipient of DOT funds.

3.3 For the purpose of this Agreement, the term ''Participating Lender'' (PL) is defined as a banking or lending institution, or other approved organization which has agreed to and has been formally accepted as a Participating Lender in the DOT Short-Term Lending Program.

4. Terms

4.1 The [BANK] shall make loans to qualifying DBEs and SDBs that request financial assistance to perform transportation-related contracts. The maximum loan face amount for any individual loan or line of credit will be $750,000.00 unless the written consent of the Director, OSDBU, is received. Loans will be secured at a minimum by assignment of the proceeds of the transportation-related contracts supporting the loan request and by a recorded first lien security position in such proceeds. (See Section 11 regarding maintenance of DOT funds in a first lien position.) Other collateral may be required based upon assessments of risk and collateral availability performed by [BANK] and DOT.

4.2 The [BANK] agrees to review and give due consideration to all loan applications submitted directly by the applicant or forwarded by DOT. Generally DOT will refer the application to the Participating Lender located closest to the applicant; however, DOT may at its sole discretion forward applications to any Participating Lender.

4.3 DOT will guarantee up to seventy-five (75) percent of the outstanding and unpaid principal amount of the loan, interest on the principal amount of the loan, and interest on any due and unpaid amounts owing by the Borrower to the Bank, provided however that the maximum liability of DOT shall not at any time exceed the guaranteed amount. In the event a DBE or SDB defaults on a loan made under this Agreement, the loss will be borne on the same pro rata basis of distribution.

4.4 The [BANK] agrees that in any and all matters concerning the DOT Short Term Lending Program it will conform to the policy and procedures as described in the DOT STLP Loan Policies and Procedures Manual and subsequent regulations implementing this manual. [BANK] and DOT will be responsible for decisions as to which DBE or SDB applicants will or will not receive loans. All decisions will require the final approval of the OSDBU Director, or the Director's designee, after the loan application has been recommended for approval by [BANK]'s loan committee or by its designated senior official. Funds shall be loaned at the Prime Rate that is defined as New York Prime and published daily in the Wall Street Journal, adjusted on the first day of each calendar month for the ensuing month. Up to an additional two (2) points can be added to the Prime Rate to cover administrative fees of managing the STLP Program.

4.5 The DBE or SDB borrower shall be able to make draws against the line of credit during the term of the loan and shall be required to repay all remaining principal and interest no later than the date of receipt of the final payment under its transportation-related contract(s). In the event that the contract is terminated for any reason, maturity of the loan will be accelerated and no further advances will be made.

4.6 The use of the two-payee check system will be required in which the [BANK] and the DBE or SDB will be the payees of any relevant check paid to the DBE or SDB for work performed under a secured transportation-related contract(s).

4.7 Application forms required for DOT guaranteed loans can be obtained from the Participating Lender, and are also available on the OSDBU webpage: *http://osdbu.dot.gov/documents/pdf/stlp/stlpapp.pdf.* Applications should be submitted directly to [BANK]. The [BANK] will perform the loan application review and process the loan for completeness. The [BANK] must initially approve or decline the loan based upon its independent review. Loans approved by the [BANK] will then be forwarded to DOT and will require the final approval of the OSDBU Director, or the Director's designee for a DOT guarantee. Questions regarding program eligibility and

policy will be referred to OSDBU for resolution. Any DBEs or SDBs rejected for a loan will be sent a letter of explanation, with a copy to OSDBU.

4.8 Determination that the final loan documents conform to the terms of the loan approval; that loan documentation is complete and has been properly executed; and that loan disbursement is completed is the sole right and responsibility of the [BANK]. The [BANK] will promptly close the loans in accordance with conditions specified by DOT in the transmittal of its approval and any other conditions upon which the DOT and the [BANK] may have agreed in writing. The [BANK] shall report the circumstances behind any loans not closed within 15 business days after receipt of final approval by OSDBU. The [BANK] must execute applications which have been finally approved by DOT and the [BANK] and must ensure the necessary completion and perfection of documents under standard banking practice and procedure. These documents will include as applicable; the note, assignment of payments, notice of assignment of payments, personal guaranties, necessary UCC filings, and any other collateral or security documents completed during the execution of the loan. Additionally, each borrower for which the DOT guarantee exceeds $150,000 must execute a Certification Regarding Lobbying concurrent with execution of the closing documents. This certification is incorporated into this Cooperative Agreement as Attachment B.

4.9 The [BANK] will forward copies of all executed closing documents and filings to DOT no later than 15 business days after execution of closing documents and filings.

4.10 [BANK] may only release loan funds to a certified applicant (DBE or SDB, as defined in Section 3.1) upon the award of a transportation-related contract as determined by DOT.

4.11 [BANK] shall be in a first position on any contract proceeds and receivables that the STLP line has financed. STLP funds shall not be placed in a subordinate position to any other debt, except if so required by a DOT authorized surety bonding company and approved by the OSDBU Director, or his/her designee. It shall be the responsibility of the [BANK] to ensure that the security interests in the proceeds of any contract funded under this Agreement are properly recorded as minimum security for the loan. The [BANK] is also responsible for maintaining regular and sufficient contact with the borrower in order to monitor and ensure the progress of the project being financed and compliance with the terms of the financing, and to detect any material adverse change in the condition of the borrower, and shall be reported in the monthly report to OSDBU.

4.12 [BANK] may collect an application fee of $150.00 from the applicant for each loan application or renewal.

4.13 For each loan successfully executed, DOT will pay [BANK[] an underwriting fee of one (1) percent of the face amount of the approved loan with a minimum fee of not less than $1,000.00 per approved loan. [BANK] can charge the applicant not more than Prime plus two (2) percent for the interest rate on the loan. For total loan amounts of $150,000.00 or less, the PL may charge an additional half (1/2) percent administration fee for the monitoring and technical assistance required. Payment of the underwriting fees will be made upon a written request for payment by the [BANK] and receipt by OSDBU of a copy of a signed loan activation form and a copy of the executed note.

4.14 [BANK] must fully fund each loan. If a second bank has participated in the loan, the distribution of the underwriting fee shall be negotiated by the banks.

4.15 DOT's guarantee shall be established by a Guarantee Agreement executed by the [BANK] and DOT for each new loan, loan modification, or loan renewal.

4.16 The [BANK] and DOT shall be jointly responsible for establishing collection procedures and shall exercise due diligence with respect to collection of delinquent debt. The [BANK] will be responsible for initiating actions to recover such debt. DOT must approve in writing any compromise of a claim, resolution of a dispute, suspension or termination of collection action, or referral for litigation. In an appropriate situation, DOT may authorize the [BANK] to undertake any legal action to collect unpaid loans and the DOT will reimburse [BANK] on a pro rata basis in proportion to the loan guarantee for the associated fees and costs with prior written authorization from the OSDBU Director. Should litigation become necessary, the Department of Justice shall be responsible for its conduct, and the [BANK] and DOT shall cooperate in providing evidence and other support to its efforts. Net recoveries applicable to principal and accrued interest shall be applied on a pro rata basis in proportion to the loan guarantee commitments.

4.17 The [BANK] shall maintain a fiduciary duty to administer all loans approved under STLP in a manner that is consistent with the terms of this Agreement and the procedures established thereunder.

5. Deliverables and Delivery Schedule

5.1 Within five (5) business days of the activation of a guaranteed loan, [BANK] will submit a completed and signed Loan Activation Form to OSDBU).

5.2 Within five (5) business days of the close-out or renewal of a guaranteed loan, [BANK] will submit a completed and signed Loan Close-out Form to OSDBU.

5.3 For loans in excess of $100,000.000, a personal site inspection of the facilities of the loan applicant must be conducted by the [BANK] prior to disbursement of funds.

5.4 Monthly Reports. [BANK] shall provide a report by the 10th of each month covering the previous month's activity, according to the attached templates (Attachments C1 and C2). The report will include: (a) A status of the review of all pending applications; (b) a summary of loans executed and outstanding, including the borrowers' name, loan amount, maturity date, balance outstanding, and accrued interest; (c) a statement for each loan as to whether the loan is current and performing satisfactorily; (d) for each loan determined delinquent and not performing properly, a summary of action taken; and, (e) the date(s) of any loans that have closed out; and, (f) any relevant information that DOT may request.

5.5 Call Reports or Thrift Financial Reports. [BANK] shall provide two copies of its quarterly Reports of Condition and Income (Federal Financial Institutions Examination Council—FFIEC Form 041), or quarterly Thrift Financial Reports (Office of Thrift Supervision—OTS Form 1313) within 60 days after the close of each calendar quarter.

5.6 Regulatory Enforcement Actions. The [BANK] shall promptly notify the OSDBU Director, of any regulatory enforcement actions involving the Bank.

5.7 Community Reinvestment Act (CRA). [BANK] shall provide the OSDBU Director a copy of its current CRA rating and shall promptly advise of any negative changes thereto. Delivery of all items or other notices or correspondence relevant to this Agreement shall be addressed as follows: Director, Office of Small and Disadvantaged Business Utilization, U.S. Department of Transportation, 1200 New Jersey Avenue SE, S–40, W56–497, Washington, DC 20590.

5.8 The PL shall notify OSDBU within 10 (ten) business days of any personnel changes regarding signatory officials of the PL, as well as any significant occurrences within the PL's organization which may affect this agreement, such as mergers, buyouts, or expansions.

6. Audit, Investigation and Review

DOT's Inspector General and the Comptroller General of the United States and/or Director, OSDBU, or Director's designee may at all reasonable times investigate, audit and review in the offices of [BANK]. [BANK] shall provide to such parties access to all documents, papers, books, and records relevant to such audit or review.

7. Record Retention

The [BANK] shall retain all documents, files, books, and records relevant to the execution and implementation of the terms of this Agreement for a period of not less than three years from the date of termination of this Agreement or payment in full from the borrower; except, if any litigation, collection action, or audit is commenced. In these cases, records and other materials shall be retained until the litigation, collection action, or audit is judicially or administratively final.

8. Duration of Agreement

This Agreement shall be in effect for a period of two (2) years from the date of the execution of this Agreement. An annual option to renew the Agreement for additional periods, not to exceed two (2) years, may be granted at the discretion of DOT.

9. Expiration of Agreement

Except in the event that DOT has offered its annual option to renew this Agreement for additional periods and the [BANK] has accepted such an offer, after expiration of this Agreement, no further applications will be furnished by DOT for approval. Unless instructed otherwise by DOT, after expiration of the Agreement, [BANK] shall complete the

documentation of any loans which have been recommended to DOT for approval and in which DOT has given final approval prior to expiration of the Agreement. Following expiration of the Agreement, [BANK] may, subject to the written concurrence of DOT, sell its loans to another bank or to another Participating Lender which shall assume the original [BANK] 's rights and responsibilities to fund, service and collect the loan or loans.

10. Suspension of Agreement

DOT may suspend this Agreement by giving a Notice of Suspension in writing to [BANK] and by instructing [BANK] in writing not to disburse funds (including the granting of additional loans and the making of loan commitments), pending [BANK] 's action to correct violations of the terms and conditions of this Cooperative Agreement. Failure by [BANK] to take corrective actions specified in the Notice of Suspension within thirty (30) days of the date of receipt of said notice may result in termination of the Agreement.

11. Termination

11.1 DOT Termination for Cause. DOT may terminate this Cooperative Agreement, in whole or in part, at any time before the expiration of the one year term of the Agreement or the expiration of any renewal term of the Agreement, and without affording a thirty (30) day cure period under the Suspension provision, if it determines that the [BANK] failed to comply with terms and conditions of the Agreement and such failure cannot be reasonably addressed. DOT shall promptly notify [BANK] in writing of the determination and the reasons for the termination, together with the effective date of termination.

11.2 DOT Termination for Convenience. DOT may terminate this Cooperative Agreement for the convenience of the Government and without cause, upon prior written notice of thirty (30) days to [BANK] of DOT's intention to terminate. Upon termination, DOT shall remain liable on the pro rata share of the loan guarantee(s) made by [BANK] , which have been finally approved by DOT prior to the effective date of termination.

11.3 Bank Termination. [BANK] may terminate the Agreement with written notice of sixty (60) days to DOT of [BANKS]'s intention to terminate. Upon termination, DOT shall remain liable only as to loan guarantee(s) written by [BANK] which have been approved by DOT, prior to the effective date of termination.

12. DOT's Representative

The Director, OSDBU, shall represent DOT under the Agreement and may exercise all rights secured to DOT by the Agreement. Decisions by the Director to exercise DOT's rights under this Agreement shall be final and binding on DOT. The Director may delegate these responsibilities to any other DOT employee on written notice to [BANK].

[BANK'S REPRESENTATIVE] shall represent [BANK] under the Agreement and may exercise all rights secured to [BANK] by the Agreement. Decisions by this representative to exercise [BANK]'s rights under this Agreement shall be final and binding on [BANK]. [BANK] may delegate these responsibilities to any other [BANK] employee upon written notice to DOT. [BANK]'s address for receipt of notices and other correspondence for the purpose of this Agreement will be:

13. Miscellaneous Conditions

13.1 As a condition of receipt of any DOT guarantee under the Agreement, [BANK] assures DOT that they will abide by the provisions of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq., and DOT's implementing regulations, 49 CFR 21; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, and DOT's implementing regulations, 49 CFR 27; the Age Discrimination Act of 1975, 42 U.S.C. 6101–7, and any Federal implementing regulations; and Section 905 of the Railroad Revitalization and Regulatory Reform Act of 1976, 45 U.S.C. 803 (re-codified in 49 U.S.C. 332). [BANK] also assures DOT that they will comply with all other applicable Federal laws and regulations.

13.2 In order to enter into this Agreement, [BANK] shall be designated as a depository and financial agent of the Government under 31 CFR Part 202.

13.3 All notices, approvals, reports, or other correspondence contemplated by this Agreement must be in writing and served personally, by facsimile, by e-mail, or by first class mail. If given by personal service, the notice shall be effective on the date of delivery; if given by mail, the notice shall be effective upon receipt. Either party may change its mailing address by giving notice of such change.

13.4 [BANK] shall execute a Drug-Free Workplace Act certification concurrent with execution of this Cooperative Agreement.

13.5 [BANK] shall maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of DOT loan guarantee, a copy of which must be made available to DOT upon request. No employee, officer or agent of the [BANK] shall participate in the selection, or in the award or administration of a contract supported by DOT funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(a) The employee, officer or agent,

(b) Any member of his or her immediate family,

(c) His or her partner, or

(d) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

[BANK]'s officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from loan applicants or potential applicants, or parties applying for any DOT short term loans. To the extent permitted by State or local law or regulations, such standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by [BANK] agents.

13.6 In accordance with Section 319 of Public Law 101–121, [BANK] shall be prohibited from using Federal appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan and shall disclose lobbying activities. [BANK] shall execute a Certificate Regarding Lobbying concurrent with execution of this Cooperative Agreement.

13.7 This document embodies the entire Agreement between [BANK] and DOT. This Agreement may be amended, altered, or any of its provisions waived only in writing and signed by both parties.

This Cooperative Agreement is entered into this ____ day of _____ 20____, by the United States Department of Transportation at Washington, District of Columbia.

By: _____

Director, Office of Small and Disadvantaged Business Utilization
U.S. Department of Transportation

This Cooperative Agreement is entered into by [BANK] and in witness whereof, the undersigned has caused the signature of its officer below-named and its corporate seal duly attested to be affixed hereto this ____ day of _____, 20____, intending to be legally bonding hereby.

[BANK]

(SEAL)
(Bank ABA/RTN#) _____/_____

By: _____

Title: _____

Appendix H to Part 22—Guarantee Agreement

DEPARTMENT OF TRANSPORTATION OFFICE OF SMALL AND DISADVANTAGED BUSINESS UTILIZATION SHORT TERM LENDING PROGRAM

GUARANTEE AGREEMENT

This GUARANTEE AGREEMENT dated as of [DATE] (this Agreement) is made by the United States Department of Transportation (DOT) and [NAME OF BANK], a National Banking Corporation, its successors and permitted assigns [NAME OF BANK] concerning the Bank's extension of a [AMOUNT OF LOAN/WORDS] ($LOAN AMOUNT) Loan (Loan) to [NAME OF BORROWER], [STATE IN WHICH INCORPORATED] Corporation, (Borrower).

Section 1. Guarantee

1.01 *The Guarantee.* Subject to the terms and conditions set forth in this Agreement, DOT hereby guarantees, irrevocably and unconditionally (except to the extent expressly provided in Sections 1.02, 1.03, 1.04, 1.05 or by applicable law) to the Bank payment of seventy five percent (75%) of the outstanding and unpaid principal amount of the loan, interest on the principal amount of the loan and interest on any due and unpaid amounts owing by the Borrower to the Bank, provided however that the maximum liability of DOT shall not at any time exceed [GUARANTEE AMOUNT/WORDS], the Guaranteed Amount.

1.02 *Coverage of the Guarantee and Compliance with STLP Cooperative Agreement and STLP Policies and Procedures Manual.*

(a) The Guarantee is entitled to the full faith and credit of the United States of America. The Guarantee constitutes a guarantee of payment and not of collection. In no event shall the liability of the DOT on the Guarantee exceed the Guaranteed Amount.

(b) If the [NAME OF BANK] fails to comply with this Guarantee Agreement and STLP Cooperative Agreement and STLP Policies and Procedures Manual in the making or servicing of any STLP loan, the Guarantee shall not be effective and shall automatically terminate. Denial of liability on the Guarantee shall only occur if DOT determines that the [NAME OF BANK] has engaged in negligence, misconduct, or failed to comply with this Guarantee Agreement the STLP Cooperative Agreement, or STLP Policies and Procedures Manual.

1.03 *Term of the Guarantee*. The Guarantee will be effective for one year from the Date of Activation of the Loan. Any requests for renewals or extensions of the expiration date must be sent by the [NAME OF BANK], in writing, to the DOT no later than thirty (30) days prior to the original expiration date. Renewal periods of one year may be considered; however, they will be handled as a new loan guaranty request. Extension periods up to ninety (90) days may be granted with reason and at the DOT's sole discretion incorporating any addendums that contain conditions on the loan approval. If a renewal is not in place by the end of the 90 day extension, the Guarantee will expire on the last day of the extension period. It is further agreed that all principal advances made to the Borrower by [NAME OF BANK] in accordance with Paragraph 1.02 (b.) and prior to the Expiration Date will be guaranteed by the DOT until collected.

1.04 *Timely Demand*. In the event that the [NAME OF BANK] fails to make demand on DOT within the time period required in Section 2.02(vi), the Guarantee of the unpaid installment of principal and/or interest as to which such timely demand was not made shall automatically terminate with respect thereto. This termination shall be without prejudice to the right of the [NAME OF BANK] to make demand on DOT under this Agreement in respect of any other due and unpaid installment(s) of principal or interest.

1.05 *Prohibited Amendment or Transfers*. In the event that the Bank, without DOT's prior written consent, agrees to any material amendment, modification, or waiver or assigns, conveys, sells, or otherwise transfers any interest in or right or obligation under this Agreement or the Loan, or any Note, then DOT shall have the right to terminate the Guarantee by providing written notice to the Bank.

1.06 *No Acceleration*. In the event that, without the prior written consent of DOT, the Bank declares all or any part of the Borrower's indebtedness under the Loan to be immediately due and payable or to be due and payable upon the demand of the Bank, then DOT shall have the right to terminate the Guarantee with respect to all or a portion of the Guaranteed Amount. The automatic acceleration of the Loan or any Note as a result of a bankruptcy or insolvency event does not constitute such an event. Any termination of the Guarantee by DOT shall be deemed effective as of the date of the declaration by the Bank.

Section 2. Claim Procedures

2.01 *Failure to Pay*. In the event that (i) the Borrower for any reason fails to pay in full any installment of principal (other than any proposed voluntary prepayment) or interest under the Loan or any Note for more than thirty (30) calendar days after the due date of such installment; and (ii) a period of fifteen (15) calendar days has elapsed since written demand for payment was made by the Bank on the Borrower (which demand may be omitted only if and to the extent that the making thereof would be prohibited by any applicable law), then the Bank may make demand on DOT under this agreement for payment (subject to Sections 1.03., 1.04, 1.05) of the Guaranteed Amount.

2.02 *Demand on DOT*. The Bank's demand on DOT must: (i) Be in writing; (ii) be made only by the Bank; (iii) identify the installment(s) of principal and/or interest unpaid as of the date of such demand; (iv) include a copy of the Bank's written demand for payment on the Borrower (or in the event that such demand was omitted in accordance with law, evidence of the applicable law); (v) include an Assignment and Certification in the form of Annex A; (vi) be made not later than sixty (60) calendar days from the due date of the unpaid installment(s) of principal and /or interest on which the Bank's demand for payment is based.

2.03 *Assignment to DOT*. On and as of the date on which DOT pays the Guaranteed Amount, DOT shall become subrogated to, and the Bank shall be deemed to have assigned to DOT, without recourse and without need for any further action, the Guaranteed Percentage of the Bank's right, title, and interest in and to the principal of and interest on the Loan and each Note in respect thereof and to such extent, DOT shall have the right to enforce or participate in any claim (including without limitation, any claim in bankruptcy), right or remedy that the Bank then has or may thereafter acquire against the Borrower under the Loan or the Note. In addition to the Assignment and Certification required, the Bank shall, upon request by DOT, promptly execute and deliver such documents and take such other actions as DOT may reasonably request to evidence or give effect to such subrogation and assignment, it being understood and agreed that the execution and delivery of any such document or the taking of any such action shall not be a condition to DOT's obligation to pay the Guaranteed Amount.

2.04 *Payment by DOT*.

(a) Within forty-five (45) Business Days after the date on which the Bank shall have properly documented its demand on DOT for payment pursuant to Section 2.02 (the ''*Demand Date*''), the DOT shall, subject to Sections 1.03, 1.04 and 1.05, pay the Guaranteed Amount to the Bank in a single payment calculated as of the date of actual payment thereof by DOT.

(b) Payment of the Guaranteed Amount due under this Agreement shall be made by DOT to the Bank, and such payment to the Bank shall discharge fully and completely DOT's liability under this Agreement. After the Demand Date, any funds received by the Bank or DOT from or on behalf of the Borrower in respect of any of the Borrower's obligations under the Loan Agreement or Note shall be applied in accordance with the terms of the Loan Agreement or Note.

2.05 *DOT Payment Does Not Discharge Borrower*. Any statute or judicial decision to the contrary notwithstanding, no payment by DOT to the Bank under this Agreement shall be deemed to reduce, discharge, satisfy or terminate any obligation of Borrower under the Loan Agreement or any Note.

Section 3. Miscellaneous

3.01 *Governing Law*. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE FEDERAL LAW OF THE UNITED STATES OF AMERICA IF AND TO THE EXTENT SUCH FEDERAL LAW IS APPLICABLE, AND OTHERWISE IN ACCORDANCE WITH THE LAW OF THE STATE OF [STATE WHERE BANK LOCATED].

3.02 *Benefit of Agreement*. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and permitted assigns of the parties hereto.

3.03 *Entire Agreement*. This Agreement contains the entire agreement among the parties hereto regarding the subject matter hereof. In the event that any term of the Loan Agreement or any Note conflicts with any term of this Agreement, the terms and provisions of this Agreement shall control to the extent of such conflict.

3.04 *Amendment or Waiver*. This Agreement may not be changed, discharged or terminated (except as expressly provided herein) without the written consent of the parties hereto, and no provision hereof may be waived without the written consent of the party to be bound thereby.

3.05 *Counterparts*. This Agreement may be signed in separate counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

3.06 *Severability*. To the extent permitted by applicable law, the illegality or unenforceability of any provision of this Agreement shall not in any way affect or impair the legality or enforceability of the remaining provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed, in duplicate, this [DAY] of [MONTH], [YEAR].

[NAME OF BANK]

United States Department of Transportation

[NAME OF OFFICIAL]
[TITLE OF OFFICIAL]

Annex A—Form of Assignment and Certification

This Assignment and Certification is made pursuant to the terms of the Guarantee Agreement dated as of [DATE] (the ''*Agreement*'') between the United States Department of Transportation (DOT) and [NAME OF BANK], a National Banking Corporation (Bank). Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned in the Agreement.

1. *Assignment*. For value received, the Bank hereby assigns to DOT, without recourse, all of its right, title and interest in and to the principal of and interest on the Loan and under the Loan Agreement and each Note in respect thereof, to the extent, and only to the extent, of the Bank's Guaranteed Percentage of the Loan represented by the Guaranteed Amount paid by DOT to the Bank.

2. *Certifications*. The Bank hereby certifies that (a) the Guaranteed Amount demanded to be paid by DOT to the Bank is properly calculated and due and owing to the Bank under the terms of the Agreement and (b) it has not, without the prior written consent of DOT:

(i) Agreed to any material amendment, written modification or written waiver in violation of Section 1.04 of the Agreement; or

(ii) Assigned, conveyed, sold or otherwise transferred any interest in or right or obligation under this Agreement, or any Note in violation of Section 1.05 the Agreement; or

(iii) Accelerated or caused the Agent to accelerate all or any part of the Loan or any Note in violation of Section 1.06 of the Agreement;

3. *Acknowledgment*. The Bank acknowledges and agrees that this Assignment and Certification is subject to the terms of the Agreement, including, without limitation, the following:

(a) Any funds received by the Bank or DOT from or on behalf of the Borrower in respect of any of the Borrower's obligations under the Loan Agreement or Note shall be applied in accordance with the terms of the Loan Agreement or Note.

(b) The Bank shall, upon request by DOT, execute and deliver such documents and take such other actions as DOT may reasonably request to establish, preserve or enforce the rights, title and interest of DOT in, to and under the Loan Agreement and each Note, and any right or remedy that DOT has or may acquire against the Borrower thereunder, it being understood and agreed that the execution and delivery of any such document or the taking of any such action shall not be a condition to DOT's obligation to pay the Guaranteed Amount.

IN WITNESS WHEREOF, the Bank has caused this instrument to be duly executed and delivered this [DAY] of [MONTH], [YEAR].

By: _____

(Signature)

(SEAL) Name: _____

(Print)

Attest _____

Title: _____

Secretary

_____

[NAME OF BANK]

[FR Doc. E8–19049 Filed 8–20–08; 8:45 am]

BILLING CODE 4910–9X–C

Notices

Federal Register

Vol. 73, No. 163

Thursday, August 21, 2008

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

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Meeting; Federal Lands Recreation Enhancement Act (Title VIII, Pub. L. 108–447)

AGENCY: USDA, Forest Service.

ACTION: Notice of meeting.

SUMMARY: The Southern Region Recreation Resource Advisory Committee will hold its fourth meeting in Harrisonburg, Virginia, on September 24–25, 2008. The purpose of the meeting is to receive recommendations concerning recreation fee proposals on areas managed by the Forest Service in Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and the territory of Puerto Rico; and to discuss other items of interest related to the Federal Lands Recreation Enhancement Act of 2004.

A final detailed agenda, with any additions/corrections to agenda topics, location, field trips and meeting times, will be sent to regional media sources at least 14 days before the meeting, and hard copies can also be mailed or sent via FAX. Individuals who need special assistance such as sign language interpretation or other reasonable accommodations, or who wish a hard copy of the agenda, should contact Caroline Mitchell at P.O. Box 1270, Hot Springs, AR 71902 or by phone at 501–321–5318 no later than 10 days prior to the meeting.

DATES: The meeting will be held September 24–25, 2008.

ADDRESSES: The meeting will be held at the Hampton Inn, 85 Univ. Blvd., 1–81 @Exit 247–A in Harrisonburg, Virginia.

FOR FURTHER INFORMATION, CONTACT: Cheryl Chatham, Designated Federal Official, U.S. Forest Service, P.O. Box 1270, Hot Springs, AR 71902.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring recreation fee matters to the attention of the Committee may file written statements with the Committee staff before the meeting. A public input session will be provided and individuals who make written requests by September 15, 2008, will have the opportunity to address the Committee at the meeting. Send written comments to Cheryl Chatham, Designated Federal Official for the Southern Recreation RAC, U.S. Forest Service, P.O. Box 1270, Hot Springs, AR 71902.

The Recreation RAC is authorized by the Federal Land Recreation Enhancement Act, which was signed into law by President Bush in December 2004.

Dated: August 15, 2008.

Cheryl G. Chatham,

Designated Federal Officer, Southern Region.

[FR Doc. E8–19251 Filed 8–20–08; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Pacific Northwest Recreation Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice; request for nominations for Recreation Resource Advisory Committees.

SUMMARY: Nominations are being sought for certain positions to serve on the Pacific Northwest Recreation Resource Advisory Committees (Recreation RAC). New members will be appointed by the Secretary of Agriculture (Secretary) and serve three-year terms. Appointments will begin in February 2009 when current member appointments expire.

One member is being sought to represent each of the following interests: Winter Non-motorized, Summer Non-motorized, Local Environmental, State Tourism, and Affected Local Governments. The public is invited to submit nominations for membership on the Recreation RAC. Current members who have only served one term may also apply. Application packets for Recreation RACs can be obtained from the Forest Service Pacific Northwest Regional Office listed below or on the Web at *http://www.fs.fed.us/passespermits/rrac.* All nominations must include a completed application packet that includes background information and other information that addresses a nominee's qualifications.

DATES: All applications must be received by the Pacific Northwest Regional Office on or before September 30, 2008. This timeframe may be extended if officials do not receive applications for needed positions.

ADDRESSES: You may submit nominations to the Pacific Northwest Recreation RAC by: U.S. Mail: Shandra Terry, Regional Public Involvement Coordinator, Public Affairs, Pacific Northwest Regional Office, PO Box 3623, Portland, OR 97208, (503) 808–2242.

Express Delivery: Shandra Terry, Regional Public Involvement Coordinator, Public Affairs, Pacific Northwest Regional Office, 333 SW 1st Ave., Portland, OR 97204, (503) 808–2242.

FOR FURTHER INFORMATION CONTACT: Anyone wanting further information regarding this request for nominations may contact Jocelyn Biro, Recreation Fee Coordinator, Pacific Northwest Regional Office, PO Box 3623, Portland, OR 97208, (503) 808–2411.

SUPPLEMENTARY INFORMATION:

Background

The Federal Lands Recreation Enhancement Act (REA), signed December 2004, requires that the Forest Service and the Bureau of Land Management (BLM) provide Recreation RACs with an opportunity to make recommendations to the two agencies on certain types of proposed recreation fee changes.

REA allows the agencies to use existing advisory councils, such as BLM Resource Advisory Councils (RACs), or to establish new committees as appropriate. The Forest Service and BLM elected to jointly use existing BLM RACs in the states of Arizona, Idaho, the Dakotas, Montana, Nevada, New Mexico, and Utah. In 2006, the Forest Service chartered new Recreation RACs for the states of California and Colorado, and for the Forest Service Pacific Northwest, Eastern and Southern Regions. The Forest Service is using an existing advisory board for the Black Hills National Forest in South Dakota.

In addition, the Governors of three states—Alaska, Nebraska and Wyoming—requested that their States be exempt from the REA-RIRAC requirement, and the two Departments concurred with the exemptions.

Members were appointed to the Pacific Northwest Recreation RAC in February 2007 for either two-year or three year terms. The terms for the two-year members will expire February 2009. The Pacific Northwest Recreation RAC provides recreation fee recommendations to both the Forest Service and the Bureau of Land Management (BLM). The Recreation RAC makes recreation fee program recommendations on implementing or eliminating standard amenity fees; expanded amenity fees; and noncommercial, individual special recreation permit fees; expanding or limiting the recreation fee program; and fee-level changes.

Recreation RAC Composition

The Recreation RAC consists of 11 members appointed by the Secretary. These members provide a broad and balanced representation from the recreation community as follows:

(1) Five persons who represent recreation users and that include, as appropriate, the following:

a. Winter motorized recreation, such as snowmobiling;

b. Winter non-motorized recreation, such as snowshoeing, cross-country and downhill skiing, and snowboarding;

c. Summer motorized recreation, such as motorcycles, boaters, and off-highway vehicles;

d. Summer non-motorized recreation, such as backpacking, horseback riding, mountain biking, canoeing, and rafting; and

e. Hunting and fishing.

(2) Three persons who represent interest groups that include, as appropriate, the following:

a. Motorized outfitters and guides;

b. Non-motorized outfitters and guides; and

c. Local environmental groups.

(3) Three persons, as follows:

a. State tourism official to represent the State;

b. A person who represents affected Indian tribes; and

c. A person who represents affected local government interests.

Nomination Information

Any individual or organization may nominate one or more qualified persons to represent the interests listed above to serve on the Recreation RAC. To be considered for membership, nominees must:

- Identify what interest group they would represent and how they are qualified to represent that group;
- State why they want to serve on the committee and what they can contribute;
- Show their past experience in working successfully as part of a collaborative group; and
- Complete Form AD–755, Advisory Committee or Research and Promotion Background Information.

Letters of recommendation are welcome. Individuals may also nominate themselves. Nominees do not need to live in a state within a particular Recreation RAC's area of jurisdiction nor live in a state in which Forest Service-managed lands are located.

Application packets, including evaluation criteria and the AD–755 form, are available at *http://www.fs.fed.us/passespermits/rrac* or by contacting the respective regions identified in this notice. Nominees must submit all documents to the appropriate regional contact. Additional information about recreation fees and REA is available at *http://www.fs.fed.us/passespermits/about-rec-fees.shtml.*

The Forest Service will also work with Governors and county officials to identify potential nominees.

The Forest Service will review the applications and prepare a list of qualified applicants from which the Secretary shall appoint both members and alternates. An alternate will become a participating member of the Recreation RAC only if the member for whom the alternate is appointed to replace leaves the committee permanently.

Recreation RAC members serve without pay but are reimbursed for travel and per diem expenses for regularly scheduled committee meetings. All Recreation RAC meetings are open to the public and an open public forum is part of each meeting. Meeting dates and times will be determined by agency officials in consultation with the Recreation RAC members.

Dated: August 14, 2008.

Calvin N. Joyner,

Acting Regional Forester, Pacific Northwest Region, USDA Forest Service.

[FR Doc. E8–19253 Filed 8–20–08; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

U.S. Census Bureau

Proposed Information Collection; Comment Request; Generic Clearance for Census 2010 Communication Campaign Pre-Testing and Evaluation

AGENCY: U.S. Census Bureau.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before October 20, 2008.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Nancy Bates, U.S. Census Bureau, Room 8H486, Washington, DC 20233–9150, (301) 763–5248 (or via the Internet at *nancy.a.bates@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to request OMB approval of a generic information collection clearance to conduct a variety of research activities as part of the pretesting, evaluation, and monitoring for the 2010 Census Integrated Communications Campaign. Under this generic clearance, a block of hours will be dedicated to these activities for each of the next two years. OMB will be informed in writing of the purpose and scope of each of these activities, as well as the time frame and the number of burden hours used. The number of hours used will not exceed the number set aside for this purpose.

This research program will be used by the Census Bureau and its vendors to test and improve advertising and partnership materials (e.g., posters, billboards, brochures, television advertisements, radio spots, Web sites, etc.) and ultimately increase the quality and effectiveness of the communications campaign in

encouraging participation in the 2010 Census.

The information will be used to development and conduct pretesting of materials prior to placing them into production as well as to monitor and evaluate responses to communications. Research activities will involve one of the following methods: one-on-one interviews, focus groups, respondent debriefings, usability tests, or tracking surveys.

II. Method of Collection

Any of the following methods may be used: mail, telephone, face-to-face interviews; paper-and-pencil, CATI, CAPI or Internet.

III. Data

OMB Control Number: None.

Form Number: Various.

Type of Review: Regular submission.

Affected Public: Individuals or households.

Estimated Number of Respondents: 13,000.

Estimated Time Per Response: 1 hour.

Estimated Total Annual Burden Hours: 13,000.

Estimated Total Annual Cost: $0.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Sections 141 and 193.

IV. Request for Comments

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

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

Dated: August 15, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–19346 Filed 8–20–08; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Regulations and Procedures Technical Advisory Committee; Notice of Partially Closed Meeting

The Regulations and Procedures Technical Advisory Committee (RPTAC) will meet September 9, 2008, 9 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

Agenda

Public Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the Public.
3. Opening remarks by Bureau of Industry and Security.
4. Export Enforcement update.
5. Regulations update.
6. Working group reports.
7. Automated Export System (AES) update.

Closed Session

8. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yspringer@bis.doc.gov* no later than September 2, 2008.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via e-mail.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on July 17, 2008, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 §§ (10)(d)), that the portion of the meeting dealing with matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)1 and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: August 18, 2008.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. E8–19459 Filed 8–20–08; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–929]

Small Diameter Graphite Electrodes From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances, in Part

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

Effective Date: August 21, 2008.

SUMMARY: The Department of Commerce (''Department'') preliminarily determines that small diameter graphite electrodes (''graphite electrodes'') from the People's Republic of China (''PRC'') are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Tariff Act of 1930, as amended (''Act''). The estimated dumping margins are shown in the ''Preliminary Determination'' section of this notice.

FOR FURTHER INFORMATION CONTACT: Magd Zalok or Drew Jackson, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; telephone: (202) 482–4162 or (202) 482–4406, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 17, 2008, the Department received a petition concerning imports of graphite electrodes from the PRC filed in proper form by SGL Carbon LLC and Superior Graphite Co. (collectively ''petitioners''). The Department initiated an antidumping duty investigation of graphite electrodes from the PRC on

February 6, 2008. *See Small Diameter Graphite Electrodes from the People's Republic of China: Initiation of Antidumping Duty Investigation*, 73 FR 8287 (February 13, 2008) (''*Initiation Notice*''). On February 13, 2008, the Department provided interested parties with U.S. Customs and Border Protection (''CBP'') data on U.S. imports of graphite electrodes from the PRC during the period of investigation (''POI''). Between February 19, 2008, and February 21, 2008, the Department requested quantity and value (''Q&V'') information from 81 of the 102 companies identified by the petitioners as potential exporters and/or producers of graphite electrodes from the PRC.[1] *See* Petition for the Imposition of Antidumping Duties Against Small Diameter Graphite Electrodes from the People's Republic of China, Exhibit General 3, Volume I (January 17, 2008) (''Petition'').

On March 3, 2008, the International Trade Commission (''ITC'') notified the Department that it had preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of graphite electrodes from the PRC. *See Small Diameter Graphite Electrodes From China, Investigation No. 731–TA–1143 (Preliminary)*, 73 FR 12461 (March 7, 2008).

Between March 7, 2008, and March 13, 2008, the Department received timely responses to its Q&V questionnaire from the following 13 companies: Fushun Jinly Petrochemical Carbon Co., Ltd. (''Fushun Jinly''); Fushun Carbon Co. Ltd. (''Fushun Carbon''); Shanghai Jinneng International Trade Co., Ltd.; Dalian Thrive Metallurgy Import and Export Co., Ltd.; GES (China) Co., Ltd.; Brilliant Charter Limited; Qingdao Haosheng Metals & Minerals Imp & Exp Co., Ltd.; Nantong River-East Carbon Joint Stock Co., Ltd.; Jilin Carbon Import and Export Company (''Jilin Carbon''); Xinghe County Muzi Carbon Co., Ltd.; Guangham Shida Carbon Co., Ltd.; Shenyang Jinli Metals & Minerals Imp & Exp Co., Ltd.; and Shijiazhuang Huanan Carbon Factory. On April 4, 2008, the Department selected Fushun Jinly and Fushun Carbon as mandatory respondents. *See* Memorandum to Stephen Claeys, Deputy Assistant Secretary for Import Administration, through Abdelali Elouaradia, Director, Office 4, and Howard Smith, Program Manager, Office 4, from Magd Zalok and Rebecca Pandolph, International Trade Analysts, ''Selection of Respondents in the Antidumping Investigation of Small Diameter Graphite Electrodes from the People's Republic of China,'' dated April 4, 2008 (''Respondent Selection Memorandum'').

On April 14, 2008, the Department received separate-rate applications from Jilin Carbon; Guangham Shida Carbon Co., Ltd.; Nantong River-East Carbon Joint Stock Co., Ltd.; Xinghe County Muzi Carbon Co. Ltd.; Brilliant Charter Limited; Shijiazhuang Huanan Carbon Factory; Shenyang Jinli Metals & Minerals Imp & Exp Co., Ltd.; Shanghai Jinneng International Trade Co., Ltd.; Dalian Thrive Metallurgy Import and Export Co., Ltd.; GES (China) Co., Ltd.; and Qingdao Haosheng Metals & Minerals Imp & Exp Co., Ltd. (the mandatory respondents filed separate-rate applications in their responses to section A of the Department's questionnaire). The Department rejected an untimely filed separate-rate application from Shanxi Xinrong International Trade Co.

On April 7, 2008, the Department issued its antidumping questionnaire to the mandatory respondents. Fushun Jinly and the Fushun Carbon submitted timely responses to all sections of the Department's questionnaire during April and May 2008. Fushun Carbon, along with its affiliated companies, Fangda Carbon New Material Co., Ltd. (''Fangda Carbon''), Beijing Fangda Carbon Tech Co., Ltd. (''Beijing Fangda''), and Chengdu Rongguang Carbon Co., Ltd. (''Chengdu Rongguang'') (collectively ''Fangda Group'') submitted a consolidated response to the Department's questionnaire. *See* ''Affiliation'' and ''Single Entity'' sections below. The Department issued supplemental questionnaires to, and received responses from, Fushun Jinly, the Fangda Group, and the separate rate respondents in May, June, and July 2008. The petitioners submitted comments to the Department regarding Fushun Jinly and the Fangda Group's questionnaire and supplemental questionnaire responses, and the separate rates response of Jilin Carbon in May, June, and July 2008.

On May 30, 2008, the Department released to interested parties a memorandum which listed potential surrogate countries and invited interested parties to comment on surrogate country and factor value selection. *See* Letter to All Interested Parties from Howard Smith, Program Manager, Office 4, concerning ''Antidumping Duty Investigation of Small Diameter Graphite Electrodes from the People's Republic of China,'' dated May 30, 2008. No party responded to the Department's invitation to comment on surrogate country selection. However, in June and July 2008, both the petitioners and the respondents submitted surrogate values for use in this investigation. All of the submitted surrogate data are from India.

On July 15, 2008, the petitioners alleged targeted dumping by Fushun Jinly.

On July 23, 2008, the petitioners requested that the Department make a finding that critical circumstances exist with respect to imports of graphite electrodes from the PRC. The Department issued questionnaires regarding critical circumstances to Fushun Jinly and the Fangda Group on July 24, 2008. Fushun Jinly and the Fangda Group submitted their responses to those questionnaires on July 30, 2008. *See* the ''Critical Circumstances'' section of this notice for additional information.

Period of Investigation

The POI is July 1, 2007, through December 31, 2007. This period comprises the two most recently completed fiscal quarters as of the month preceding the month in which the petition was filed (*i.e.*, January 2008). *See* 19 CFR 351.204(b)(1).

Scope of the Investigation

The merchandise covered by this investigation includes all small diameter graphite electrodes of any length, whether or not finished, of a kind used in furnaces, with a nominal or actual diameter of 400 millimeters (16 inches) or less, and whether or not attached to a graphite pin joining system or any other type of joining system or hardware. Small diameter graphite electrodes are most commonly used in primary melting, ladle metallurgy, and specialty furnace applications in industries including foundries, smelters, and steel refining operations. Small diameter graphite electrodes subject to this investigation are currently classified under the Harmonized Tariff Schedule of the United States (''HTSUS'') subheading 8545.11.0000. The HTSUS number is provided for convenience and customs purposes, but the written description of the scope is dispositive.

Scope Comments

In accordance with the preamble to the Department's regulations, we set aside a period of time in our *Initiation Notice* for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of

[1] The Department did not send Q&V questionnaires to 21 companies listed in the petition due to incomplete addresses.

publication of that notice. *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997); *see also Initiation Notice.* The Department received no comments concerning the scope of the graphite electrodes antidumping duty investigation during the 20 day period set aside for such comments.

However, in response to a request from the Department for comments on whether graphite pin joining systems (connecting pins) are within the scope of the investigation, on July 25, 2008, and July 30, 2008, parties submitted direct and rebuttal comments, respectively. On August 6, 2008, the petitioners submitted additional comments regarding connecting pins and revised language to clarify the scope of the investigation.

According to the respondents, connecting pins are within the scope of the investigation when they are sold with electrodes (either attached to the electrode or unattached), but not when they are sold separately from the electrodes (*i.e.*, listed separately on an invoice). When there are more connecting pins than electrodes in a sale, the respondents believe the additional connecting pins are within the scope of the investigation if the connecting pins are part of the electrode sale and not listed as a separate line item on the invoice.

In contrast, the petitioners maintain that connecting pins are covered by the scope of the investigation, regardless of whether they are attached to, shipped with, or sold separately from, electrodes. According to the petitioners, the word ''attached'' in the scope language is to be read as ''sold with,'' and should not be interpreted as requiring the connecting pin to be physically attached to the electrode to be covered by the scope. Additionally, the petitioners maintain that the HTSUS number listed in the scope includes connecting pins and the U.S. domestic industry included connecting pin sales in the sales data reported to the Department and the ITC. Lastly, the petitioners note that if the Department does not include connecting pins in the scope of the investigation, foreign producers will begin selling electrodes at artificially high prices (to avoid dumping duties) while separately selling connecting pins at very low prices.

After reviewing the parties' comments, we have preliminarily determined that all connecting pins are outside of the scope of the investigation. The description of the scope identifies only small diameter graphite electrodes as subject merchandise; it does not state that both electrodes and connecting pins are subject merchandise. Furthermore, we do not agree that the word ''attached'' in the scope language conveys the meaning ''sold with.'' Even if the word ''attached'' is read as ''sold with,'' such a reading simply means that electrodes are covered by the scope whether or not they are sold with connecting pins; it does not indicate that connecting pins are subject merchandise. Furthermore, although the Petition notes that finished electrodes may be fitted with a threaded graphite pin joining system, the Petition consistently describes subject merchandise as small diameter graphite electrodes regardless of the type of joining system to which they are attached. The Petition does not state that connecting pins are also subject merchandise. Given the foregoing, we find that all connecting pins are outside the scope of the investigation, regardless of whether the connecting pin is sold or shipped with an electrode (either attached to the electrode or unattached), or sold or shipped separately from the electrode. Therefore, we have not considered sales of connecting pins in calculating the preliminary dumping margins.

Targeted Dumping

Pursuant to section 777A(d)(1) of the Act, in calculating dumping margins in investigations, the Department normally will compare U.S. prices and normal values using a weighted average-to-average or transaction-to-transaction comparison methodology. However, section 777A(d)(1)(B) of the Act allows the Department to compare transaction-specific export or constructed export prices to weighted-average normal values if there is a pattern of export or constructed export prices for comparable merchandise that differ significantly among purchasers, regions, or periods of time, and the Department explains why such differences cannot be taken into account using the weighted average-to-average or transaction-to-transaction methods. *See* sections 777A(d)(1)(B)(i)–(ii) of the Act. Section 351.414(f)(1)(i) of the Department's regulations allows the Department to apply a average-to-transaction method if ''through the use of, among other things, standard and appropriate statistical techniques'' there is a pattern of export or constructed export prices for comparable merchandise that differ significantly among purchasers, regions, or periods of time (''targeted dumping''). The regulations further state that targeted dumping allegations ''must include all supporting factual information, and an explanation as to why the average-to-average or transaction-to-transaction method could not take into account any alleged price differences.'' 19 CFR 351.414(f)(3).

On July 15, 2008, the petitioners alleged that Fushun Jinly targeted certain sales of graphite electrodes for dumping. On July 28, 2008, the petitioners submitted additional information regarding targeted dumping in response to the Department's July 22, 2008 supplemental questionnaire. According to the petitioners, targeted dumping is evidenced by differing export prices for comparable merchandise among U.S. purchasers. Specifically, in their July 15, 2008, allegation, the petitioners argued that, in most instances, the average net price of subject merchandise sold by Fushun Jinly to a particular customer in a particular month of the POI differed by more than two percent from the average net price of all sales of that merchandise in the same month to all other customers. The petitioners explain that they used the two-percent price difference as the threshold for a significant price difference based on: (1) The Department's use of plus/minus two percent as the basis for determining whether sales to affiliated parties are at arm's length prices; (2) the fact that a dumping margin of two percent is used as the threshold for a finding of dumping, and (3) the pricing pattern of Fushun Jinly's sales to a particular customer compared to its other sales of the subject merchandise. The petitioners therefore argue that Fushun Jinly engaged in targeted dumping with respect to a particular customer.

The petitioners note that the Department has recently relied on a different methodology for purposes of determining whether targeted dumping has occurred. *See Certain New Pneumatic Off-The-Road Tires from the People's Republic of China; Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances,* 73 FR 40485, 40487 (July 15, 2008) *(''Off-The-Road Tires'').* The petitioners also note that in *Off-The-Road Tires,* although the Department relied on a different methodology for calculating the final margin for purposes of initiating an investigation regarding targeted dumping, the Department accepted the petitioners' allegation of targeted dumping in that case based on the methodology relied on by petitioners in the instant case. *See Off-The-Road Tires,* and accompanying Issues and Decision Memorandum at Comment 23.A. Accordingly, the petitioners maintain that the information submitted in

support of their targeted dumping allegation is, at a minimum, sufficient to initiate a targeted dumping analysis by the Department.

The petitioners point out that they disagree with the methodology used in *Off-The-Road Tires* to determine whether there is targeted dumping. Specifically, the petitioners claim that the methodology used in *Off-The-Road Tires* does not appropriately measure whether targeted dumping is occurring because it cannot detect obvious patterns of targeting and does not rely on an appropriate statistical technique to determine whether targeted dumping exists. Thus, the petitioners argue that the Department's method is inconsistent with the express statutory directive and regulatory requirement. Additionally, the petitioners contend that the Department's methodology is complex, redundant and difficult to satisfy, thereby limiting domestic industries' ability to obtain relief from unfair trading practices, in contravention of legislative intent. Nevertheless, in support of their allegation, the petitioners submitted a targeted dumping analysis based on the methodology used by the Department in the final determination of *Off-The-Road Tires.*

The Department has determined that the petitioners' analysis provides a basis for accepting their targeted dumping allegation and performing a targeted dumping analysis. After performing such an analysis, we have determined that targeted dumping was occurring with respect to the particular customer identified by the petitioners. However, because there are no negative transaction-specific dumping margins in this preliminary determination, it is not possible that the targeted dumping of sales is being masked by our normal calculation methodology. *See* Memorandum to the File from Magd Zalok, regarding ''Transaction-specific Margins'' dated August 14, 2008. Thus, the petitioners' claim that the observed price differences can only be taken into account using an average-to-transaction comparison is not supported. *See id.* As mentioned above, Section 777A(d)(1)(B)(ii) of the Act requires that, in order to use the average-to-transaction comparison methodology, the Department must explain why the average-to-average or transaction-to-transaction methodology cannot account for the price differences. *See also Statement of Administrative Action,* accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103–316, Vol. I at 843 (1994) *(''SAA''),* reprinted in 1994 U.S.C.C.A.N. 4040 (''{b}efore relying on {the average-to-transaction comparison} methodology, however, Commerce must establish and provide an explanation why it cannot account for such differences through the use of an average-to-average or transaction-to-transaction comparison.''). Hence, the Department preliminarily determines that the average-to-average comparison methodology does account for price differences and, therefore, finds that petitioners' allegation does not warrant the use of the average-to-transaction comparison methodology.

Critical Circumstances

After reviewing record information, the Department preliminarily finds that there is reason to believe or suspect that critical circumstances exist for imports of subject merchandise from the Fangda Group and the separate rate companies because: (A) In accordance with section 733(e)(1)(A)(ii) of the Act, the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) in accordance with section 733(e)(1)(B) of the Act, the Fangda Group and the separate rate companies had massive imports during a relatively short period. However, record evidence does not indicate that critical circumstances exist with respect to imports of subject merchandise from Fushun Jinly or the PRC wide entity. *See* Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration from Abdelali Elouaradia, Director, Office 4, ''Preliminary Affirmative Determination of Critical Circumstances,'' dated August 14, 2008.

Single Entity Treatment

Pursuant to 19 CFR 351.401(f)(1), the Department will treat producers as a single entity, or ''collapse'' them, where: (1) Those producers are affiliated; (2) the producers have production facilities for producing similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities; and (3) there is a significant potential for manipulation of price or production.[2] In determining whether a significant potential for manipulation exists, 19 CFR 351.401(f)(2) states that the Department may consider various factors, including: (1) The level of common ownership; (2) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (3) whether the operations of the affiliated firms are intertwined through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.[3]

In proceedings involving non-market economy (''NME'') countries, the Department begins with the rebuttable presumption that all companies within the country are subject to government control.[4] Companies subject to government control are treated as part of the NME entity and assigned the same dumping rate.[5] The Department, however, recognizes that NME companies may also be connected by means other than government control. Hence, even if certain companies are not part of the NME entity, it may be appropriate to treat the companies as a single entity and to determine a single dumping margin for the entity.[6] Therefore, to the extent that the Department's practice does not conflict with section 773(c) of the Act, the Department has, in prior cases, treated certain NME exporters and/or producers as a single entity if the facts of the case supported such treatment.[7]

Moreover, the Department has determined that the factors listed in 19 CFR 351.401(f)(2) are not exhaustive and, in the context of an NME proceeding, other factors unique to the relationships between business entities within the NME country may lead the Department to determine that collapsing is warranted. The Court of International Trade has upheld the Department's practice of taking into account one such

[2] *See, e.g., Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review,* 63 FR 12764, 12774 (March 16, 1998).

[3] *See Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From Taiwan,* 62 FR 51427, 51436 (October 1, 1997).

[4] *See, e.g., Off-The-Road Tires* (citing *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 *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''), and 19 CFR 351.107(d)).

[5] *See id.*

[6] *See Certain Steel Nails From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances and Postponement of Final Determination,* 73 FR 3928 (January 23, 2008) (unchanged in final determination, *Certain Steel Nails From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances,* 73 FR 33977 (June 16, 2008), and amended final determination, *Certain Steel Nails From the People's Republic of China: Amended Preliminary Determination of Sales at Less Than Fair Value,* 73 FR 7254 (February 7, 2008)).

[7] *See id.*

unique factor, namely export decisions, in applying the collapsing provisions in NME proceedings.[8] Thus, although the Department's regulations do not address the treatment of non-producing entities (*e.g.*, exporters), where non-producing entities are affiliated, and there exists a significant potential for manipulation of prices and/or export decisions, the Department has considered such entities, as well as any other affiliated entities (where appropriate), as a single entity.[9]

We have preliminarily determined that the exporters and producers of the Fangda Group (*i.e.*, Beijing Fangda, Fangda Carbon, Fushun Carbon, Chengdu Rongguang, and Hefei Carbon) are affiliated pursuant to sections 771(33)(F) and (G) of the Act and that these companies should be treated as a single entity for the purposes of the antidumping duty investigation of graphite electrodes from the PRC. These companies have common ownership and are under common control, and therefore, are affiliated in accordance sections 771(33)(F) and (G) of the Act (which states that affiliated persons include two or more persons directly or indirectly controlling, controlled by, or under common control with, any person (subsection F); and any person who controls any other person and such other person (subsection G)).

Further, we find that the member companies of the Fangda Group that operate production facilities (specifically, Fushun Carbon, Fangda Carbon, and Chengdu Rongguang) [10] produce similar or identical products that would not require substantial retooling of their facilities in order to restructure manufacturing priorities. We have also determined that there is a significant potential for the manipulation of price or production among these companies as evidenced by the level of common ownership, the degree of management overlap, and the intertwined nature of the operations of these companies. See Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, through Abdelali Elouaradia, Director, Office 4, and Howard Smith, Program Manager, Office 4, from Drew Jackson, International Trade Analyst, concerning ''Small Diameter Graphite Electrodes from the People's Republic of China: Affiliation and Single Entity Status of Beijing Fangda Carbon Tech Co., Ltd.; Fangda Carbon New Material Co., Ltd.; Fushun Carbon Co., Ltd.; Chengdu Rongguang Carbon Co., Ltd.; and Hefei Carbon Co., Ltd.,'' dated August 11, 2008.

Non-Market Economy Treatment

The Department considers the PRC to be an NME country. In accordance with section 771(18)(c)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results of 2001–2002 Administrative Review and Partial Rescission of Review,* 68 FR 7500 (February 14, 2003), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2001–2002 Administrative Review and Partial Rescission of Review,* 68 FR 70488 (December 18, 2003). The Department has not revoked the PRC's status as an NME country. Therefore, in this preliminary determination, we have treated the PRC as an NME country and applied our current NME methodology.

Selection of a Surrogate Country

In antidumping proceedings involving NME countries, the Department, pursuant to section 773(c)(1) of the Act, will generally base normal value (''NV'') on the value of the NME producer's factors of production. In accordance with section 773(c)(4) of the Act, in valuing the factors of production, the Department shall utilize, to the extent possible, the prices or costs of factors of production 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 merchandise comparable to the subject merchandise.

The Department has determined that India, Indonesia, Sri Lanka, the Philippines, and Egypt are countries that are at a level of economic development comparable to that of the PRC. *See* Memorandum from Carol Showers, Acting Director, Office of Policy to Howard Smith, Program Manager, AD/CVD Operations, Office 4, concerning ''Antidumping Duty Investigation of Small Diameter Graphite Electrodes (SDGE) from the People's Republic of China (PRC): Request for a List of Surrogate Countries,'' dated May 22, 2008. From among these economically comparable countries, the Department has preliminarily selected India as the surrogate country for this investigation because it determined that: 1) India is a significant producer of merchandise comparable to the subject merchandise; and 2) reliable Indian data for valuing the factors of production are readily available. *See* Memorandum to the File through Abdelali Elouaradia, Director, Office 4, and Howard Smith, Program Manager, Office 4, from Magd Zalok, International Trade Analyst, concerning ''Antidumping Duty Investigation of Small Diameter Graphite Electrodes from the People's Republic of China: Selection of a Surrogate Country,'' dated June 25, 2008.

Separate Rates

In the *Initiation Notice,* the Department notified parties of the recent application process by which exporters and producers may obtain separate-rate status in NME investigations. *See Initiation Notice.* Pursuant to the Department's practice, exporters and producers are required to submit a separate-rate status application. *See also Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,* (April 5, 2005) (''*Policy Bulletin 05.1*''), available at *http://ia.ita.doc.gov.*[11] However, the

[8] *See Hontex Enterprises* v. *United States,* 342 F. Supp. 2d 1225, 1230–34 (CIT 2004).

[9] *See, e.g., Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil; Notice of Final Determination at Sales at Less Than Fair Value,* 65 FR 5554 (February 4, 2000); *Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review,* 63 FR 55578 (October 16, 1998) and accompanying Issues and Decision Memorandum at Comment 2; *Automotive Replacement Glass Windshields from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review,* 69 FR 25545 (May 7, 2004); *Automotive Replacement Glass Windshields from the People's Republic of China; Final Results of Antidumping Duty Administrative Review,* 69 FR 61790 (October 21, 2004); *Certain Preserved Mushrooms From the People's Republic of China: Final Results of Sixth Antidumping Duty New Shipper Review and Final Results and Partial Rescission of the Fourth Antidumping Duty Administrative Review,* 69 FR 54635 (September 9, 2004) and accompanying Issues and Decision Memorandum at Comment 1. *See also Hontex Enterprises* v. *United States,* 248 F. Supp. 2d 1323, 1343 (CIT 2003).

[10] The Fangda Group reported that Beijing Fangda is a sales entity, and does not produce subject merchandise.

[11] *Policy Bulletin 05.1* states: ''while continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applied both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in

standard for eligibility for a separate rate, which is whether a firm can demonstrate an absence of both *de jure* and *de facto* governmental control over its export activities, has not changed. *Id.,* at ''Background.''

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* governmental control over export activities. The Department analyzes each entity exporting the subject merchandise under a test arising from *Sparklers,* as further developed in *Silicon Carbide.* However, if the Department determines that a company is wholly foreign-owned or located in a market economy, then a separate rate analysis is not necessary to determine whether it is independent from government control.

A. Separate Rate Applicants

All of the separate rate applicants, including the mandatory respondents Fushun Jinly and the Fangda Group, stated that they are either joint ventures between Chinese and foreign companies or are wholly Chinese-owned companies (collectively ''PRC SR Applicants''). For one applicant, mandatory respondent Fushun Jinly, there is conflicting information on the record regarding its ownership status during the POI.

Fushun Jinly reported that it was established in 1987 as a collectively-owned enterprise (*i.e.* owned by Nianpan Township), known as the Fushun Carbon Products Plant, but that the plant was sold to the Factory Director in 2002. Despite the sale, Fushun Jinly reported that it did not change its legal status as a collectively-owned enterprise since suppliers were more willing to extend credit to a collectively-owned entity. However, according to Fushun Jinly, by 2007 most of the township's collectively-owned enterprises had been sold and, thus, it decided it was time to officially change its status to a limited liability company. Thus, in June 2007, the Factory Director began the process of changing the company's legal status from a collectively-owned entity to a limited liability company. In order to make the transition, Fushun Jinly reported that it obtained contracts from the township, dated in June 2007, showing the sale of the plant. Fushun Jinly obtained a new business license identifying it as a limited liability company on November 1, 2007.

Given the above information, we have preliminarily determined that Fushun Jinly continued to be a collectively-owned enterprise until October 31, 2007, four months into the POI. Record evidence, namely Fushun Jinly's business license, shows that the company legally remained a collectively-owned enterprise until October 31, 2007. Additionally, Fushun Jinly has provided conflicting information as to when the township sold the factory's assets. Thus, we have considered Fushun Jinly to be a ''collectively-owned enterprise'' until October 31, 2007, and a limited liability company thereafter.

Since none of the separate rate or mandatory respondents are wholly foreign-owned (with no PRC control) or located in a market economy with no PRC ownership, we must analyze whether these respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

a. Absence of *De Jure* Control

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

The evidence provided by the PRC SR Applicants supports a preliminary finding of *de jure* absence of governmental control based on the following: (1) An absence of restrictive stipulations associated with the individual exporters' business and export licenses; (2) applicable legislative enactments decentralizing control of the companies; and (3) and formal measures by the government decentralizing control of these companies.[12]

With respect to Fushun Jinly, the record indicates that while the company was collectively owned, it was subject to the ''Regulations on Rural Collectively-Owned Enterprises of the People's Republic of China'' (''Collectively-Owned Enterprise Regulations''), Order No. 59 of the State Council, Implemented on July 1st 1990.[13] The Department has cited the Collectively-Owned Enterprise Regulations, together with a number of other laws, as a basis for finding an absence of *de jure* government control of respondents in a number of proceedings. *See e.g., Brake Rotors from the People's Republic of China: Preliminary Results and Partial Rescission of the Sixth Administrative Review and Preliminary Results and Final Partial Rescission of the Ninth New Shipper Review,* 69 FR 10402 (March 5, 2004). Thus, our preliminary finding of an absence of *de jure* government control with respect to Fushun Jinly is consistent with the Department's findings in prior determinations. *Id.*

b. Absence of *De Facto* Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide,* 59 FR at 22586–22587; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995). The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

The evidence placed on the record of this investigation by the PRC SR Applicants demonstrate an absence of *de facto* government control with respect to each of the exporters' exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon*

question and produced by a firm that supplied the exporter during the period of investigation.'' *See Policy Bulletin 05.1* at 6.

[12] *See e.g.,* Shijiazhuang Huanan Carbon Factory's April 15, 2008, submission at Exhibit 4, and Fushun Jinly's July 8, 2008, submission at Appendices A–6 and A–11.

[13] *See* Fushun Jinly's July 8, 2008, submission at 4 and Appendix A–11.

Carbide. Thus, there is an absence of both *de jure* and *de facto* government control with respect to each of the PRC SR Applicants. Therefore, the Department has preliminarily granted separate rate status to the following companies: Fushun Jinly, Fushun Carbon, Fangda Carbon, Beijing Fangda Chengdu Rongguang, Jilin Carbon, Guangham Shida Carbon Co., Ltd., Nantong River-East Carbon Joint Stock Co., Ltd., Xinghe County Muzi Carbon Co. Ltd., Brilliant Charter Limited, Shijiazhuang Huanan Carbon Factory, Shenyang Jinli Metals & Minerals Imp & Exp Co., Ltd., Shanghai Jinneng International Trade Co., Ltd., Dalian Thrive Metallurgy Import and Export Co., Ltd., GES (China) Co., Ltd., and Qingdao Haosheng Metals & Minerals Imp & Exp Co., Ltd. The Department has calculated company-specific dumping margins for the two mandatory respondents, Fushun Jinly and the Fangda Group (*i.e.*, Fushun Carbon, Fangda Carbon, Beijing Fangda, and Chengdu Rongguang) and assigned the other companies that have been granted a separate rate a dumping margin equal to a simple average of the dumping margins calculated for the two mandatory respondents.

B. Companies Not Receiving a Separate Rate

The Department has determined that all parties applying for a separate rate in this segment of the proceeding have demonstrated an absence of government control both in law and in fact (see discussion above), and is, therefore, not denying separate rate status to any applicants.

The PRC-Wide Entity

Although PRC exporters of subject merchandise to the United States were given an opportunity to provide Q&V information to the Department, not all exporters responded to the Department's request for Q&V information.[14] Based upon our knowledge of the volume of imports of subject merchandise from the PRC, we have concluded that the companies that responded to the Q&V questionnaire do not account for all U.S. imports of subject merchandise from the PRC made during the POI. We have treated the non-responsive PRC producers/exporters as part of the PRC-wide entity because they did not qualify for a separate rate.

Section 776(a)(2) of the Act provides that the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified.

As noted above, the PRC-wide entity withheld information requested by the Department. As a result, pursuant to section 776(a)(2)(A) of the Act, we find it appropriate to base the PRC-wide dumping margin on facts available. *See Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam,* 68 FR 4986 (January 31, 2003), unchanged in *Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam,* 68 FR 37116 (June 23, 2003).

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation*, 65 FR 5510, 5518 (February 4, 2000); *see also ''Statement of Administrative Action*,'' accompanying the URAA, H.R. Rep. No. 103–316, 870 (1994) (''SAA'') at 870. Since the PRC-wide entity did not respond to the Department's request for information, the Department has concluded that the PRC-wide entity has failed to cooperate to the best of its ability. Therefore, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate.

Section 776(b) of the Act authorizes the Department to use, as adverse facts available (''AFA''): (1) Information derived from the petition; (2) the final determination from the LTFV investigation; (3) a previous administrative review; or (4) any other information placed on the record. In selecting a rate for AFA, the Department selects one that is sufficiently adverse ''as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909 (February 23, 1998). It is the Department's practice to select, as AFA, the higher of: (a) The highest margin alleged in the petition or (b) the highest calculated rate for any respondent in the investigation. *See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products From the People's Republic of China*, 65 FR 34660 (May 31, 2000) and accompanying Issues and Decisions Memorandum at Facts Available. The highest margin alleged in the petition is 159.34 percent. Since the dumping margin derived from the Petition is higher than the calculated weighted-average margins for the mandatory respondents, we examined whether it was appropriate to base the PRC-wide dumping margin on the secondary information in the Petition.

When the Department relies on secondary information, rather than information obtained in the course of an investigation, section 776(c) of the Act requires it to, to the extent practicable, corroborate that information from independent sources reasonably at its disposal.[15] The *SAA* also states that the independent sources may include published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *See SAA* at 870.

The *SAA* also clarifies that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. *See SAA* at 870. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts*

[14] The Department received only 13 timely responses to the requests for Q&V information that it sent to 81 potential exporters identified in the petition. With a few exceptions, the record indicates the questionnaires were received by the exporters. *See* Respondent Selection Memorandum.

[15] Secondary information is described in the *SAA* as ''information dervied from the petition that gave rise to the investigation or review, the final determination concerning subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See SAA* at 870.

Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Final Results of Antidumping Duty Administrative Reviews and Termination in Part, 62 FR 11825 (March 13, 1997).

To corroborate the Petition margin, we compared the range of control number-specific preliminary dumping margins calculated for the mandatory respondents to the dumping margin alleged in the Petition. Based on this comparison, we have preliminarily corroborated the 159.34 percent dumping from the Petition, which is within the range of control number-specific dumping margins calculated for the mandatory respondents. *See* Memorandum regarding ''Corroboration of the PRC-Wide Facts Available Rate for the Preliminary Determination in the Antidumping Duty Investigation of Small Diameter Graphite Electrodes from the People's Republic of China,'' dated concurrently with this notice. The dumping margin for the PRC-wide entity applies to all entries of the merchandise under investigation except for entries of subject merchandise from Fushun Jinly, the Fangda Group, Jilin Carbon, Guangham Shida Carbon Co., Ltd., Nantong River-East Carbon Joint Stock Co., Ltd., Xinghe County Muzi Carbon Co. Ltd., Brilliant Charter Limited, Shijiazhuang Huanan Carbon Factory, Shenyang Jinli Metals & Minerals Imp & Exp Co., Ltd., Shanghai Jinneng International Trade Co., Ltd., Dalian Thrive Metallurgy Import and Export Co., Ltd., GES (China) Co., Ltd., and Qingdao Haosheng Metals & Minerals Imp & Exp Co., Ltd.

Fair Value Comparisons

To determine whether Fushun Jinly or the Fangda Group sold graphite electrodes to the United States at LTFV, we compared the weighted-average export price of the graphite electrodes to the normal value of the graphite electrodes, as described in the ''U.S. Price'' and ''Normal Value'' sections of this notice.

U.S. Price

Export Price

In accordance with section 772(a) of the Act, we based U.S. price on export price (''EP'') because the first sale to an unaffiliated purchaser was made prior to importation and the use of constructed export price was not otherwise warranted. In accordance with section 772(c) of the Act, we calculated EP by deducting, where applicable, the following expenses from the starting price (gross unit price) charged to the first unaffiliated customer in the United States: Foreign movement expenses, marine insurance, international freight, and foreign brokerage and handling expenses.

We based these movement expenses on surrogate values where a PRC company provided the service and was paid in Renminbi. If market economy service providers, who were paid in a market economy currency, provided movement services for over 33 percent of subject merchandise shipments, by volume, we based the movement expenses on the actual price charged by the service provider. If market economy service providers, who were paid in a market economy currency, provided movement services for less than 33 percent of subject merchandise shipments, by volume, we calculated the movement expenses by weight-averaging surrogate values with the actual price charged by the service provider. *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61717–18 (October 19, 2006).

For details regarding our EP calculation, *see* Memorandum to the File, through, Howard Smith, Program Manager, Office 4, from Drew Jackson, International Trade Analyst, ''Investigation of Small Diameter Graphite Electrodes from the People's Republic of China: Analysis Memorandum for Beijing Fangda Carbon Tech Co., Ltd., Fushun Carbon Co. Ltd., and Chengdu Rongguang Carbon Co., Ltd.,'' dated August 14, 2008, and Memorandum to the File, through, Howard Smith, Program Manager, Office 4, from Magd Zalok, International Trade Analyst, ''Investigation of Small Diameter Graphite Electrodes from the People's Republic of China: Analysis Memorandum for Fushun Jinly Petrochemical Carbon Co., Ltd.,'' dated August 14, 2008 (collectively, ''Analysis Memoranda'').

Normal Value

In accordance with section 773(c) of the Act, we constructed normal value (''NV'') from the factors of production employed by the respondents to manufacture subject merchandise during the POI. Specifically, we calculated NV by adding together the values of the factors of production, general expenses, profit, and packing costs. We valued the factors of production using prices and financial statements from the surrogate country, India. In selecting surrogate values, we followed, to the extent practicable, the Department's practice of choosing values which are non-export average values, contemporaneous with, or closest in time to, the POI, 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.

We valued material inputs and packing materials by multiplying the amount of the factor consumed in producing subject merchandise by the average unit value of the factor. We derived the average unit value of the factor from Indian import statistics. 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. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States*, 117 F.3d 1401, 1407–08 (Fed. Cir. 1997). Where we could only obtain surrogate values that were not contemporaneous with the POI, we inflated (or deflated) the surrogate values using the Indian Wholesale Price Index (''WPI'') as published in the International Financial Statistics of the International Monetary Fund.

Further, in calculating surrogate values from Indian imports, we disregarded imports from Indonesia, the Republic of South Korea, and Thailand because in other proceedings the Department found that these countries maintain broadly available, non-industry-specific export subsidies. Therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized. *See, e.g., 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) and

accompanying Issues and Decision Memorandum at Comment 7.[16] Thus, we have not used prices from these countries in calculating the Indian import-based surrogate values.

We valued electricity using price data for small, medium, and large industries, as published by the Central Electricity Authority of the Government of India in its publication titled *Electricity Tariff & Duty and Average Rates of Electricity Supply in India*, dated July 2006. These electricity rates represent actual country-wide, publicly-available information on tax-exclusive electricity rates charged to industries in India. Since the rates are not contemporaneous with the POI, we inflated the values using the WPI. *See* Memorandum to the File regarding ''Investigation of Small Diameter Graphite Electrodes from the People's Republic of China: Surrogate Values Selected'' for Fushun Jinly and the Fangda Group, dated August 14, 2008 (''Factor Value Memorandum'').

We valued natural gas using a value obtained from the Gas Authority of India Ltd.'s Web site, a supplier of natural gas in India. See *http://www.gailonline.com/gailnewsite/index.html*. The value relates to the period January through June 2002. Therefore, we inflated the value using the WPI. In addition, we added transportation charges to the value. *See* Surrogate Value Memorandum and *Polyvinyl Alcohol From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 27991 (May 15, 2006), and accompanying Issues and Decision Memorandum at Comment 2.

For direct labor, indirect labor and packing labor, consistent with 19 CFR 351.408(c)(3), we used the most recently calculated regression-based wage rate, which relies on 2005 data. This wage rate can be found on the Department's Web site on Import Administration's home page. *See* Expected Wages of Selected NME Countries (revised May 2008) (available at *http://ia.ita.doc.gov/wages/index.html*). The source of these wage rate data on the Import Administration's Web site is the International Labour Organization, Geneva, Labour Statistics Database Chapter 5B: Wages in Manufacturing. Since this regression-based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by Fushun Jinly and the Fangda Group. *See* Factor Value Memorandum.

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. Since this value is not contemporaneous with the POI, we deflated the rate using the WPI. *See* Factor Value Memorandum.

We valued rail freight expenses using a per-unit average rate from data obtained from the Web site of the Indian Ministry of Railways and distance data obtained from an Indian transportation company, InFreight Technologies India Limited. *See http://www.indianrailways.gov.in/ and http://www.infreight.com/*. *See* Factor Value Memorandum.

We valued brokerage and handling using a simple average of the brokerage and handling costs that were reported in public submissions that were filed in three antidumping duty cases. Specifically, we averaged the public brokerage and handling expenses reported by Agro Dutch Industries Ltd. in the antidumping duty administrative review of certain preserved mushrooms from India, Kejirwal Paper Ltd. in the LTFV investigation of certain lined paper products from India, and Essar Steel in the antidumping duty administrative review of hot-rolled carbon steel flat products from India. *See Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 71 FR 10646 (March 2, 2006); *see also Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances in Part: Certain Lined Paper Products From India*, 71 FR 19706 (April 17, 2006), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India*, 71 FR 45012 (August 8, 2006) and *Certain hot-Rolled Carbon Steel Flat Products From India: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 2018, 2021 (January 12, 2006) (unchanged in *Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Antidumping Administrative Review*, 71 FR 40694 (July 18, 2006). Since the resulting value is not contemporaneous with the POI, we inflated the rate using the WPI. *See* Factor Value Memorandum.

We valued marine insurance using a publicly available price quote from a marine insurance provider at *http://www.rjgconsultants.com/insurance.html*.

We valued factory overhead, selling, general, and administrative expenses, and profit, using the 2007–2008 audited financial statements of Graphite India Limited. Record evidence indicates that Graphite India Limited is an Indian company that produces subject merchandise. The financial statements of Graphite India Limited were placed on the record by both the petitioners and the respondents and are the only surrogate financial statements on the record. *See* Factor Value Memorandum.

In accordance with 19 CFR 351.301(c)(3)(i), interested parties may submit publicly available information with which to value factors of production in the final determination within 40 days after the date of publication of the preliminary determination.

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 of the United States.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information upon which we will rely in making our final determination.

Combination Rates

In the *Initiation Notice*, the Department stated that it would calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. *See Initiation Notice*. This change in practice is described in *Policy Bulletin 05.1*:

> (W)hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more

[16] In addition, we note that legislative history explains that the Department is not required to conduct a formal investigation to ensure that such prices are not subsidized. *See* H.R. Rep. 100–576 at 590 (1988). As such, it is the Department's practice to base its decision on information that is available to it at the time it makes its determination.

producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.

Preliminary Determination

The weighted-average dumping margins are as follows:

Exporter & producer	Weighted-average margin (percent)
Fushun Jinly Petrochemical Carbon Co., Ltd.	132.80
Produced by: Fushun Jinly Petrochemical Carbon Co., Ltd.	
Fushun Carbon Co., Ltd.	147.80
Produced by: Fushun Carbon Co., Ltd.	
Fangda Carbon New Material Co., Ltd.	147.80
Produced by: Fangda Carbon New Material Co., Ltd.	
Beijing Fangda Carbon Tech Co., Ltd.	147.80
Produced by: Chengdu Rongguang Carbon Co., Ltd.; Fangda Carbon New Material Co., Ltd.; or Fushun Carbon Co., Ltd.	
Chengdu Rongguang Carbon Co., Ltd.	147.80
Produced by: Chengdu Rongguang Carbon Co., Ltd.	
Jilin Carbon Import and Export Company	140.30
Produced by: Sinosteel Jilin Carbon Co., Ltd.	
Guangham Shida Carbon Co., Ltd.	140.30
Produced by: Guangham Shida Carbon Co., Ltd.	
Nantong River—East Carbon Joint Stock Co., Ltd.	140.30
Produced by: Nantong River—East Carbon Co., Ltd.; or Nantong Yangzi Carbon Co., Ltd.	
Xinghe County Muzi Carbon Co. Ltd.	140.30
Produced by: Xinghe County Muzi Carbon Co., Ltd.	
Brilliant Charter Limited	140.30
Produced by: Nantong Falter New Energy Co., Ltd.; or Shanxi Jinneng Group Co., Ltd.	
Shijiazhuang Huanan Carbon Factory	140.30
Produced by: Shijiazhuang Huanan Carbon Factory	
Shenyang Jinli Metals & Minerals Imp & Exp Co., Ltd.	140.30
Produced by: Shenyang Jinli Metals & Minerals Imp. & Exp. Co., Ltd.	
Shanghai Jinneng International Trade Co., Ltd.	140.30
Produced by: Shanxi Jinneng Group Datong Energy Development Co., Ltd.	
Dalian Thrive Metallurgy Import and Export Co., Ltd.	140.30
Produced by: Linghai Hongfeng Carbon Products Co., Ltd.; Tianzhen Jintian Graphite Electrodes Co., Ltd.; Jiaozuo Zhongzhou Carbon Products Co., Ltd.; Heilongjiang Xinyuan Carbon Products Co., Ltd.; Xuzhou Jianglong Carbon Manufacture Co., Ltd.; or Xinghe Xinyuan Carbon Products Co., Ltd.	
GES (China) Co., Ltd.	140.30
Produced by: Shanghai GC Co., Ltd.; Fushun Jinli Petrochemical Carbon Co., Ltd.; Xinghe County Muzi Carbon Plant and Linyi County Lubei Carbon Co., Ltd. Shandong Province	
Qingdao Haosheng Metals & Minerals Imp & Exp Co., Ltd.	140.30
Produced by: Sinosteel Jilin Carbon Co., Ltd.	
PRC-Wide Entity	159.34

Disclosure

We will disclose the calculations performed to parties in this proceeding within five days of the date of the public announcement of the preliminary determination in accordance with 19 CFR 351.224(b).

Suspension of Liquidation

As noted above, the Department has found that critical circumstances exist with respect to imports of subject merchandise from the Fangda Group and the separate rate companies. Therefore, in accordance with section 733(d) of the Act, we will instruct CBP to suspend liquidation of all entries of graphite electrodes from the Fangda Group and the separate rate applicants [17] entered, or withdrawn from warehouse, for consumption on or after 90 days prior to the date of publication of this notice in the **Federal Register**. For Fushun Jinly and the PRC wide entity, we will instruct CBP to suspend liquidation of all entries of graphite electrodes entered, or withdrawn from warehouse, for consumption upon the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds U.S. price, as indicated above. The suspension of liquidation will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at LTFV. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of graphite electrodes, or sales (or the likelihood of sales) for importation, of the subject merchandise within 45 days of our final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than seven days after the date the final verification report is issued in this proceeding and rebuttal briefs, limited to issues raised in case briefs, no later than five days after the deadline for

[17] As noted above, the separate rate applicants are Jilin Carbon; Guangham Shida Carbon Co., Ltd; Nantong River East Carbon Co. Ltd.; Xinghe County Muzi Carbon Co. Ltd.; Brilliant Charter Limited; Shijiazhuang Huanan Carbon Factory; Shenyang Jinli Metals & Minerals Imp & Exp Co., Ltd.; Shanghai Jinneng International Trade Co., Ltd.; Dalian Thrive Metallurgy Import and Export Co., Ltd.; GES (China) Co., Ltd.; and Qingdao Haosheng Metals & Minerals Imp & Exp Co., Ltd.

submitting case briefs. *See* 19 CFR 351.309(c)(1)(i) and 19 CFR 351.309(d)(1). A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we intend to hold the hearing three days after the deadline of submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Ave, NW., Washington, DC 20230, time and room to be determined. Parties should confirm by telephone the date, time, and room location of the hearing two days before the scheduled hearing date.

Interested parties that wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days after the date of publication of this notice. *See* 19 CFR 351.310(c). Requests should contain the party's name, address, and telephone number, the number of hearing participants, and a list of the issues to be discussed in the hearing. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief and may make rebuttal presentations only on arguments included in that party's rebuttal brief.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, on July 30, 2008, Fushun Jinly and the Fangda Group, respectively, requested that in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days. At the same time, Fushun Jinly and the Fangda Group agreed that the Department may extend the application of the provisional measures prescribed under 19 CFR 351.210(e)(2) from a 4-month period to a 6-month period. In accordance with section 733(d) of the Act and 19 CFR 351.210(b), we are granting the request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register** because (1) our preliminary determination is affirmative, (2) the requesting exporters account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist. Suspension of liquidation will be extended accordingly.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: August 14, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–19412 Filed 8–20–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Scope Rulings

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

EFFECTIVE DATE: August 21, 2008.

SUMMARY: The Department of Commerce (''Department'') hereby publishes a list of scope rulings completed between April 1, 2008, and June 30, 2008. In conjunction with this list, the Department is also publishing a list of requests for scope rulings and anticircumvention determinations pending as of June 30, 2008. We intend to publish future lists after the close of the next calendar quarter.

FOR FURTHER INFORMATION CONTACT: Juanita H. Chen, AD/CVD Operations, China/NME Group, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: 202–482–1904.

SUPPLEMENTARY INFORMATION:

Background

The Department's regulations provide that the Secretary will publish in the **Federal Register** a list of scope rulings on a quarterly basis. See 19 C.F.R. 351.225(o). Our most recent notification of scope rulings was published on May 22, 2008. *See Notice of Scope Rulings*, 73 FR 29739 (May 22, 2008). This current notice covers all scope rulings and anticircumvention determinations completed by Import Administration between April 1, 2008, and June 30, 2008, inclusive, and it also lists any scope or anticircumvention inquiries pending as of June 30, 2008. As described below, subsequent lists will follow after the close of each calendar quarter.

Scope Rulings Completed Between April 1, 2008, and June 30, 2008:

People's Republic of China

A–570–868: Folding Metal Tables and Chairs from the People's Republic of China

Requestor: Ignite USA, LLC; the VIKA Twofold 2–in–1 Workbench/Scaffold is not within the scope of the antidumping duty order; April 18, 2008.

A–570–890: Wooden Bedroom Furniture from the People's Republic of China

Requestor: AP Industries; convertible cribs (model nos. 1000–0100; 1000–0125; 1000–0160; 1000–1195/2195; 1000–2145; and 1000–2165) are not within the scope of the antidumping duty order; April 30, 2008.

A–570–891: Hand Trucks from the People's Republic of China

Requestor: WelCom Products, Inc.; its MCX Magna Cart is not within the scope of the antidumping duty order; May 12, 2008.

A–570–898: Chlorinated Isocyanurates from the People's Republic of China

Requestor: BioLab, Inc.; chlorinated isocyanurates originating in the People's Republic of China, that are packaged, tableted, blended with additives, or otherwise further processed in Canada by Capo Industries, Ltd., before entering the U.S., are within the scope of the antidumping duty order; April 9, 2008.

A–570–899: Artist Canvas from the People's Republic of China

Requestor: Tara Materials, Inc.; artist canvas purchased in the U.S. that has been woven, primed with gesso, and cut to size in the U.S. and shipped to the PRC for assembling (*i.e.*, wrapping and stapling to the wooden frame) and returned to the U.S. are not within the scope of the antidumping duty order; April 10, 2008.

Multiple Countries

A–549–821: Polyethylene Retail Carrier Bags from Thailand; A–557–813: Polyethylene Retail Carrier Bags from Malaysia; A–570–886: Polyethylene Retail Carrier Bags from the People's Republic of China

Requestor: Medline Industries, Inc.; certain hospital patient belongings bags and surgical kit bags (drawstring bags model nos. DS500C, DS400C, 38667, 25117, 28614, and 42817) are within the scope of the antidumping duty orders; certain hospital patient belongings bags and surgical kit bags (drawstring bags model nos. DONDS600, 7510, 42818, and rigid handle bag model no. 26900)

are not within the scope of the antidumping duty orders; May 8, 2008.

Anticircumvention Determinations Completed Between April 1, 2008, and June 30, 2008:

None.

Scope Inquiries Terminated Between April 1, 2008, and June 30, 2008:

None.

Anticircumvention Inquiries Terminated Between April 1, 2008, and June 30, 2008:

None.

Scope Inquiries Pending as of June 30, 2008:

Germany

A–428–801: Ball Bearings and Parts Thereof from Germany

Requestor: Petree & Stoudt Associates, Inc.; whether certain textile–machinery components are within the scope of the antidumping duty order; requested January 24, 2008; initiated March 19, 2008.

A–428–825: Stainless Steel Sheet and Strip in Coils from Germany

Requestor: Almetals, Inc.; whether certain TriClad nickel–clad stainless steel sheet and strip in coils is within the scope of the antidumping duty order; requested May 1, 2008.

Italy

A–475–703: Granular Polytetrafluoroethylene Resin from Italy

Requestor: Petitioner, E.I. DuPont de Nemours & Company; whether imports of Polymist[reg] feedstock produced by the respondent Solvay Solexis, Inc. and Solvay Solexis S.p.A. are within the scope of the antidumping duty order; requested August 18, 2006; initiated October 2, 2006; preliminary ruling July 2, 2007.

People's Republic of China

A–570–502: Iron Construction Castings from the People's Republic of China

Requestor: A.Y. McDonald Mfg. Co.; whether cast iron lids and bases independently sourced from the PRC for its ''Arch Pattern'' and ''Minneapolis Pattern'' curb boxes are within the scope of the antidumping duty order; requested April 2, 2007.

A–570–803: Heavy Forged Hand Tools With or Without Handles from the People's Republic of China

Requestor: New Buffalo Corporation; whether its 4 Ton Log Splitter is within the scope of the antidumping duty order; requested May 21, 2008.

A–570–827: Cased Pencils from the People's Republic of China

Requestor: Walgreen Co.; whether the ''Artskills™ Draw & Sketch Kit'' is within the scope of the antidumping duty order; requested May 25, 2007.

A–570–827: Cased Pencils from the People's Republic of China

Requestor: Walgreen Co.; whether the ''Artskills™ Stencil Kit'' is within the scope of the antidumping duty order; requested May 25, 2007.

A–570–827: Cased Pencils from the People's Republic of China

Requestor: The Smencil Company; whether its not yet scent applied newspaper pencils are within the scope of the antidumping duty order; requested July 5, 2007.

A–570–864: Pure Magnesium in Granular Form from the People's Republic of China

Requestor: ESM Group Inc.; whether atomized ingots are within the scope of the antidumping duty order; original scope ruling rescinded and vacated April 18, 2007[1]; initiated April 18, 2007.

A–570–866: Folding Gift Boxes from the People's Republic of China

Requestor: Footstar; whether certain four boxes for business cards and forms (length x width: 5 x 3.5; 7 x 3.5; 12.125 x 3.5; and 11 x 8.5) are within the scope of the antidumping duty order; requested April 26, 2007.

A–570–866: Folding Gift Boxes from the People's Republic of China

Requestor: Hallmark Cards, Inc.; whether its ''FunZip'' gift presentation is within the scope of the antidumping duty order; requested June 1, 2007.

A–570–875: Non–Malleable Cast Iron Pipe Fittings from the People's Republic of China

Requestor: Taco Inc.; whether black cast iron flange, green ductile iron flange and cast iron ''Twin Tee'' are within the scope of the antidumping duty order; requested September 6, 2007.

A–570–882: Refined Brown Aluminum Oxide from the People's Republic of China

Requestor: 3M Company; whether certain semi–friable and heat–treated, specialty aluminum oxides are within the scope of the antidumping duty order; requested September 19, 2006; initiated January 17, 2007.

[1] *See Notice of Scope Rulings*, 72 FR 43245, 43246 (August 3, 2007).

A–570–886: Polyethylene Retail Carrier Bags from the People's Republic of China

Requestor: Majestic International; whether certain polyethylene gift bags (UPC codes starting with 8–51603- and ending with: 00002–3, 00004–7, 00140–2, 00141–9, 00142–6, 00041–2, 00040–5, 00052–8, 00059–7, 00066–5, 00068–9, 00071–9, 00072–6, 00075–7, 00076–4, 00092–4, 00093–1, 00094–8, 00098–6, 00131–0, 00132–7, 00133–4, 00144–0, 00145–7, 00152–5, 00153–2, 00155–6, 00156–3, 00160–0, 00163–1, 00165–5, 00166–2, 00175–4, 00176–1, 00181–5, 00183–9, 00226–3, 00230–0, 00231–7, 00246–1, 00251–5, 00252–2, 00253–9, 00254–6, 00255–3, 00256–0, 00257–7, 00259–1, 00260–7, 00262–1, 00263–8, 00300–0, 00301–7, 00302–4, 00303–1, 00305–5, 00306–2, 00307–9, 00308–6, 00309–3, 00350–5, 00351–2, 00352–9, 00353–6, 00354–3, 00355–0, 00356–7, 00357–4, 00358–1) are within the scope of the antidumping duty order; requested June 2, 2007.

A–570–886: Polyethylene Retail Carrier Bags from the People's Republic of China

Requestor: Rayton Produce Packaging Inc.; whether its promotional bag (model # F–OPPAPEJZLG) is within the scope of the antidumping duty order; requested November 20, 2007.

A–570–886: Polyethylene Retail Carrier Bags from the People's Republic of China

Requestor: Best Buy Purchasing LLC; whether a certain sealable polyethylene plastic bag (BESTBUY12ADH) is within the scope of the antidumping duty order; requested May 19, 2008.

A–570–886: Polyethylene Retail Carrier Bags from the People's Republic of China

Requestor: Bags on the Net; whether a certain polyethylene bag (HOLIDAYINN–8410) is within the scope of the antidumping duty order; requested May 30, 2008.

A–570–890: Wooden Bedroom Furniture from the People's Republic of China

Requestor: Dutailier Group, Inc.; whether its convertible cribs (infant crib to toddler bed; model numbers 1230C8, 3500C8, 5400C8, 5500C8, and 6200C8) are within the scope of the antidumping duty order; requested September 21, 2007; initiated February 25, 2008; preliminary ruling May 27, 2008.

A–570–890: Wooden Bedroom Furniture from the People's Republic of China

Requestor: Armel Enterprises, Inc.; whether certain children=s playroom

and accent furniture are within the scope of the antidumping duty order; requested September 24, 2007.

A–570–890: Wooden Bedroom Furniture from the People's Republic of China

Requestor: Shermag Inc.; whether the Three–in-One Cribs (model # 2056–48, 2110–49, and 2045–48) are within the scope of the antidumping duty order; requested November 2, 2007; initiated February 25, 2008.

A–570–890: Wooden Bedroom Furniture from the People's Republic of China

Requestor: Target Corporation; whether the Shabby Chic secretary desk and mirror are within the scope of the antidumping duty order; requested November 30, 2007.

A–570–890: Wooden Bedroom Furniture from the People's Republic of China

Requestor: Zinus, Inc. and Zinus (Xiamen) Inc.; whether its Smartbox mattress support and box spring are within the scope of the antidumping duty order; requested January 22, 2008.

A–570–890: Wooden Bedroom Furniture from the People's Republic of China

Requestor: Acme Furniture Industry, Inc.; whether its mattress supports (item nos. 2833, 2834, 2835, 2836 and 2837) are within the scope of the antidumping duty order; requested February 26, 2008.

A–570–891: Hand Trucks from the People's Republic of China

Requestor: Northern Tool & Equipment Co.; whether a high–axle torch cart (item #164771) is within the scope of the antidumping duty order; requested March 27, 2007.

A–570–891: Hand Trucks from the People's Republic of China

Requestor: Eastman Outdoors, Inc.; whether its deer cart (model # 9930) is within the scope of the antidumping duty order; requested October 17, 2007.

A–570–891: Hand Trucks from the People's Republic of China

Requestor: American Lawn Mower Company; whether its Collect–It Garden Waste Remover is within the scope of the antidumping duty order; requested January 24, 2008.

A–570–891: Hand Trucks from the People's Republic of China

Requestor: Corporate Express Inc.; whether its luggage carts, model numbers CEB31210 and CEB31490, are within the scope of the antidumping duty order; requested January 31, 2008.

A–570–894: Certain Tissue Paper Products from the People's Republic of China

Requestor: Walgreen Co.; whether gift bags of five different sizes, consisting of a gift bag, one crinkle bow, and 1–6 sheets of tissue paper (depending on bag size) are within the scope of the antidumping duty order; requested February 6, 2008.

A–570–894: Certain Tissue Paper Products from the People's Republic of China

Requestor: QVC Corporation; whether certain gift wrap kits that include tissue paper (QVC Item # H04692 - 218 Piece Holiday Wrap Set; and QVC Item # H98411 - Pretty Presents 115 Piece Wrap Set with Gift Bags by Valerie) and do not include tissue paper (QVC Item # F02444 - All Occasion 300–piece Gift Bag Kit with Embellishments; QVC Item # H06262 - 17–Piece Christmas Gift Bag, Box and Tin Set; QVC Item # H89831 - Wooded Wonderland 20–Piece Box and Bag Gift Set; and QVC Item # H06260 - 22–Piece Christmas Gift Bag, Box and Tin Set) are within the scope of the antidumping duty order; requested April 29, 2008.

A–570–898: Chlorinated Isocyanurates from the People's Republic of China

Requestor: BioLab, Inc.; whether chlorinated isocyanurates originating in the People's Republic of China, that are packaged, tableted, blended with additives, or otherwise further processed in Vietnam before entering the U.S., are within the scope of the antidumping duty order; requested August 15, 2007; initiated March 21, 2008.

A–570–901: Lined Paper Products from the People's Republic of China

Requestor: Lakeshore Learning Materials; whether certain printed educational materials, product numbers RR973 and RR974 (Reader's Book Log); GG185 and GG186 (Reader's Response Notebook); GG181 and GG182 (The Writer's Notebook); RR673 and RR674 (My Word Journal); AA185 and AA186 (Mi Diario de Palabras); RR630 and RR631 (Draw & Write Journal); AA786 and AA787 (My First Draw & Write Journal); AA181 and AA182 (My Picture Word Journal); GG324 and GG325 (Writing Prompts Journal); EE441 and EE442 (Daily Math Practice Journal Grades 1 - 3); EE443 and EE444 (Daily Math Practice Journal Grades 4 - 6); EE651 and EE652 (Daily Language Practice, Grades 1–3); EE653 and EE654 (Daily Language Practice Journal, Grades 4 - 6), are within the scope of the antidumping duty order; requested December 7, 2006; initiated May 7, 2007.

Multiple Countries

A–423–808 and C–423–809: Stainless Steel Plate in Coils from Belgium; A–475–822: Stainless Steel Plate in Coils from Italy; A–580–831: Stainless Steel Plate in Coils from South Korea; A–583–830: Stainless Steel Plate in Coils from Taiwan; A–791–805 and C–791–806: Stainless Steel Plate in Coils from South Africa

Requestor: Ugine & ALZ Belgium N.V.; whether stainless steel products with an actual thickness of less than 4.75 mm, regardless of nominal thickness, are within the scope of the antidumping and countervailing duty orders; requested June 8, 2007; initiated July 23, 2007.

Anticircumvention Rulings Pending as of June 30, 2008:

People's Republic of China

A–570–868: Folding Metal Tables and Chairs from the People's Republic of China

Requestor: Meco Corporation; whether the common leg table (a folding metal table affixed with cross bars that enable the legs to fold in pairs) produced in the PRC is a minor alteration that circumvents the antidumping duty order; requested October 31, 2005; initiated June 1, 2006.

A–570–894: Certain Tissue Paper Products from the People's Republic of China

Requestor: Seaman Paper Company; whether imports of tissue paper from Vietnam made out of jumbo rolls of tissue paper from the PRC are circumventing the antidumping duty order; requested July 19, 2006; initiated September 5, 2006; preliminary ruling April 15, 2008.

Interested parties are invited to comment on the completeness of this list of pending scope and anticircumvention inquiries. Any comments should be submitted to the Deputy Assistant Secretary for AD/CVD Operations, Import Administration, International Trade Administration, 14th Street and Constitution Avenue, N.W., APO/Dockets Unit, Room 1870, Washington, DC 20230.

This notice is published in accordance with 19 C.F.R. 351.225(o).

Dated: August 14, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–19413 Filed 8–20–08; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XJ71

Incidental Takes of Marine Mammals During Specified Activities; Shallow Hazard and Site Clearance Surveys in the Chukchi Sea in 2008

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

ACTION: Notice of issuance of a marine mammal incidental take authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) to take marine mammals, by Level B harassment, incidental to conducting open water shallow hazard and site clearance surveys by ConocoPhillips Alaska, Inc. (CPAI) in the Chukchi Sea has been issued.

DATES: The authorization is effective from August 15, 2008, until October 31, 2008.

ADDRESSES: A copy of the application, IHA, the *Final Programmatic Environmental Assessment for Arctic Ocean Outer Continental Shelf Seismic Surveys—2006* (2006 PEA) prepared by the Minerals Management Service (MMS), the 2008 Supplemental Environmental Assessment (SEA) for the Issuance of five IHAs for open water seismic surveys and shallow hazard and site clearance surveys in the Arctic, and/or a list of references used in this document may be obtained by writing to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning one of the contacts listed here (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 713–2289, ext 137 or Brad Smith, Alaska Region, NMFS, (907) 271–5006.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for certain subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

Summary of Request

On April 30, 2008, NMFS received an application from CPAI for the taking, by Level B harassment, of several species of marine mammals incidental to conducting shallow hazard and site clearance surveys using acoustic equipment and small airguns in the Chukchi Sea for 30–45 days from approximately August 10, 2008 until October 31, 2008. The geographic region of the proposed activities includes two areas spaced about 60 km (37 mi) apart and a path for sampling conditions along a potential pipeline route. Each area is about 2,000 km^2 (772.5 mi^2) with dimensions about 72 km (45 mi) by 62 km (38.5 mi). The two areas are about 111 km (69 mi) off the Alaska coast, generally west from the village of Wainwright. The marine surveys will be performed from a seismic vessel.

Detailed information on the shallow hazard and seismic surveys can be found in the CPAI application and in the **Federal Register** notice for the proposed IHA published on May 23, 2008 (73 FR 30064) (hereinafter ''FR Notice of Proposed IHA''). No changes have been made to the proposed activities since publication of the FR Notice of Proposed IHA.

Comments and Responses

During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (Commission), the Native Village of Point Hope (NVPH); the North Slope Borough (NSB); the Alaska Eskimo Whaling Commission (AEWC); the Center for Biological Diversity (CBD), Pacific Environment, Natural Resources Defense Council and Alaska Wilderness League; Oceana and Ocean Conservancy; the Inupiat Community of the Arctic Slope (ICPS); Dr. David E. Bain of the University of Washington; and CPAI.

General Comments

Comment 1: The Commission recommends that NMFS issue the IHA provided that (a) the proposed marine mammal mitigation and monitoring activities are carried out as described in NMFS' FR Notice of Proposed IHA; (b) operations be suspended immediately if a dead or seriously injured marine mammal is found in the vicinity of the operations and the death or injury could have occurred incidental to those operations; and (c) the list of species authorized to be taken be expanded to include fin whales.

Response: NMFS concurs with the Commission's recommendation and will require the immediate suspension of seismic activities if a dead or injured marine mammal has been sighted within an area where the Holder of the IHA deployed and utilized seismic airguns within the past 24 hours.

In addition, fin whales have been included in the list of species authorized to be taken by Level B harassment for the CPAI shallow hazard and site clearance surveys.

Comment 2: The NSB and ICAS point out that the CPAI application was incomplete because the proposed dates and duration of activities vary throughout the application documents. In addition, the NSB points out that the application has limited information

about marine mammal distribution, movements, habitat use, population size and trends. In addition, the ICAS states that CPAI cannot have adequately provided estimates of the number and type of species taken, when the IHA application did not adequately acknowledge the uncertainties in the available data for this type of operation.

Response: Comment noted. NMFS reviewed the CPAI application and verified the information provided within. At the time when CPAI submitted its application, no specific dates had been identified by CPAI, but a range of possible dates (i.e., July 15 through November 15, 2008) for the activity was noted. CPAI has since narrowed its operation window to between August 10 and October 31, 2008. CPAI also indicates that the seismic activities would take approximately 30–45 days, and it is likely to finish the operation earlier if weather permits.

While information on marine mammals is lacking, NMFS conducted relevant research so that complete information is provided in the FR Notice of Proposed IHA. In addition, detailed and updated information on bowhead whales and other marine mammal species is provided in the MMS 2006 PEA, MMS 2007 draft PEIS, NMFS 2008 SEA, and the SAR, as referenced in the FR Notice of Proposed IHA.

Comment 3: The NSB and ICAS recommend that NMFS not authorize CPAI's proposed seismic activities. The CBD also urges NMFS not to issue any take authorization to CPAI for the proposed activities unless and until the agency can ensure that mitigation measures are in place that truly avoid adverse impacts to all species and their habitats and only after full and adequate public participation has occurred and environmental review of the cumulative impacts of such activities on these species and their habitats has been undertaken. The CBD feels that the proposed IHA does not meet these standards and therefore violates the MMPA, ESA, NEPA, and other governing statutes and regulations.

Response: NMFS does not agree with NSB, ICAS, and CBD's recommendation and CBD's assessment. In its FR Notice of Proposed IHA, NMFS outlined in detail the proposed mitigation and monitoring requirements. The implementation of these measures will reduce the impacts of the proposed survey on marine mammals and their surrounding environment to the lowest level practicable, as required by the MMPA. The public was given 30 days to review and comment on these measures, in accordance with section 101(a)(5)(D) of the MMPA. NMFS has prepared a Supplemental EA to the 2006 MMS PEA. NMFS has fulfilled its obligations under NEPA by completing a SEA, which is not required to be available for public comment prior to its finalization. Additionally, NMFS completed a Biological Opinion in July 2008, as required by section 7 of the ESA, which concluded that this action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. Therefore, NMFS does not believe the issuance of an IHA to CPAI would result in a violation of the MMPA, ESA, NEPA, and other governing statutes and regulations.

Acoustics Impacts

Comment 4: Citing studies on noise impacts to chinchillas (Henderson *et al.*, 1991) and human noise exposure standards by the U.S. Occupational Safety Health Administration (OSHA), Dr. Bain states that ''in humans, chronic exposure to levels of noise too low to generate a TTS can result in PTS.'' As OSHA standards require limiting human exposure to noise at 115 dBA above threshold to 15 minutes per day, Dr. Bain concludes that this level is equivalent to 145 dB re 1 microPa for killer whales.

Response: Although NMFS agrees that chronic exposure to noise levels that would not cause TTS could result in hearing impairment in the long-term, it is important to understand that such exposure has to be of a chronic and long-term nature. The OSHA standards for permissible exposure are based on daily impacts throughout an employee's career, while the noise exposure to seismic surveys by marine mammals is short-term and intermittent, as described in the FR Notice of Proposed IHA and in the MMS 2006 PEA. In addition, the reference Dr. Bain cites to (Henderson *et al.*, 1991) does not address chronic noise impact to humans. The research by Henderson *et al.* (1991) focused on the applicability of the equal energy hypothesis (EEH) to impact (impulse) noise exposures on chinchillas, and the results indicated that hearing loss resulting from exposure to impact noise did not conform to the predictions of the EEH, which is the basis for OSHA standards for continuous noise exposure.

Most importantly, Dr. Bain's extrapolation of 145 dB re 1 microPa for killer whale hearing safety from OSHA's 115 dBA is fundamentally flawed for three reasons:

(1) The reference points when using decibel (dB) unit that address sound in air and in water are different. For airborne sounds, such as those by OSHA, the reference point is 20 microPa, while for underwater sounds, the reference point is 1 microPa. There are 26 dB differences between the values when different reference points are used for the same sound pressure, therefore, 115 dB re 20 microPa is 141 dB re 1 microPa for the same sound pressure. So 115 dB re 20 microPa in air above human threshold (defined as 0 dB re 20 microPa in air) would be 141 dB re 1 microPa underwater for the same sound pressure. Using the lowest threshold of 30 dB re 1 microPa as the killer whale hearing threshold, and assuming that noise impacts to killer whales are the same as for humans, one could extrapolate that continuous noise exposure of 171 dB re 1 microPa (141 dB over the 30 dB threshold) for 15 minutes for killer whales would be equivalent to humans exposed to 115 dB re 20 microPa for 15 minutes. Nevertheless, such extrapolation still leaves much uncertainty since marine mammals have a different mechanism for sound reception (Au, 1993; Richardson *et al.*, 1005). Some of the most recent science has shown that for some odontocetes, the onset of TTS when exposed to impulse noise is much higher (Finneran *et al.*, 2002) than NMFS' current thresholds.

(2) The decibel values used by OSHA are expressed as broadband A-weighted sound levels expressed in dBA. This frequency-dependent weighting function is used to apply to the sound in accordance with the sensitivity of the human ear to different frequencies. Thus, it is inappropriate to compare these values to an animal's hearing capability, including how an animal perceives sound in air (Richardson *et al.*, 1995). For marine mammals, M-weighting functions have been suggested based on five different hearing functional groups to address different hearing sensitivities of different frequencies by each of the marine mammal groups (Southall *et al.*, 2007).

(3) Finally, the sound characteristic used in OSHA standards is continuous sound, while the seismic sound from the proposed shallow hazard and site clearance surveys is impulse sound, which by its very nature is not a continuous sound.

Comment 5: Dr. Bain asserts that the zone of immediate risk of injury or death for marine mammals should be within the 150–215 dB re 1 microPa contours and assumes that values can be extrapolated from terrestrial species. Dr. Bain supports his argument by stating that immediate injury may result from

brief exposure to sound levels that are 120 to 140 dB above threshold in terrestrial mammals, and that marine mammals vary in their best sensitivity from killer whales at around 30 dB re 1 microPa (killer whale) to 60 dB re 1 microPa (phocids) and 75 dB re 1 microPa (otariids)

Response: NMFS does not agree with Dr. Bain's assessment. As discussed in *Response* to *Comment 3*, the reference points when using decibel (dB) unit that address sound in air is 20 microPa, while in water the reference point is 1 microPa. Therefore, the decibel levels used to address injury in terrestrial mammals cannot be extrapolated to apply marine mammal species without adding a correction factor of 26 dB (see Richardson *et al.*, 1995). Even so, plenty of controlled laboratory experiments on several marine mammal species (e.g., beluga whales, bottlenose dolphins, harbor seals, California sea lions, and northern elephant seals) in the past decade point out injuries (PTS) to marine mammals would probably occur at much higher sound exposure levels, far above the 180 and 190 dB re 1 microPa NMFS currently applies to protect cetaceans and pinnipeds from onset of Level A harassment (injury). (see review by Southall *et al.*, 2007).

Comment 6: Citing OSHA (2007) standards for human noise exposure standards, Nachtigall *et al.* (2003), and Henderson *et al.* (1991), Dr. Bain extrapolates that permanent injury to hearing from repeated exposure to noise at 120 dB re 1 microPa would occur to killer whales after being exposed for 8 hours.

Response: NMFS does not agree with Dr. Bain's assessment as such an extrapolation is invalid. First, as discussed in Response to Comment 4, the reference point addressing sound levels or intensities in air, which is used by OSHA for the human noise exposure standards, is relative to 20 microPa, while the reference point used to address sound levels or intensities in water is relative to 1 microPa. These are fundamentally different acoustical measures and should not be confused. Second, as discussed in *Response* to *Comment 5*, the noise exposure standard unit used by OSHA is dBA, which is the weighted sound exposure level based on human hearing sensitivities, and is not suitable to be used in other animals which have very different hearing sensitivities across the spectrum. Third, the sound sources used by OSHA are based on continuous sound, as is the referenced paper by Nachtigall *et al.* (2003), while the sound sources from the proposed seismic surveys are impulse sounds. The prediction of acoustic injury from continuous noise exposure is not applicable to impulse noise exposure, as is shown in the referenced paper by Henderson *et al.* (1991); therefore, the extrapolation is invalid. Fourth, ambient noise levels at many shallow water areas could easily reach 120 dB re 1 microPa, coupled with surf and wave actions. If killer whales suffered from permanent hearing damage when exposed to this noise level for 8 hours as suggested by Dr. Bain, then most killer whales in the coastal areas would have no hearing left. The lab controlled experiments by Nachtigall *et al.* (2003), as cited by Dr. Bain, show that an Atlantic bottlenose dolphin exhibited TTS of an average 11 dB after being exposed to continued noise up to 179 dB re 1 microPa for 55 minutes, a much higher level than where Dr. Bain would consider TTS to occur. However, in the wild, animals are expected to avoid such intense noise levels, thus preventing onset of TTS. Finally, killer whales are not expected to occur frequently in the proposed Arctic shallow hazard and site clearance project area, so the risk to this species is minimal.

Comment 7: Citing several papers on killer whales, harbor porpoises, and marbeled murrelets, Dr. Bain states that major behavior changes of these animals appear to be associated with received levels of around 135 dB re 1 microPa, and that minor behavioral changes can occur at received levels from 90–110 dB re 1 microPa or lower. Citing his own studies, Dr. Bain states that ''killer whales are 40% less likely to forage at all when vessels are nearby, perhaps because vessel noise masks echoes from prey, making the probability of foraging successfully negligible (Bain *et al.* 2006ab).'' In addition, Dr. Bain states that the threshold for effects on harbor porpoise is 90 dB re 1 microPa, for killer whale is 100 dB re 1 microPa, and for beluga whale is 153 dB re 1 microPa, which are all lower than the threshold used to estimate the takes. CBD also cited a study of Canadian beluga whales showing flight responses from ice-breakers at received sound levels as low as 94 dB. In addition, citing NRC (2003), the NVPH states that at distances of up to 50 km from icebreakers or other ships operating in deep channels, beluga whales respond with a suite of behavioral reactions which include rapid swimming away from the ship for distances up to 80 km. Finally, citing Richardson *et al.* (1999) and Richardson (2008), the NSB states that bowhead whales were excluded from a zone around an active seismic vessel where sound levels were estimated to be between 116 and 135 dB, and that bowhead whales were deflected away from sounds associated with a development island in the Beaufort Sea at levels perhaps approaching ambient sound levels.

Response: NMFS does not agree with Dr. Bain, CBD, NVPH, and NSB's assessment. Although it is possible that marine mammals could react to any sound levels detectable above the ambient noise level within the animals' respective frequency response range, this does not mean that such animals would react in a biologically significant way. In addition, as discussed in *Response* to *Comment 5*, ambient noise levels in many of the world's ocean can easily exceed 90 dB re 1 microPa (Urick, 1983).

According to experts on marine mammal behavior, the degree of reaction which constitutes a ''take,'' i.e., a reaction deemed to be biologically significant that could potentially disrupt the migration, breathing, nursing, breeding, feeding, or sheltering, etc. of a marine mammal is complex and context specific, and it depends on several variables in addition to the received level of the sound by the animals. These additional variables include, but are not limited to, other source characteristics (such as frequency range, duty cycle, continuous vs. impulse vs. intermittent sounds, duration, moving vs. stationary sources, etc.); specific species, populations, and/or stocks; prior experience of the animals (naive vs. previously exposed); habituation or sensitization of the sound by the animals; and behavior context (whether the animal perceives the sound as predatory or simply annoyance), etc. (Southall *et al.*, 2007).

The references cited by Dr. Bain, CBD, NVPH, and NSB's second example in this comment address different source characteristics (continuous sound rather than impulse sound that are planned for the proposed shallow hazard and site clearance surveys) or species (killer whales and harbor proposes) that rarely occur in the proposed Arctic action area. No reference supporting the ''threshold for effects'' on beluga whales is provided by Dr. Bain. Much research regarding bowhead and gray whales response to seismic survey noises has been conducted in addition to marine mammal monitoring studies during prior seismic surveys. Detailed descriptions regarding behavior responses of these marine mammals to seismic sounds are available (e.g., Richardson *et al.*, 1995; review by Southall *et al.*, 2007), and are also discussed in this document.

Although migrating bowhead whales were shown to be excluded from a zone around an active seismic vessel where sound levels were estimated to be at around 120 dB (Richardson *et al.*, 1999), the situation in this issue was that the migratory corridor was narrower in the Beaufort Sea. As the 120 dB ensonified area filled the narrow migratory corridor, thus impedes the movement of the whales. However, NMFS believes that in the Chukchi Sea where the area is more open, the 120 dB ensonified area would not impede bowhead whale migration. Therefore, there would be no significant biological affect to the species. However, as discussed below that monitoring a 120-dB radius in the Chukchi Sea is not practicable and due to safety concerns, NMFS would not require this level of monitoring in the Chukchi Sea.

Comment 8: Dr. Bain states that sound sources are typically divided into continuous and pulsed categories, and that behavioral effects from pulsed sound are likely to be independent of the repetition rate and duty cycle, and depend primarily on the duration of the survey. Dr. Bain further states that intermittent pulses can result in continuously received noise when sound arrives via multiple paths, which Dr. Bain explains as ''sound that bounces between the bottom and the surface will take longer to reach an animal than sound traveling via a direct path,'' and that ''noise can mask signals for a brief period before and after it is received, meaning an almost continuous received noise can mask signals continuously.'' Dr. Bain concludes that ''the subbottom profilers proposed for use during the site clearance surveys, with the very short intervals between pulses, present a risk of continuous masking effects.''

Response: NMFS does not agree with Dr. Bain's statement on ocean acoustics and his subsequent analysis and assessment regarding underwater sound propagation and its effects to marine mammals. Within the scientific community on ocean acoustics and bioacoustics, two types of sounds are traditionally recognized: transient sounds (sounds of relatively short duration) and continuous sounds (sounds that go on and on). Transient sounds can be further classified into impulsive (such as seismic airguns, explosives, pile driving) and non-impulsive (such as military tactic sonars) sounds (Richardson *et al.*, 1995). Other researchers working on noise impacts to marine mammals classified sound types into a single pulse (such as a single explosive), multiple pulses (seismic airguns, pile driving), and nonpulses (ship, sonar) (Southall *et al.*, 2007). A simple way to distinguish pulses sound from nonpulses (continuous sound included) is that the former have rapid rise-time in relation to its extremely short duration. As mentioned in *Response* to *Comment 7*, behavioral responses from marine mammals when exposed to underwater noise is complex and context specific, and often depend on the sound characteristics (such as received levels, duration, duty cycles, frequency, etc.) and other variables.

NMFS agrees that the distinction between transient and continuous sounds is not absolute, as continuous sound from a fast moving vessel is often treated as transient sound in relation to a stationary or slow moving marine mammal. Further, the distinction between pulses and nonpulses is also not always clear as certain pulsed sound sources (e.g., seismic airguns and explosives) may become nonpulses at greater distances due to signal decay through reverberation and other propagation paths. However, Dr. Bain's statement that intermittent pulses can result in continuously received noise when sound arrives via multiple paths is unfounded. For a marine mammal exposed to noise, multipath propagation would expose the animal to the noise multiple times, usually each subsequent exposure with lower sound level due to loss of acoustic energy from surface and bottom reflections; however, the noise arriving via multipath propagation would not become continuous sound because the intervals between signals would always exist. In addition, noise cannot mask a signal before or after it is received by the animal. Noise masking of signals can only occur when the unwanted sound (noise) interferes with the signal when received by the animal, generally at similar frequencies (Richardson *et al.*, 1995). Therefore, Dr. Bain's assessment that the subbottom profilers proposed for shallow hazard and site clearance surveys would cause continuous masking effects to marine mammals is not supported.

Comment 9: Dr. Bain states that one characteristic of pulsed sources is known as ''time-bandwidth'' product, and he explains that it is ''any sound with a finite duration (that is, any real-world sound) contains additional frequencies to the nominal frequency. That is, pulsed sources that nominally have a frequency that is too high to hear, may, in fact, be audible, as the source will contain lower frequencies that are detectable.''

Response: NMFS does not agree with Dr. Bain's statement that high frequency pulsed sources nominally contain additional frequencies that are audible. The high frequency pulsed sources are expected to operate within their frequency range, although some mechanical noise at lower frequencies may be produced as a byproduct during the operation. The mechanical noise associated with acoustic equipment is expected to be low intensity and is not expected to result in harassment of marine mammals. Furthermore, the term ''time-bandwidth product'' is generally used in signal process, which is irrelevant to the proposed Arctic seismic survey.

Comment 10: Dr. Bain states that the directionality of the sources and whether they are on during turns would also affect the ensonified area.

Response: All acoustic sources are downward directional, thus no additional ensonified area would result during turns.

Comment 11: The CBD argues that NMFS analysis of the various high-energy sound sources on marine mammals is deficient, with NMFS for the most part simply asserting that the sound generated by these sources is outside the hearing range of most marine mammals. The CBD further states that even NMFS acknowledges that odontocetes such as beluga whales can in fact hear these sounds.

Response: NMFS does not agree with the CBD statement as it does not have scientific basis. In the FR Notice of the Proposed IHA, NMFS stated that the 445 kHz frequency band from the Klein System 3000 dual frequency digital side-scan sonar is outside any marine mammal species' hearing range, therefore, there would be no effect to marine mammals when this frequency is chosen. High frequency sounds above 200 kHz are clearly outside the hearing ranges for any marine mammals, which is well accepted among marine mammal bioacousticians (Richardson *et al.*, 1995; Southall *et al.*, 2007). In addition, NMFS never acknowledged that odontocetes such as beluga whales can hear sounds above 200 kHz (CBD did not provide any reference to support its statement.) Furthermore, the sound generated by various side-scan sonars operated at the frequency of 120 kHz and beyond produce signals above the hearing ranges for mysticetes, such as bowhead, gray, humpback, and minke whales (Richardson *et al.*, 1995; Southall *et al.*, 2007).

MMPA Comments

Comment 12: The CBD, ICAS, and NSB state that since NMFS has not promulgated any regulations related to shallow hazard and site clearance surveys under the MMPA, and because

such surveys and associated activities carry the real potential of injury or death to marine mammals, neither an IHA nor an LOA can be issued for CPAI's proposed activities.

Response: NMFS does not agree with the CBD, ICAS, and NSB's statement. Section 101(a)(5)(D) of the MMPA authorizes Level A (injury) harassment and Level B (behavioral) harassment takes. While NMFS' regulations indicate that a LOA must be issued if there is a potential for serious injury or mortality, NMFS does not believe that CPAI's shallow hazard and site clearance survey requires a LOA. As explained throughout this **Federal Register** Notice, it is highly unlikely that marine mammals would be exposed to sound pressure levels (SPLs) that could result in serious injury or mortality. The best scientific information indicates that an auditory injury is unlikely to occur as apparently sounds need to be significantly greater than 180 dB for injury to occur (Southall *et al.*, 2007).

NMFS has determined that exposure to several seismic pulses at received levels near 200 205 dB (rms) might result in slight temporary threshold shift (TTS) (which is not considered injury) in hearing in a small odontocete, assuming the TTS threshold is a function of the total received pulse energy. Received levels of 200 205 dB or more from the loudest acoustic device would be restricted to a radius of no more than 5 m (16 ft) around a seismic vessel. CPAI's airgun array is considered to be of small size. For baleen whales, while there are no data, direct or indirect, on levels or properties of sound that are required to induce TTS, there is a strong likelihood that baleen whales (bowhead and gray whales) would avoid the approaching airguns (or vessel) before being exposed to levels high enough for there to be any possibility of onset of TTS. For pinnipeds, information indicates that for single seismic impulses, sounds would need to be higher than 190 dB rms for TTS to occur while exposure to several seismic pulses indicates that some pinnipeds may incur TTS at somewhat lower received levels than do small odontocetes exposed for similar durations. Consequently, NMFS has determined that it would be lawful to issue an IHA to CPAI for the 2008 seismic survey program.

Comment 13: The CBD states that it referenced the scientific literature linking seismic surveys with marine mammal stranding events in its comments to MMS on the 2006 Draft PEA and in comments to NMFS and MMS on the 2007 DPEIS. The CBD further states that NMFS' failure to address these studies and the threat of serious injury or mortality to marine mammals from seismic surveys renders NMFS' conclusory determination that serious injury or morality will not occur from CPAI's activities arbitrary and capricious.

Response: The MMS briefly addressed the humpback whale stranding in Brazil on page PEA–127 in the 2006 Final PEA. Marine mammal strandings are also discussed in the MMS 2007 DPEIS. A more detailed response to the cited strandings has been provided in several previous IHA issuance notices for seismic surveys (e.g., 73 FR 40512, July 15, 2008). Additional information has not been provided by CBD or others regarding these strandings. As NMFS has stated, the evidence linking marine mammal strandings and seismic surveys remains tenuous at best. Two papers, Taylor *et al.* (2004) and Engel *et al.* (2004), reference seismic signals as a possible cause for a marine mammal stranding. Taylor *et al.* (2004) noted two beaked whale stranding incidents related to seismic surveys. The statement in Taylor *et al.* (2004) was that the seismic vessel was firing its airguns at 1300 hrs on September 24, 2004, and that between 1400 and 1600 hrs, local fishermen found live-stranded beaked whales some 22 km (12 nm) from the ship's location. A review of the vessel's trackline indicated that the closest approach of the seismic vessel and the beaked whales' stranding location was 33 km (18 nm) at 1430 hrs. At 1300 hrs, the seismic vessel was located 46 km (25 nm) from the stranding location. What is unknown is the location of the beaked whales prior to the stranding in relation to the seismic vessel, but the close timing of events indicates that the distance was not less than 33 km (18 nm). No physical evidence for a link between the seismic survey and the stranding was obtained. In addition, Taylor *et al.* (2004) indicates that the same seismic vessel was operating 500 km (270 nm) from the site of the Galapagos Island stranding in 2000. Whether the 2004 seismic survey caused two beaked whales to strand is a matter of considerable debate (see Cox *et al.*, 2004). NMFS believes that scientifically, these events do not constitute evidence that seismic surveys have an effect similar to that of mid-frequency tactical sonar. However, these incidents do point to the need to look for such effects during future seismic surveys. To date, follow-up observations on several scientific seismic survey cruises have not indicated any beaked whale stranding incidents.

Engel *et al.* (2004), in a paper presented to the International Whaling Commission (IWC) in 2004 (SC/56/E28), mentioned a possible link between oil and gas seismic activities and the stranding of eight humpback whales (seven off the Bahia or Espirito Santo States and one off Rio de Janeiro, Brazil). Concerns about the relationship between this stranding event and seismic activity were raised by the International Association of Geophysical Contractors (IAGC). The IAGC (2004) argues that not enough evidence is presented in Engel *et al.* (2004) to assess whether or not the relatively high proportion of adult strandings in 2002 is anomalous. The IAGC contends that the data do not establish a clear record of what might be a ''natural'' adult stranding rate, nor is any attempt made to characterize other natural factors that may influence strandings. As stated previously, NMFS remains concerned that the Engel *et al.* (2004) article appears to compare stranding rates made by opportunistic sightings in the past with organized aerial surveys beginning in 2001. If so, then the data are suspect.

Second, strandings have not been recorded for those marine mammal species expected to be harassed by seismic in the Arctic Ocean. Beaked whales and humpback whales, the two species linked in the literature with stranding events with a seismic component are either extralimital or not located in the Chukchi Sea where shallow hazard and site clearance survey would occur. Moreover, NMFS notes that in the Arctic, marine mammal observation and monitoring have been conducted by the industry during periods of industrial activity (and by MMS during times with no activity). No strandings or marine mammals in distress have been observed during these surveys; nor reported by NSB inhabitants. Finally, if bowhead and gray whales react to sounds at very low levels by making minor course corrections to avoid seismic noise and mitigation measures require CPAI to ramp-up the seismic array to avoid a startle effect, strandings are highly unlikely to occur in the Arctic Ocean. Ramping-up of the array will allow marine mammals the opportunity to vacate the area of ensonification and thus avoid any potential injury or impairment of their hearing capabilities. In conclusion, NMFS does not expect any marine mammals will incur serious injury or mortality as a result of CPAI's shallow hazard and site clearance survey in the Chukchi Sea in 2008.

Comment 14: The CBD states that NMFS failed to adequately specify

CPAI's activities and impacts of vessels because neither CPAI's application nor NMFS' FR Notice of the Proposed IHA mention the various transit routes through U.S. waters in the Bering, Chukchi and/or Beaufort Seas that these vessels associated with CPAI's surveys would take.

Response: The specified activity that has been proposed and for which an IHA has been requested is the use of seismic airguns to conduct oil and gas exploration. While the support vessels play a role in facilitating seismic operations, NMFS does not expect these operations to result in the incidental take of marine mammals. Since these support vessels are typically slow-moving, any risk of vessel collisions with marine mammals is expected to be minimal. Moreover, normal shipping and transit operations do not rise to a level requiring an authorization under the MMPA. To require IHAs and LOAs for standard shipping would affect NMFS' ability to review activities that have a potential to cause harm to marine mammal populations.

Comment 15: The ICAS and NSB state that a ''small take'' finding is inadequate and thus cannot be supported with actual data for the proposed CPAI shallow hazard and site clearance survey, therefore, placing NMFS in the position of having to make an arbitrary decision. In addition, the CBD states that NMFS did not make the distinction between ''small number'' and ''negligible impact'' while making the decision in the FR Notice of the Proposed IHA.

Response: NMFS does not agree with the ICAS, NSB, and CBD's statement. The analysis provided in the FR Notice of Proposed IHA clearly described in detail the numbers of bowhead, gray, and beluga whales, and ringed and bearded seals that may be potentially taken by Level B harassment as a result of the seismic operations in the Chukchi Sea. As clearly stated in the aforementioned **Federal Register** notice, take numbers of these species represent 0.09, 0.19, and 0.06 percent of the western Arctic stock of bowhead (population estimated at 10,545), eastern North Pacific stock of gray (population estimated at 18,178), and the Bering Sea stock of harbor porpoises (population estimated at 66,078), respectively; and 0.55 and 0.15 percent of the Alaska stocks of ringed (population estimated at 249,000 in the Chukchi Sea) and bearded seal (population estimated at 250,000–300,000 in the Bering and Chukchi Seas) populations within the Chukchi Sea, respectively. Although no take number was estimated for humpback, fin, minke, and killer whales, harbor porpoises, and spotted and ribbon seals in the vicinity of the project area due to their rare presence based in the Chukchi Sea, NMFS believes that the harassment of these species would be much less likely than those of bowhead and beluga whales and ringed and bearded seals. NMFS believes that the numbers for all affected species are small relative to their stock size. Separate detailed analyses on the levels of take by noise exposure and cumulative impacts to these marine mammal species and stocks from a wide spectrum in the past, current, and foreseeable future were also conducted and described in the aforementioned **Federal Register** notice, the MMS 2006 PEA, and NMFS 2008 SEA. These analyses led NMFS to conclude that while behavioral modifications, including temporarily vacating the area during the project period may be made by these species to avoid the resultant visual and acoustic disturbance, NMFS nonetheless found that this action would result in no more than a negligible impact on the affected marine mammal species and/or stocks. NMFS also found that the proposed action would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence uses.

Comment 16: The CPAI states although for bowhead whales a current minimum population is estimated at 9,472, there are more data that gives a range of the population up to 13,000 individuals. CPAI requests NMFS to consider using the range that more accurately reflects the health of the population and its increased growth over the past few decades.

Response: Comment noted. Although several recent studies have put the western Arctic stock of bowhead whales in the range of 13,000 individuals (Gerber *et al.*, 2007; Citta *et al.*, 2007), those studies were based on the projection of an approximate 3 percent increase from the most recent estimate conducted in 2004 (George *et al.*, 2004). However, it is important to recognize that this number (13,000) is merely a projection based on the stock assessment survey and does not represent the population estimate which is usually based on population abundance surveys. NMFS Stock Assessment Report defines the best stock estimate for the western Arctic bowhead whales at 10,545, the minimum at 9,472 individuals, respectively (Angliss and Outlaw, 2008). For the purpose of this activity, NMFS uses the best population estimate, i.e., 10,545.

Comment 17: The ICAS points out that the population density estimates used in the IHA application to determine the estimated take of various species are uncertain because CPAI based population density estimates on the published report of marine mammal surveys conducted during the Shell and CPAI seismic program in the Chukchi Sea during 2007 (''LGL Report''). The ICAS further states that while these may be the most recent density estimates for the region, they do not include estimates for ribbon seals, beluga, humpback whales, or fin whales. Finally, the ICAS points out that only 22 percent of the total daylight observation effort from the main vessel, and 43 percent of the total daylight observation from chase/monitoring vessels for the Chukchi Sea survey was useable.

Response: As ICAS states in its comment these are the most recent density estimates of marine mammal species/stocks in the vicinity of the proposed seismic survey area. Therefore, NMFS considers these data to best reflect the recent marine mammal distribution and abundance in the region. These density estimates were adjusted for sighting rates to account for animals present but not actually seen. As for those species and stocks whose density data are not available, such as beluga, humpback, and killer whales, and ribbon seals that could also be affected by Level B behavioral harassment, since the occurrence of these marine mammals is very rare within the proposed project area during the late summer and fall in the Chukchi Sea, take numbers cannot be estimated. However, should these animals occur in the project area, NMFS believes their take numbers would be much lower (including as a percentage of the affected species or stock) as compared to those marine mammals whose take numbers were calculated.

Comment 18: The CBD, ICAS, and NSB state that NMFS' estimates of the number of marine mammals that may be harassed based on the assumption that sounds below 160 dB re 1 microPa (rms) do not constitute harassment is incorrect because an activity can constitute harassment if it has the ''potential'' to affect marine mammal behavior. In addition, the CBD argues that 160 dB threshold for belugas is similarly flawed, as it points out in previous IHA notices, NMFS has acknowledged the impacts of sounds on beluga even at significant distances from a sound source (up to 20 km).

Response: NMFS does not agree with CBD, ICAS, and NSB's statement. As stated in the MMPA, Level B harassment is defined as any act of

pursuit, torment, or annoyance which ''has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.'' Activities that affect marine mammal behavior briefly but not cause disruption of behavioral patterns are not considered ''takes.''

In addition, in regard to impacts to marine mammal behaviors, distance is not the only factor that counts. The received levels at which marine mammals are affected are related to a number of factors including source levels, distances, and acoustic propagation pathways. The particular example CBD brought up regarding the seismic surveys by the National Science Foundation used airgun arrays with total discharge volume of 2,840 in^3, while the proposed CPAI shallow hazard and site clearance survey would only use an airgun array with total discharge volume of 40 in^3. The different source levels determine the ensonified zone where marine mammals, including beluga whales, would be impacted.

Comment 19: The ICAS points out that when calculating the estimated take number, CPAI used the equation of multiplying the average density of species by the length of trackline shots (in km) by twice of the distance of transmission loss to 160 dB. The ICAS states that such calculation did not include marine mammal takes within the semi-circular areas defined by the safety radii that would bound the start and end-points of seismic surveying. The ICAS states that to account for this discrepancy, the above equation should be supplemented with the semi-circular areas.

Response: Comment noted. Although it is customary to include the semi-circular areas defined by the safety radii that would bound the start and end-points of seismic surveying, the 160-dB distance is very short due to the overall low intensity of the acoustic sources. Therefore, the ensonified area within the bounded semi-circular areas is very small (8 km^2, or 0.045 percent of the total ensonified area) when compared to the total ensonified area even without the semi-circular areas (17,649 km^2). A recalculation of the estimated takes including the semi-circular areas did not show a difference from the original calculation.

Comment 20: The CBD, ICAS, and NSB state that NMFS has no idea of the actual population status of several of the species subject to the proposed IHA. For example, in the most recent Stock Assessment Reports (SARs) prepared pursuant to the MMPA, NMFS acknowledges it has no accurate information on the status of ribbon, spotted, bearded, and ringed seals. CBD and NSB both indicate that without these data, NMFS cannot conclude that surveys which will harass untold numbers of individuals of each species would have no more than a ''negligible impact'' on the stocks.

Response: As required by the MMPA implementing regulations at 50 CFR 216.102(a), NMFS has used the best scientific information available in making its determinations required under the MMPA. The Alaska SAR provides population estimates based on past survey work conducted in the region, and the SAR shows that based on the most recent information, all of these Alaska stocks of ice seal species have robust populations. The proposed survey by CPAI is not expected to have adverse impacts on ice seals. The activity will last for approximately 30–45 days in the open-water environment of the Chukchi Sea, where bearded and spotted seals are found only occasionally.

In addition, it is expected that approximately 1,379 ringed and 376 bearded seals would be affected by Level B behavioral harassment as a result of the proposed shallow hazard and site clearance surveys, respectively, and that these take numbers represent 0.55 and 0.15 percent of the Alaska stocks of ringed and bearded seal populations within the Chukchi Sea, respectively. Although spotted and ribbon seals could also be taken by Level B behavioral harassment as a result of the proposed marine surveys in the Chukchi Sea, the probability of take is very low since their presence is very rare within the proposed project area. Nonetheless, NMFS believes their take numbers would be much lower as compared to those marine mammals whose take numbers were calculated.

Comment 21: Citing research on long term adverse effects to whales and dolphins from whale watching activities (Trites and Bain, 2000; Bain, 2002; Lusseau *et al.*, 2006), Dr. Bain states that Level B behavioral harassment could be the primary threat to cetacean populations.

Response: Although NMFS agrees that long-term, persistent, and chronic exposure to Level B harassment could have a profound and significant impact on marine mammal populations, such as described in the references cited by Dr. Bain, however, those examples do not reflect the impacts of seismic surveys to marine mammals for the proposed CPAI project. First, whale watching vessels are intentionally targeting and making close approaches to cetacean species so the tourists onboard can have a better view of the animals. Some of these whale/dolphin watching examples cited by Dr. Bain occurred in the coastal waters of the Northwest Pacific between April and October and for extended periods of time (''[r]ecreational and scientific whale watchers were active by around 6 a.m., and some commercial whale watching continued until around sunset.'') Thus multiple vessels have been documented to be in relatively close proximity to whales for about 12 hours a day, six months a year, not counting some ''out of season'' whale watching activities and after dark commercial filming efforts. In addition, noise exposures to whales and dolphins from whale watching vessels are probably significant due to the vessels' proximity to the animals. To the contrary, the proposed 2008 open water shallow hazard and site clearance surveys, along with other potential four seismic activities and existing industrial operations in the Chukchi and Beaufort Seas, do not intentionally approaching marine mammals in the project areas. The two areas situate in a much larger Arctic Ocean Basin which is far away from most human impacts. Therefore, the adverse effects from each activity are remote and spread farther apart, as analyzed in the MMS 2006 PEA and draft EIS. The proposed seismic activities would only be conducted between August and October for 30–45 days, weather permitting. In addition, although studies and monitoring reports from previous seismic surveys have detected Level B harassment of marine mammals, such as avoidance of certain areas by bowhead and beluga whales during the airgun firing, no evidence suggests that such behavioral modification is biologically significant or non-negligible (Malme *et al.*, 1986; 1988; Richardson *et al.*, 1987; 1999; Miller *et al.*, 1999; 2005), as compared to those exposed by chronic whale watching vessels cited by Dr. Bain. Therefore, NMFS believes that potential impacts to marine mammals in the Arctic by shallow hazard and site clearance surveys would be limited to Level B harassment only, and due to the limited scale and remoteness of the projects in relation to a large area, such adverse effects would not accumulate to the point where biologically significant effects would realized.

Comment 22: Dr. Bain states that changes in behavior resulting from noise exposure could lead to indirect injury in marine mammals in the wild. He presented several examples to suggest that marine mammals repeatedly

exposed to Level B behavioral harassment could result in Level A takes: (1) Gas bubble lesions in beaked whales due to acoustically mediated bubble growth or rapid ascent by animals after deep diving; (2) a minke whale and harbor porpoises were observed traveling at high speed during exposure to mid-frequency sonar in Haro Strait in 2003, and that exhaustion from rapid flight could lead to heart or other muscle damage, which could cause mortality; (3) citing MMS' (2004) Environmental Assessment on Proposed Oil and Gas Lease Sale 195 in the Beaufort Sea Planning Area (OCS EIS/EA MMS 2004–028) that feeding requires a prey density of 800 mg/m3 and his own observation, Dr. Bain is concerned displacement from high productive feeding areas would negatively affect individual whales, and that small cetaceans such as harbor porpoises would face a risk of death if they are unable to feed for periods as short as 48–72 hours; (4) individual killer whales have been observed splitting their pod when frightened by sonar, and that other killer whales' separation from their social units has resulted in death; (5) TTS may lead to harm as a minke whale was nearly struck by a research vessel in the area where one had been observed fleeing mid-frequency sonar; and (6) impaired auditory ability may increase predation as white-sided dolphins were attacked by killer whales due to the noise of the research vessel caused the approach of killer whales undetected by the dolphins.

Response: NMFS agrees that it is possible that changes in behavior or auditory masking resulting from noise exposure could lead to injury in marine mammals under certain circumstances in the world, such as those examples/hypotheses raised by Dr. Bain. However, it is not likely that received sound pressure levels (SPLs) from the shallow hazard and site clearance surveys would drastically cause changes in behavior or auditory masking in marine mammals in the vicinity of the proposed action area. First, marine mammals in the aforementioned examples and hypotheses were exposed to high levels of non-pulse intermittent sounds such as the military sonar, which has been shown to cause flight activities (e.g., Haro Strait killer whales); and continuous sounds such as the vessel, which could cause auditory masking when animals are closer to the source. The sources produced by the acoustic equipment and airguns for the proposed shallow hazard and site clearance surveys are impulse sounds used in seismic profiling, bathymetry, and seafloor imaging. Unlike military sonar, seismic pulses have an extremely short duration (tens to hundreds milliseconds), and relatively long intervals (several seconds) between pulses. Therefore, the sound energy levels from these acoustic equipment and small airguns are far lower in a given time period. Second, the intervals between each short pulse would allow the animals to detect any biologically significant signals, and thus avoid or prevent auditory masking. In addition, NMFS requires mitigation measures to ramp up acoustic sources at a rate of no more than 6 dB every 5 minutes. This ramp up would prevent marine mammals from being exposed to high level noises without warning, thereby eliminating the possibility that animals would dramatically alter their behavior (i.e. from a ''startle'' reaction). NMFS also believes that long-term displacement of marine mammals from a feeding area is not likely because the seismic vessel is constantly moving, and the maximum 160-dB ensonified radius is about 4 km, which would make an ensonified zone of approximately 50 km2 at any given moment, which constitutes a very small portion of the Chukchi Sea. In reality, NMFS expects the 160-dB ensonified zone to be smaller due to absorption and attenuation of acoustic energy in the water column.

Comment 23: Citing that the difference between takes by subsistence harvest and potential biological removal (PBR) of the Western Arctic stock bowhead whales is about 28 individuals whales, or less than 0.3 percent of the population, Dr. Bain is concerned that the cumulative effects of multiple seismic surveys would not need to be very large to push takes over PBR for bowheads.

Response: NMFS does not agree with Dr. Bain's assessment. None of the five proposed 2008 open water Arctic seismic surveys and shallow hazard and site clearance surveys is expected to result in any Level A harassment (i.e., injury) or mortality. As analyzed in the NMFS 2008 supplemental environmental assessment (SEA) for the issuance of five Arctic seismic surveys and shallow hazard and site clearance surveys, all incidental takes of marine mammals are expected to be Level B behavioral harassment (NMFS, 2008). Therefore, no PBR would be applied for the proposed CPAI seismic activities and other 2008 seismic activities in the Chukchi and Beaufort Seas.

Comment 24: Citing MMS 2006 Programmatic Environmental Assessment (MMS 2006 PEA) and the MMS 2007 draft Programmatic Environmental Impact Statement (DEIS) for seismic surveys in the Arctic Ocean, Dr. Bain states that he supports the mitigation measures established in these documents that no more than 12 cow/calf pairs and aggregation of feeding or resting bowheads are within the area to be ensonified by 120 dB and 160 dB, respectively. The CBD also states that the monitoring of a 120 dB safety zone for bowhead cow/calf pairs and monitoring of a 160 dB safety zone for large groups of bowhead or gray whales (> 12 individuals) were required by NMFS in 2006 and were practicable. The CBD states that the failure to require such conditions, or at least analyze it, violates the MMPA. Dr. Bain presumes that these numbers (using 120 and 160 dBs) reflect the difference between takes allocated to hunters and the PBR for the stock. Dr. Bain further suggests that this number be applied to all seismic activities combined, not individual seismic surveys, thus, if four seismic surveys occur concurrently, no single survey should be allowed to affect the migration of more than 3 cow/calf pairs or 3 aggregation of feeding or resting bowhead whales.

Response: First, the additional mitigation measures in the MMS 2006 PEA and the MMS 2007 draft PEIS, as well as in the 2007 NMFS SEA for the issuance of an IHA to Shell Offshore Inc. for its open water seismic surveys conducted in the Chukchi and Beaufort Seas in 2007, establish safety (shut-down) zones of 120 dB re 1 microPa for an aggregation of four or more bowhead cow/calf pairs and 160 dB re 1 microPa for an aggregation of 12 or more bowhead or gray whales, not 12 cow/calf pairs as Dr. Bain states in his comment. The rationale for this cautious and conservative approach when addressing the 120-dB and 160-dB safety zones is clearly stated in the MMS 2006 PEA. These additional mitigation and monitoring measures were identified through the analyses to further reduce the potential for adverse environmental impacts and, depending on the scope of seismic-survey activities, could be adopted as requirements for seismic-survey-related marine mammal incidental take authorizations. With respect to CBD's concern that these measures were ''practicable'' in 2006, NMFS has re-evaluated the practicability of requiring aerial monitoring to the 120-dB isopleth in the Chukchi. NMFS has determined that it is not practicable to conduct aerial monitoring to the 120-dB isopleth because aerial surveys have currently been determined to be impracticable

due to lack of adequate landing facilities, the prevalence of fog and other inclement weather in that area, thereby resulting in safety concerns. Additionally, these conditions are analyzed in NMFS' 2008 SEA. These numbers have nothing to do with the PBR of the bowhead whale stock, as assumed by Dr. Bain. As discussed in FR Notice of Proposed IHA, the proposed 2008 Arctic seismic surveys and shallow hazard and site clearance surveys are not expected to result in Level A harassment (injury) or mortality.

In addition, Dr. Bain's suggestion of ''breaking up'' the aggregated takes of bowheads into small subsets that can be ''allocated'' to each seismic survey is based on his assumption that these numbers were set by PBR. NMFS does not support this suggestion because it has no scientific support other than assumption. The safety zones of 120-dB for four or more cow/calf pairs and 160-dB for an aggregation of 12 bowhead or gray whales are based on the biology of the bowhead and gray whales as analyzed in the MMS 2007 draft PEIS.

The threshold of four or more fall-migrating bowhead whale cow/calf pairs was set based on the following: (a) cow/calf pairs are identified as the most vulnerable portion of the population and disruption of their biologically significant behaviors or their avoidance of important habitats is more likely to lead to population level impacts; (b) mitigation measures for this portion of the population should be cautiously developed to ensure that takings are at the lowest practicable level and that significance is avoided; (c) bowhead whale cow/calf pairs migrate in groupings or pulses and the observed presence of cow/calf pairs by surveys generally indicates that additional cow/calf pairs are present but unseen; (d) using professional judgment, NMFS and MMS have determined that the presence of four or more cow/calf pairs (as observed during surveys) indicates that enough cow/calf pairs are likely present (but some unseen) in the area in numbers equal to or greater than 12 animals; and (e) the potential for significance to occur therefore increases when four or more bowhead whale cow/calf pairs are observed (MMS, 2007).

The threshold of an aggregation of 12 or more bowhead or gray whales is based on the following premises: (a) whales aggregate in order to communicate and perform ''biologically significant'' behaviors (as defined by NRC, 2005), such as feeding, resting, socializing, mating, and calving; (b) aggregations of animals can also indicate an area of preferred habitat and locations where biologically significant behaviors are likely occurring; (c) disruptions of these biologically significant behaviors and important habitats have a greater potential to lead to population level effects (i.e., result in limiting reproductive potential or recruiting success, impeding important mother/calf bonding); (d) protective measures should be designed to reduce the potential for disruption of biologically significant behaviors or help ensure whales do not avoid important key habitat areas (and thus potentially negate a negligible impact finding under the MMPA); and (e) standard scientific acceptance that the presence of observed whales (i.e., at the surface) during monitoring surveys indicates that additional whales are also present in the area but non-detectable (i.e., below the surface) (MMS, 2007).

Comment 25: Dr. Bain is concerned that the North Pacific right whale is excluded from consideration for the proposed seismic activity in the Chukchi Sea. Citing Nowacek *et al.* (2004), Dr. Bain further states that the [North] Atlantic right whale is less easily disturbed [than the North Pacific right whale], is known to be affected by received levels below 135 dB.

Response: NMFS does not agree with Dr. Bain and believes his concern is unwarranted. The North Pacific right whales are found in the northern part of the Pacific, such as the Bering Sea and the Gulf of Alaska (Moore *et al.*; 2000; 2002; LeDuc *et al.*, 2001; Waite *et al.*, 2003; Mellinger *et al.*, 2004; Wade *et al.*, 2006). They do not enter Chukchi Sea in the Arctic Ocean, where the proposed seismic activity is planned. In addition, NMFS is not able to verify Dr. Bain's statement that the North Atlantic right whale is less easily disturbed than the North Pacific right whale, since he did not provide a supporting reference.

Comment 26: Dr. Bain is concerned that many species are sedentary, territorial, or have strong tendencies toward site fidelity, and that these species are unlikely to move away from a noise source. In addition, Dr. Bain is concerned that many predators are used to experiencing pain during feeding, and hence tolerate pain [from being exposed to loud noise] rather than abandoning their prey (e.g., many mammals involved in fishery-interactions).

Response: First, the monitoring and mitigation measures described in this document and implemented for the proposed open water seismic activity would prevent any marine mammals from being exposed to received levels that could cause onset of injury (180 dB re 1 microPa for cetaceans and 190 dB re 1 microPa for pinnipeds). Second, there are no sedentary marine mammals. The proposed seismic activity is fundamentally different from commercial fisheries activity in which the appearance of a seismic vessel does not reinforce the marine mammal with food or prey, therefore, it is unlikely that predatory marine mammals would approach the seismic vessel or acoustic source while searching for prey. Even if a marine mammal happens to be in close vicinity of the vessel or source, monitoring and mitigation measures will required the crew to power-down or shut-down the acoustic sources so that the animal will not be affected by Level A harassment.

Comment 27: Dr. Bain comments on NMFS' and CPAI's method of calculating estimated take numbers of marine mammals by multiplying the ''strip width'' by the length of the survey, and states that ''[f]or bowheads, some studies showed behavioral changes in nearly all whales out to 20 km, and in many cases to at least 30 km.'' Dr. Bain further states that ''belugas and bowheads are known to be affected at 10–20 km or more.'' At such, Dr. Bain observes that the ramp-up procedures would not be effective as it would take about 5 hours for the bowheads [near the source] to move to a distance of 30 km, and marine mammal monitoring over a distance of 20 km is very difficult.

Response: First, the estimated takes of marine mammals were calculated by multiplying the expected average animal densities by the area of ensonification for the 160 dB re 1 microPa (rms) isopleth for marine mammals. The area of ensonification was determined by multiplying the total proposed trackline (5,300 km or 3,294 mi) times 2 (both sides of the trackline) times the distance to the 160-dB isopleth (not ''strip width,'' a term usually used in the population survey, as stated by Dr. Bain in his comment).

NMFS cannot verify Dr. Bain's statement that ''some studies showed behavioral changes in nearly all whales out to 20 km, and in many cases to at least 30 km'' and that ''belugas and bowheads are known to be affected at 10–20 km or more,'' since he did not provide any supporting references. Neither did Dr. Bain provide the source levels and displacement volumes of the airgun arrays in which these studies were conducted, nor the severity of the behavioral changes by the whales. Nevertheless, it is important to understand that the distance from the seismic sources where bowheads or other marine mammals can be affected depends on the source levels of the

airgun arrays, which is also related to the size, or displacement volume of the airgun array. It is possible that if a large airgun array was used in the seismic survey, the received level at 20 to 30 km distance could still be high enough to cause behavioral changes (or behavioral harassment) by the bowhead whales. However, for the proposed shallow hazard and site clearance surveys, the source levels of the airgun array and other acoustic equipment are relatively low (about 214 dB re 1 microPa for the GeoChirp II, the loudest acoustic equipment planed to be used), and that the modeled distance to the 160-dB isopleths is estimated at 1,665 m (5,463 ft). Please see Number of Marine Mammals Estimated to be Taken section below for a detailed description of the calculation.

As far as mitigation measures are concerned, NMFS expects that the distance from the source to the safety zone for cetaceans is approximately 115 m (377 ft), where the received level is at 180 dB re 1 microPa, which is a small enough area to be effectively monitored by NMFS-approved marine mammal monitors (MMOs). Furthermore, no seismic surveys, ramp up included, will commence if there is a marine mammal within the safety zone.

Comment 28: Citing the 90-day monitoring report for the SOI 2007 open water seismic activities, the NVPH is concerned that the shallow hazard and site clearance surveys could exclude nearly all migrating bowhead whales from waters within 20 km or more of the survey vessel, since the 120-dB isopleth extends over 25 km. The NVPH states that similar displacement of beluga whales at a large distance is also possible.

Response: NMFS does not agree with NVPH's assessment regarding the potential acoustic impacts to bowhead and beluga whales. First, as discussed in *Response* to *Comment 4*, although it is possible that marine mammals could react to any sound levels detectable above the ambient noise level within the animals' respective frequency response range, this does not mean that such animals are taken by Level B harassment (see definition of Level B harassment above). The degree of reaction which constitutes a ''take,'' i.e., a reaction deemed to be biologically significant that could potentially disrupt the migration, breathing, nursing, breeding, feeding, or sheltering, etc. of a marine mammal is complex and context specific, and it depends on several variables in addition to the received level of the sound by the animals. In many cases, bowhead or beluga whales that are exposed to 120 dB re 1 microPa or higher do not exhibit noticeable behavioral changes (e.g., Malme *et al.*, 1984; Richardson *et al.*, 1986; 1999; Miller *et al.*, 2005). Second, although migrating bowhead whales have been seen to be excluded from entering areas with seismic sound levels at approximately 120 dB re 1 microPa in the Beaufort Sea (Richardson *et al.*, 1999), NMFS believes this was due to the narrower migratory route in the Beaufort Sea where the whales migration was impeded due to the seismic noise. However, the migratory route of bowhead whales is much wider in the Chukchi Sea. The wider migratory route allows bowhead whales to go around the ensonified zone during their migration, instead of being impeded by the sound. In addition, since the source levels from the shallow hazard and site clearance survey are relatively low (214 dB re 1 microPa for the source of the loudest acoustic equipment), the ensonified zone would also be relatively small. If any deflection were to occur, NMFS does not believe it would be biologically significant. Therefore, NMFS does not believe that bowhead and beluga whales would be displaced when exposed to received level from seismic airguns at 120 dB re 1 microPa.

Comment 29: The NSB states CPAI used the density information to estimate the number of belugas they may encounter and take during the seismic operations, based on 2006 and 2007 vessel based survey, was not appropriate, since these data were collected in the same season when seismic operations were occurring and belugas appear to be sensitive to industrial sounds. The NSB recommends that the Brueggerman *et al.* (1990; 1991; 1992) observations be used to calculate the beluga density. The NSB further states that if CPAI conducts surveys into October or November, it would also encounter belugas from the Beaufort Sea stock as the animals are migrating toward wintering areas. Therefore, it is highly unlikely that only 10 belugas would be disturbed.

Response: NMFS agrees with the NSB's assessment regarding the uncertainty of beluga density in the vicinity of the proposed seismic operation area. Although density estimate data for marine mammals in the Arctic Ocean are available, NMFS typically uses the most recent data because they are deemed to be reliable. In this case, the 2006 and 2007 beluga whale monitoring data provide the most recent scientific information on the distribution of these animals, while the Brueggerman *et al.* (1990; 1991; 1992) data are 16–18 years old. In addition, the NSB did not provide the full citation of the Brueggerman *et al.* references for NMFS to verify and compare. However, NMFS also recognizes that satellite tagging efforts directed at the eastern Chukchi stock of beluga whales showed that whales tagged in the eastern Chukchi in summer traveled 1,100 km (684 mi) north of the Alaska coastline and to the Canadian Beaufort Sea within 3 months of tagging (Suydam *et al.*, 2001), indicating significant stock overlap with the Beaufort Sea stock of beluga whales. For these reasons, NMFS could not provide a take estimate for beluga whales for both populations. Nevertheless, recent data from the LGL Report (LGL, 2008), which was based on marine mammal monitoring during the 2007 Shell and CPAI seismic surveys, showed that beluga whale distribution in the proposed seismic area in the Chukchi Sea is very low. Therefore, NMFS believes that only a small undetermined number of beluga whales would be affected by Level B harassment as a result of the proposed CPAI shallow hazard and site clearance surveys.

Subsistence Uses

Comment 30: NVPH questions whether NMFS's assessment of the impacts to subsistence was based on the ''best available scientific evidence'' and whether NMFS has made any effort to discern whether seismic surveying activities in the Chukchi Sea in 2006 or 2007 had an adverse impact on the availability of any or all seal and whale species for subsistence uses.

Response: In making its final determination of whether the proposed shallow hazard and site clearance surveys would have unmitigable impacts to subsistence use of marine mammal populations in the affected area, NMFS relies upon the best available scientific information to make its MMPA determinations. In this case, NMFS has reviewed the 90-day marine mammal monitoring and mitigation reports for the 2006 and 2007 open water seismic survey and shallow hazard and site clearance survey conducted by Shell Offshore, Inc. (SOI), ConocoPhillips Alaska, Inc., and GXTechnology in 2006 and by SOI in 2007 (Ireland *et al.*, 2007a; 2007b; Patterson *et al.*, 2007; Funk *et al.*, 2007; 2008). These monitoring reports point out that the impacts to marine mammals as a result of the 2006 and 2007 Arctic seismic activities were negligible. In addition, actual take of marine mammals by Level B harassment was generally lower than expected due to the implementation of monitoring and mitigation measures. No marine

mammals were observed to have suffered injuries or death as a result of the seismic surveys and none were suspected. In addition, information presented by the oil and gas industry and independent researchers who conducted marine mammal monitoring at the 2007 and 2008 Arctic Open Water Scientific Meetings was also taken into consideration.

Comment 31: NVPH states that NMFS failed to provide the substantive analysis to support any meaningful finding regarding the possible effect of CPAI's activities on the availability of beluga whales, seals, and bowhead whales for subsistence uses by coastal communities along the Chukchi Sea or the effectiveness of mitigation measures to eliminate such impacts. The NVPH further states that the Chukchi Sea and the adjoining coast existed as a relatively pristine ocean environment, free of industrial operations that would disturb bowhead and beluga whales and seals with their availability for subsistence uses. Therefore, NVPH states that even a slight interference in the availability of these species to communities on the Chukchi Sea would constitute an unmitigable adverse impact to their overall availability for subsistence uses.

Response: NMFS does not agree with NVPH's statement. The FR Notice of Proposed IHA provided a detailed analysis regarding the possible effect of seismic surveys and underwater sound on marine mammals in the planned action area. This analysis prompted NMFS to make a preliminarily determination that the impact of conducting the shallow hazard and site clearance surveys in Chukchi Sea may result, at worst, in a temporary modification in behavior of small numbers of marine mammals.

NMFS agrees that the Chukchi Sea and the adjoining coast existed as a relatively pristine ocean environment that was free of industrial operations. However, NMFS does not agree with NVPH's assessment that within this environment, a slight interference in the availability of these species to communities on the Chukchi Sea would constitute an unmitigable adverse impact for subsistence uses of these species. The proposed shallow hazard and site clearance surveys proposed by CPAI would only occur in a small area within the much larger Chukchi Sea basin for a brief period of 30–45 days. It would also occur far offshore, approximately 70 miles, outside the area in which harvest traditionally occurs. In addition, because CPAI's seismic surveys will occur during the late summer and fall (after many of the Chukchi Sea communities have harvested sizeable portions of their marine mammal quota), NMFS does not believe that CPAI's activities are likely to reduce the availability of the affected species to a level insufficient for a harvest to meet its needs. NMFS does not expect subsistence users to be directly displaced by the seismic surveys because subsistence users typically do not travel this far offshore to harvest marine mammals. Next, because of the significant distance offshore and the lack of hunting in these areas, there is no expectation that any physical barriers would exist between marine mammals and subsistence users. Furthermore, mitigation and monitoring measures required for the seismic activities are expected to reduce all potential impacts to negligible levels to marine mammals and their habitat. Finally, CPAI will be working with Native communities in the affected region to ensure that seismic operations do not result in an unmitigable adverse impact on the availability of marine mammals to subsistence uses by the Native communities in and around the Chukchi Sea.

Comment 32: The CBD, NVPH, ICAS, and NSB state that the MMPA requires that any incidental take authorized will not have ''an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses'' by Alaska Natives. The NVPH is concerned that CPAI intends to conduct surveys within just a few miles of the village of Wainwright, and that it also plans to conduct surveys near the north end of Kasegaluk Lagoon, which is an important subsistence use area for residents of Point Lay, and contains the largest concentration of spotted seals in Alaska. The NSB is also concerned about impacts to subsistence hunts of marine mammals in the summer: notably beluga hunts at Point Lay and Wainwright, and walrus and bearded seal hunts in all of the villages of the Alaska Bering and Chukchi Seas. The NSB states that the summer beluga whale hunt at Point Lay extends into July, the hunt in Wainwright extends into August, and Point Hope and Wainwright hunt bowhead whales in the fall and these hunts may be adversely affected. Additionally, CBD notes they are aware that the NVPH, a federally recognized tribal government, has submitted comments opposing the proposed take authorizations due to impacts on subsistence, and along with many community members has commented on myriad other related agency documents that have direct bearing on these take authorization such as the Chukchi Sea Sale 193, MMS Five-Year Plan, and the DPEIS. Similarly, the NSB, the AEWC, and REDOIL have all filed challenges in federal court and/or the IBLA challenging offshore activities due to impacts on the subsistence hunt of bowheads and other species. In light of the positions of these communities and organizations, the CBD does not think that NMFS can lawfully make the findings required under the MMPA for approving CPAI's proposed IHA.

Response: NMFS does not agree with CBD, NVPH, ICAS, and NSB's statement. The CPAI's shallow hazard and site clearance survey will not occur in the coast of the Alaska North Slope. As stated in the FR Notice of Proposed IHA, the two areas for the proposed CPAI shallow hazard and site clearance surveys would be conducted about 111 km (69 mi) off the Alaska coast, generally west from the village of Wainwright. Therefore, NVPH's concern that the proposed seismic activities would be conducted just miles off the coast is unwarranted.

Although CPAI plans to conduct its shallow hazard and site clearance survey in August, it is likely that the surveys would not start until mid-August, thus missing the summer beluga hunt at Point Lay and most in Wainwright. In addition, as mentioned earlier, the proposed shallow hazard and site clearance survey would be conducted 69 miles off the coast and would therefore not overlap with the subsistence harvest of beluga whales and bearded seals. The subsistence hunt of walruses was reviewed by the FWS since it is a species under the FWS jurisdiction. An LOA was issued by the FWS for the take of walruses incidental to CPAI's proposed seismic surveys. Finally, the IHA issued to CPAI includes specific mitigation measures that would prevent any unmitigable impacts to subsistence use of marine mammals from the proposed seismic activities. Please refer to the Mitigation Section of this document for detailed information.

Comment 33: The AEWC states that CPAI has not communicated its intentions regarding the signing of Conflict Avoidance Agreement (CAA) with the AEWC, and that it understands that CPAI would not agree to the 2008 CAA. Therefore, AEWC observes that to issue an IHA to a company that would not voluntarily agree to the terms of the CAA, NMFS must limit its authorization to times and locations that would ensure they company's compliance with the mitigation measures set forth in the CAA—no more than two simultaneous geophysical activities in each of the Beaufort and Chukchi Seas. The AEWC

further states that it would not oppose an IHA issued to CPAI containing these limitations and the other requirements and recommendations provided by the NSB in its comments. Finally, the AEWC states that it will oppose any IHA issued by NMFS that does not contain mitigation measures identical to those set forth in the 2008 CAA.

Response: Comment noted. Under sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*), an IHA or LOA would be granted to U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if NMFS finds that the taking of marine mammals will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for certain subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. In other words, no marine mammal take authorizations may be issued if NMFS has reason to believe that the proposed exploration or development activities would not have an unmitigable adverse impact on the availability of marine mammal species or stock(s) for Alaskan native subsistence uses. Although Federal laws do not require consultation with the native coastal communities until after offshore exploration and development plans have been finalized, permitted, and authorized, pre-permitting consultations between the oil and gas industry and the Alaskan coastal native communities are considered by NMFS when the agency makes a determination whether such activities would have an unmitigable adverse impact on the availability of marine mammal species or stock(s) for subsistence uses. For the proposed shallow hazard and site clearance survey, CPAI has conducted POC meetings for its seismic operations in the Chukchi Sea in the communities and villages of Kivalina, Kotzebue, Wainwright, Barrow, Point Lay, and Point Hope.

CPAI has not signed the 2008 CAA with Alaska Natives and has informed NMFS that it does not intend to do so. NMFS has scrutinized all of the documents submitted by CPAI (e.g., IHA application, Plan of Cooperation and other correspondence to NMFS and affected stakeholders) and documents submitted by other affected stakeholders and concluded that harassment of marine mammals incidental to CPAI's activities will not have an unmitigable adverse impact on the availability of marine mammals for taking for subsistence uses. This finding was based in large part on NMFS' definition of ''unmitigable adverse impact'', the proposed mitigation and monitoring measures, the 2008 CAA signed by other industry participants and Alaska Natives, the scope of activities proposed to be conducted, including time of year, location and presence of marine mammals in the project area, and CPAI's Plan of Cooperation.

As described in CPAI's IHA application, the seismic survey is proposed to be conducted approximately 70 miles off the Alaskan coast in the Chukchi Sea where very little subsistence harvest occurs. In addition, because CPAI's seismic surveys will occur during the late summer and fall (after many of the Chukchi Sea communities have harvested sizeable portions of their marine mammal quota), NMFS does not believe that CPAI's activities are likely to reduce the availability of the affected species to a level insufficient for a harvest to meet its needs. NMFS does not expect subsistence users to be directly displaced by the seismic surveys because subsistence users typically do not travel this far offshore to harvest marine mammals. Next, because of the significant distance offshore and the lack of hunting in these areas, there is no expectation that any physical barriers would exist between marine mammals and subsistence users. For bowhead whale subsistence hunting, recent history shows that Point Hope and Wainwright only hunt during the spring migration (Suydam *et al.*, 2005; Suydam and George, 2004). The village of Barrow hunts during the spring and fall migrations, taking most bowheads during the spring migration. The fall hunt occurs in open water from late August through October by Barrow, and whalers hunt mainly in the waters east and northeast of Point Barrow in the Beaufort Sea. Also, hunters prefer to take bowheads close to shore to avoid a long tow during which the meat can spoil. Beluga whales are hunted for subsistence at Barrow, Wainwright, Point Lay, and Point Hope, with the most taken by Point Lay (Fuller and George, 1997). Harvest at all of these villages generally occurs between April and July with most taken in April and May when pack-ice conditions deteriorate and leads open-up. Ringed, bearded, and spotted seals are hunted by all of the villages bordering the project area (Fuller and George, 1997). Ringed and bearded seals are hunted throughout the year, but most are taken in May, June, and July when ice breaks up and there is open water instead of the more difficult hunting of seals at holes and lairs. Spotted seals are only hunted in spring through summer. Therefore, the scheduling of the proposed shallow hazard and site clearance survey is expected to have minimum conflict between the industries and marine mammal harvests.

Finally, in the event harvest activities do occur this far offshore, the required mitigation and monitoring measures are expected to reduce any adverse impacts on marine mammals for taking for subsistence uses to the extent practicable. These measures include, but are not limited to, the 180 dB and 190 dB safety (shut-down/power-down) zones; a requirement to monitor the 160 dB isopleths for aggregations of 12 or more non-migratory balaenidae whales and when necessary shut-down seismic airguns; maintaining a distance of at least 15 miles from other operating seismic vessels; reducing vessel speed when a vessel is within 300 yards of whales to avoid a collision; utilizing communication centers to avoid any conflict with subsistence hunting activities; and the use of marine mammal observers. Many of these requirements are consistent with the measures contained in the 2008 CAA entered into between other industry participants who operate in the Chukchi Sea and Alaska Natives.

NMFS does not agree with AEWC's recommendation to limit no more than two simultaneous geophysical activities in each of the Beaufort and Chukchi Seas. As analyzed in detail in the MMS 2006 PEA and NMFS 2008 SEA, a total of four simultaneous geographical/seismic activities can be conducted in each of the Beaufort and Chukchi Seas without significant impacts to the human environment. A similar finding was made for the proposed 2008 CPAI shallow hazard and site clearance survey in the Chukchi Sea.

Comment 34: NVPH states that it noted that CPAI proposes to mitigate impacts to subsistence activities via measures developed through a Plan of Cooperation (POC) with the AEWC and a variety of meetings and consultations. The NVPH states that there is no guarantee that these processes would result in enforceable limits that ensure CPAI's activities have no unmitigable adverse impact on the availability of seals and whales for subsistence purposes. The NVPH further states that by relying on these processes without ensuring that they produce a meaningful outcome, NMFS has effectively deferred its determination whether CPAI's activities would have an unmitigable adverse impact on the availability of

seals and whales for subsistence uses by communities along the Beaufort Sea until after a POC has been developed.

Response: NMFS does not agree with NVPH's assessment. First, the proposed CPAI shallow hazard and site clearance survey is planned in the Chukchi Sea, not the Beaufort Sea as NVPH stated in its comment. In order to make a determination that the proposed CPAI 2008 shallow hazard and site clearance surveys would not have a unmitigable adverse impact on the availability of marine mammal species or stocks for taking for subsistence uses in the proposed seismic area, NMFS carefully reviewed and analyzed the proposed seismic activities before making its determination (see Response to Comment 33). NMFS also reviewed other information presented in various documents, including but not limited to, the MMS 2006 PEA, the MMS 2007 draft PEIS, 2006 and 2007 Arctic seismic survey monitoring reports, and the 2008 CAA.

Comment 35: NVPH states that NMFS failed to discuss a mandatory limit on the number of concurrent seismic and/or shallow hazard surveys in the Chukchi Sea. NVPH requests NMFS to prohibit the simultaneous operation of multiple vessels within the Chukchi Sea during the fall bowhead migration. NVPH further requests that NMFS require that no two vessels operate within 100 km (62 mi) of one another, because given the large size of the 120 dB zone, closer simultaneous operation would pose a real risk of disrupting the bowhead whale migration.

Response: NMFS does not agree with NVPH's statement and request. First, the MMS 2006 PEA, which NMFS incorporated into its 2008 SEA, provided a thorough analysis on the maximum number of eight seismic activities that could occur in the Chukchi and Beaufort Seas. The analysis lead NMFS and MMS to conclude that up to a maximum of eight seismic surveys would not result in significant impacts to the quality of the human environment. In addition, NMFS' 2008 SEA, which analyzed the effect of multiple seismic surveys also lead NMFS to conclude that the CPAI survey would not result in a significant impacts.

NVPH has not provided NMFS with any data to support its argument that multiple seismic vessels should not be permitted in the Chukchi Sea or that no more than 2 vessels be allowed to operate within 100 km (62 mi) of one another. The 100 km (62 mi) separating distance for the 120 dB zone between vessels is not scientifically supportable. The distance where the received level reaches 120 dB re 1 microPa is dependent upon the source level and oceanographic conditions. For the same oceanographic conditions, the higher the source level, the longer the distance where the received level would reach 120 dB. Therefore, at this time, there is no basis upon which to limit effort to no more than 2 vessels within 100 km of one another.

Mitigation and Monitoring

Comment 36: Dr. Bain questions the effectiveness of marine mammal monitoring with only two MMOs on duty full time. Citing Forney and Barlow (1998) and Dahlheim and Towell (1994), Dr. Bain states that a common work schedule where consistent effort is required would be 40 minutes on, 40 minutes off, 40 minutes on, two hours off, three times a day. Dr. Bain suggests that an observation team of 12 MMOs would be required to cover a 24-hour period. Dr. Bain further states that the probability of detecting marine mammals would drop with increased distance from the vessel.

Response: NMFS does not agree with Dr. Bain's assessment and suggestions regarding MMOs and marine mammal monitoring. NMFS reviewed the references (Dahlheim and Towell, 1994; Forney and Barlow, 1998) provided by Dr. Bain, and did not find any type of work schedules described. Unlike observers during marine mammal population surveys who are required to search the entire field for any marine mammals, the primary responsibility for MMOs is to monitor the safety zones, which in this case are 115 m (377 ft) radius for the 180-dB isopleth and 20 m (66 ft) radius for the 190-dB isopleth, and to ensure that proper mitigation measures (power-down or shut-down acoustic sources) are implemented if a marine mammal enters or is sighted within these safety zones. NMFS agrees that the detection probability of a marine mammal drops with increased distance from the ship. However, the occurrence of marine mammals outside the safety zones is not a big concern for marine mammal monitoring during the proposed seismic activity because it is presumed these animals would not be within a zone that could result in injury. Furthermore, MMOs would be on duty for 4 consecutive hours or less to reduce fatigue. In addition, all MMOs hired for the proposed seismic surveys must be NMFS-approved observers who are qualified to perform the required monitoring tasks. Therefore, NMFS believes that two MMOs are effective for marine mammal monitoring for CPAI's shallow hazard and site clearance surveys.

Comment 37: Dr. Bain is concerned that many species that are capable of diving for more than 30 minutes could be missed during the monitoring.

Response: NMFS agrees with Dr. Bain that monitoring for deep diving marine mammals it poses a challenge. However, within the proposed seismic survey area, there are no marine mammals that normally dive for more than 30 minutes. However, in the event that a marine would be missed during the initial pre-survey monitoring, ramp-up procedures will be followed when an acoustic source begins to operate, so the undetected animal(s) would have an opportunity to detect the sound as it increases gradually and move away from the source. Please refer to Monitoring and Mitigation Measures section below for a detailed description of these measures.

Comment 38: NVPH is concerned that NMFS did not discuss the option of requiring CPAI to power down its airguns and other sound sources when aggregations of feeding, resting or socializing bowhead whales or gray whales are located within the 160 dB isopleth, and that NMFS fails to discuss the option of requiring CPAI to monitor the 120 dB isopleth for bowhead cow-calf pairs and to require CPAI to power down its sound sources when four or more cow-calf pairs are observed to be exposed to noises at or above 120 dB. NVPH requests that NMFS requires both of these mitigation measures. Citing Richardson's observation, NVPH further states that nearly all bowhead whales avoid seismic airguns at received levels as low as 107 dB, and requests NMFS to impose a safety zone for bowhead cow-calf pairs exposed to 107 dB or more. In addition, as NVPH observes that it would be impossible to monitor such a large area be ship-based observation, NVPH requests that such monitoring be conducted by aerial observation together with ship-based observers, for both of these safety zones.

Response: In its final determination and the IHA issued to CPAI, NMFS requires CPAI to establish a 160-dB safety zone whenever an aggregation of 12 or more bowhead whales or gray whales are observed. If an aggregation of 12 or more bowhead or gray whales is observed within the 160-dB safety zone around the seismic activity, the seismic operation will not commence, or will shut down, until two consecutive vessel surveys indicate they are no longer present within the 160-dB safety zone of seismic-surveying operations.

However, NMFS will not impose a requirement to conduct aerial monitoring of the 120-dB safety zone for the occurrence of four or more cow-calf

pairs in the Chukchi Sea because it is not practicable. First, the 120-dB safety zone would require a safety zone of 20 km (12 mi) in radius, which is beyond the range for visual monitoring. The 120-dB ensonified zone is also too large to be monitored by chase boats. Second, aerial surveys are not required in the Chukchi Sea because they have currently been determined to be impracticable due to lack of adequate landing facilities, the prevalence of fog and other inclement weather in that area, thereby resulting in safety concerns.

As far as the NVPH's statement that nearly all bowhead whales avoid seismic airguns at received levels as low as 107 dB, NMFS is not able verify NVPH's assessment because NVPH did not provide a reference to support its statement. A comprehensive review by Southall *et al.* (2007) on the potential acoustic impacts to low-frequency cetaceans (bowhead and other large whales) does not list any reference that shows these animals react to received levels under 110 dB re 1 microPa. Therefore, NMFS does not believe bowhead whales exposed to 107 dB would be taken by Level B behavioral harassment, and that imposing a safety zone of 107 dB is not appropriate.

Comment 39: CPAI states that they are not able to ramp up the single source because they plan to use a low level sparker seismic tool for the geohazard surveys. CPAI requests that NMFS not require ramp-up procedures. CPAI indicates that they would still follow the following mitigation measures, including (1) vessel speed or course alteration; (2) shutdown procedures; (3) MMOs on the vessels; and (4) communication systems to stay in contact with villages and hunters to avoid conflict with subsistence activities.

Response: With respect to CPAI's comment, NMFS has communicated with ASRC Energy Services (AES), which plans to conduct a similar shallow hazard and site clearance survey in the Chukchi Sea during the 2008 open water season and use essentially the same acoustic equipment CPAI listed in its IHA application. AES indicated that all of these Sparker acoustic systems can be ramped up. NMFS has also been informed by the U.S. Geological Survey and other contractors who use Sparker or similar acoustic systems that these acoustic devices have the capability to ramp up. Based upon this information and the technology identified in CPAI's application, there does not appear to be a legitimate reason for waiving the ramp up procedures because Sparker or similar acoustic systems are capable of ramp up and these devices are available for CPAI's use this season. In addition, ramping up is a standard mitigation measure for seismic surveys that introduce high level acoustic energy (over 200 dB re 1 microPa) into the water column, and is described in the MMS 2006 PEA, the MMS 2007 draft PEIS, and NMFS 2008 SEA for seismic surveys in the Arctic as a required mitigation measure under the preferred alternative. Furthermore, NMFS requires all IHA applicants that plan to conduct seismic surveys in the 2008 Arctic open-water season to ramp up their seismic sources as a mitigation measure. Therefore, NMFS cannot waive ramp-up requirement just for CPAI.

After further discussion with CPAI, CPAI agreed that they will use a smaller sparker tool to initiate the survey and then transfer to the larger sparker. This process would be equivalent to a traditional ramp up requirement and would be an appropriate mitigation measure.

Comment 40: NVPH states that NMFS failed to provide for peer review of CPAI's proposed monitoring plans. It further states that the presentation provided by CPAI at the 2008 Open Water Scientific Meeting only gave very limited information and was unable to respond to even the most basic questions raised by attendees. NVPH requests NMFS to reject any suggestion that the meeting satisfied the peer review requirement. NVPH states that peer review by independent, objective reviewers remains necessary.

Response: In order for the independent peer-review of Arctic area activity monitoring plans, it must be conducted in an open and timely process. Review by organizations, such as the National Academy of Sciences, would take at least a year to complete and would likely provide for an inflexible monitoring plan (e.g., any modifications would require reconvening the Committee). As a result, NMFS believes that independent peer-review of monitoring plans can be conducted via two means. First, the monitoring plans are made public and available for review by scientists and members of the public in addition to scientists from the NSB, NMFS, and the FWS. In accordance with the MMPA, the Marine Mammal Commission's Committee of Scientific Advisors reviews all IHA applications, including the monitoring plans. Second, monitoring plans and the results of previous monitoring measures are reviewed once or twice annually at public meetings held with the industry, the AEWC, the NSB, Federal agencies and the public. CPAI's mitigation and monitoring plan was reviewed by scientists and stakeholders at a meeting in Anchorage between April 14, 2008, and April 16, 2008, and by the public between May 23, 2008 (73 FR 30064) and June 23, 2008. NMFS believes that it has met the requirements of section 101(a)(5)(D) of the MMPA.

Comment 41: The CBD, NSB, ICAS, and Dr. Bain state that during night-time and poor visibility condition, CPAI proposes essentially no limitations on operations, even though the likelihood of observers seeing marine mammals in such conditions is very low. The NSB requests NMFS to require CPAI to cese operations during darkness and inclement weather until another technique becomes available for observing safety zones under such conditions. The NSB further states that MMOs would not be able to measure Level B impacts because they would not be able to see far enough away from the vessel to observe the zones where Level B takes may occur.

Response: The IHA issued to CPAI does not allow the start up of acoustic sources when the entire safety zones cannot be adequately monitored. However, as stated in the FR Notice of Proposed IHA, once the safety zones are visually established and that pre-survey monitoring has determined there are no marine mammals within the safety zones, seismic surveys can commence and continue into low visibility conditions. However, if for any reason the seismic sources are stopped during low visibility conditions, they are not to be restarted until the conditions are suitable for the marine mammal visual monitoring so that the safety zones can be reestablished. Nevertheless, ramping up of airguns and other seismic equipment during under normal visual conditions is expected to keep marine mammals from entering the established safety zones. In addition, NMFS also does not agree with NSB's assessment that the MMOs are not able to monitor the entire Level B zone. The 160-dB isopleth is estimated to be 1,665 m, which can reasonably be monitored from the source vessel with binoculars. Please refer to Monitoring and Mitigation Measures section below for a detailed description.

Comment 42: The CBD and NSB state that NMFS and CPAI did not adequately consider the use of passive acoustic monitoring (PAM). While past IHAs have required PAM, this IHA completely ignores even discussing the possibility of using such monitoring.

Response: NMFS disagrees. The MMPA has not established standards for

monitoring requirements. The monitoring requirements proposed are to ensure that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. Monitoring measures are also used to reduce the level of takes to the lowest level practicable due to implementation of the mitigation measures.

Monitoring measures for different projects are proposed on a case-by-case basis, and there is no ''one size fits all'' type of monitoring protocol. For the proposed shallow hazard and site clearance survey in the Chukchi Sea, the radius of the safety zone (115 m, or 377 ft) based on the 180 db re: 1 microPa isopleth is too small to allow accurate and effective passive acoustic monitoring. As the Joint Nature Conservation Committee (JNCC, 2004) stated that in practice the exclusion zone (safety zone) needs to be more than 500 m (1,640 ft) to allow for accurate passive acoustic monitoring (PAM). JNCC also noted that in many cases PAM is not as accurate as visual observation when determining range. NMFS believes that in the subject seismic survey projects, where the safety zone is as small as 115 m (377 ft), passive acoustic monitoring is not warranted. The presence of additional vessels for deploying PAM would only introduce more noise to the small area where the proposed projects are to occur.

NEPA

Comment 43: NVPH, CBD, ICAS, and the NSB state that NMFS must prepare an Environmental Impact Statement (EIS) to evaluate CPAI's shallow hazard surveys, together with the other seismic and shallow hazard surveying activity proposed for the summer of 2008 in the Beaufort and Chukchi Seas.

Response: NMFS prepared a Final SEA to analyze further the effects of CPAI's (and other companies) proposed open-water shallow hazard and site clearance survey activities for the 2008 season. NMFS has incorporated by reference the analyses contained in MMS 2006 Final PEA for Arctic OCS Seismic Surveys in the Beaufort and Chukchi Seas and has also relied in part on analyses contained in the MMS 2007 FEIS for the Chukchi Sea Lease Sale 193, the MMS 2003 FEIS for multiple lease sales, and the MMS 2007 DPEIS submitted for public comment on March 30, 2007.

The 2006 PEA analyzed a broad scope of proposed seismic activities in the Arctic Ocean. In fact, the PEA assessed the effects of multiple, ongoing seismic surveys (up to 8 surveys) in the Beaufort and Chukchi Seas for the Arctic open water season. Although CPAI's proposed activity for this season was not explicitly identified in the 2006 PEA, the PEA did contemplate that future seismic activity, such as CPAI's could occur. NMFS believes the range of alternatives and environmental effects considered in the MMS 2006 PEA, combined with NMFS' SEA for the 2008 season are sufficient to meet the agency's NEPA responsibilities. In addition, the 2008 SEA includes new information obtained since the 2006 Final PEA was issued, including updated information on cumulative impacts. NMFS also includes a new section in the 2008 SEA, which provides a review of the 2006 and 2007 monitoring reports. As a result of our review and analysis, NMFS has determined that it was not necessary to prepare and issue an EIS for the issuance of an IHA to CPAI in 2008 for seismic activity in the Chukchi Sea but that preparation of an SEA and issuance of a Finding of No Significant Impact (FONSI) were sufficient under NEPA.

Comment 44: The NSB, NVPH, ICAS, and CBD state that NMFS appears to rely on the NEPA analysis in the DPEIS in clear violation of NEPA law. They state that NEPA requires agencies to prepare a draft EIS, consider public and other agency comments, respond to these comments in its final EIS, and wait 60 days before issuing a final decision. The CBD further states that before the record of decision has been issued on the final PEIS, NMFS cannot authorize CPAI's proposed seismic surveys because the purpose of the PEIS process is to consider seismic surveys in the Chukchi and Beaufort Seas for the years 2008 and beyond. The CBD states that NMFS seems to either be relying on a NEPA document that is not just inadequate, but which by its very terms only covers activities from two years ago (the 2006 PEA), or one which is nowhere near complete (the 2007 DPEIS).

Response: See *Response* to *Comment 43* on this concern. Contrary to the NSB's and CBD's statement, NMFS relied on information contained in the MMS 2006 Final PEA, as updated by NMFS' 2008 SEA for making its determinations under NEPA and that the DPEIS was not the underlying document to support NMFS' issuance of CPAI's IHA. NMFS merely relied upon specific pieces of information and analyses contained in the DPEIS to assist in preparing the SEA. It is NMFS' intention that the PEIS currently being developed will be used to support, in whole, or in part, future MMPA actions relating to oil and gas exploration (i.e., seismic surveys) in the Arctic Ocean. Additionally, NMFS believes that a SEA is the appropriate NEPA analysis for this season as the amount of activity for 2008 is less than what was analyzed in the 2006 PEA.

Comment 45: NVPH states that the MMS 2006 PEA is flawed since it understates the risk of significant impacts to bowhead whales, and therefore, it is inappropriate for NMFS to rely on that document. NVPH states that the 2006 PEA assumed the source vessels would ensonify much smaller zones than those which have been subsequently measured in the field. NVPH states that based on the propagation actually measured in 2006 and 2007, the impacts of a single 3D seismic survey are two to three times as large as NMFS anticipated or more. The impacts of a single shallow hazard survey are comparable to the impacts NMFS anticipated from a single 2D or 3D seismic survey. Before authorizing further seismic surveying activity or shallow hazard surveys in the Arctic Ocean, NVPH requests NMFS to complete the PEIS that it began in 2006 to evaluate the potentially significant impacts of such activities.

Response: NMFS does not agree with NVPH's statement. First, the subject 2006 PEA was written by MMS, not NMFS. However, NMFS was a cooperating agency under NEPA in its preparation. Second, as noted in your cited part in the 2006 PEA, 20 km (12.4 mi) was used for illustrative purposes in an exercise to estimate impact of 4 seismic vessels operating within 24 km (15 mi) of each other. To do so, MMS created a box (that was moveable along the Beaufort or Chukchi Sea coast) to make these estimates. NMFS believes that the use of 20 km (12.4 mi) remains the best information available at this time and was the radius agreed to by participants at the 2001 Arctic Open-water Noise Peer Review Workshop in Seattle, Washington. This estimate is based on the results from the 1998 aerial survey (as supplemented by data from earlier years) as reported in Miller *et al.* (1999). In 1998, bowhead whales below the water surface at a distance of 20 km (12.4 mi) from an airgun array received pulses of about 117–135 dB re 1 μPa rms, depending upon propagation. Although NVPH states that propagation actually measured in 2006 and 2007 showed that the impacts of a single 3D seismic survey are two to three times as large as NMFS anticipated, NVPH failed to provide any data to support this statement. In fact, the marine mammal monitoring reports for the 2006 and

2007 open water seismic surveys clearly showed that at 20 km (12.4 mi) the received levels from large airgun arrays used in 3D seismic surveys fall between 140 and 160 dB re 1 microPa (Ireland *et al.*, 2007a; 2007b; Patterson *et al.*, 2007; Funk *et al.*, 2007; 2008), which is below NMFS current noise exposure standard for Level B behavioral harassment. For this reason, until more data collection and analyses are conducted on impacts of anthropogenic noise (principally from seismic) on marine mammals in the Beaufort and Chukchi seas, NMFS will continue to use 20 km (12.4 mi) as the radius for estimating impacts on bowhead whales during the fall migration period.

Comment 46: NVPH states that the MMS 2006 PEA fails to provide site-specific analysis. Thus, in order to reduce the likelihood of significant impacts, NMFS has imposed 160 dB and 120 dB safety zones when authorizing surveys pursuant to the PEA. At a minimum, it must do the same for CPAI's surveys but with the modifications to the safety zones discussed above.

Response: NMFS does not agree with NVPH's statement. Although the MMS 2006 PEA did not explicitly provide site-specific analysis on the proposed CPAI shallow hazard and site clearance surveys, NMFS SEA prepared for the 2008 open-water season described its specific location and time of operation. As in the PEA, NMFS' 2008 SEA has described additional mitigation measures such as imposing the 160 dB safety zone for seismic activities in the Chukchi Sea when an aggregation of 12 or more bowhead or gray whales is sighted. This mitigation measure is required in the IHA issued to CPAI. Regarding imposing the 120-dB safety zone, it would pose safety and practical concerns for marine mammal monitoring in the Chukchi Sea. Therefore, a safety zone based on received level of 120 dB re 1 microPa will not be imposed in the Chukchi Sea as it has been determined to be impracticable under the MMPA.

Comment 47: The NVPH and NSB state that the scope of the MMS 2006 PEA is explicitly limited to activities that occur during 2006, and that those seismic survey activities have already occurred, as well as an additional season worth of activities in 2007. NVPH states that the PEA does not evaluate activities that will occur over a period of several years, though NMFS has continued to rely on it as if its scope were for a multi-year program of seismic surveys. In addition, NVPH states that the PEA uses arbitrary significance criteria for non-endangered marine mammals that would allow long-lasting impacts to populations, or in fact the entire Arctic ecosystem, that would nonetheless be deemed insignificant. NVPH states that these significance criteria are inappropriate for an evaluation of impacts from seismic surveys, as indicated by MMS' use of more defensible significance criteria based on potential biological removal form marine mammal populations affected by seismic surveys in the Gulf of Mexico.

Response: NMFS does not agree with the NVPH and NSB's statement, as failed to provide any support for their position. The MMS 2006 PEA, in which NMFS was a cooperating agency, provided a thorough description and analysis on the affected environment, including ESA-listed and non-ESA-listed species. Under the NEPA, there is no ''significance criteria for non-endangered'' species. The criteria for determining whether a proposed action would result in significant effects to the environment are contained in CEQ's regulations. NVPH's statement that MMS' such analysis ''would allow long-lasting impacts to populations, or in fact the entire Arctic ecosystem, that would nonetheless be deemed insignificant'' in a way supports the MMS 2006 PEA. In addition, NMFS has prepared and released to the public an SEA for the proposed 2008 Arctic seismic surveys in the Chukchi and Beaufort Seas (see **ADDRESSES** for availability). This SEA incorporates by reference the relevant information contained in the 2006 PEA and updates that information where necessary to assess impacts on the marine environment from the 2008 seismic survey activities. Further, the SEA and FONSI considered the CEQ significance criteria (including the criteria developed by NMFS) to determine whether take of marine mammals incidental to CPAI's seismic survey would result in significant impacts to the human environment. NMFS believes that the agency has complied with the requirements of NEPA in its preparation of its NEPA documents.

Comment 48: Oceana and Ocean Conservancy are concerned that oil and gas activities may have substantial negative effects on marine mammals and other Arctic species. Oceana and Ocean Conservancy further state that there has never been a comprehensive evaluation of the cumulative effects of seismic activities in the Arctic. Oceana and Ocean Conservancy request that in light of the dramatic effects of climate change in the Arctic, NMFS must not approve further seismic activities without such a comprehensive evaluation.

Response: NMFS shares Oceana and Ocean Conservancy's concern that the increasing industrial activities, including oil and gas development, could have profound negative effects on marine mammals in the Arctic region. Nevertheless, NMFS believes that proactive efforts to conserve and protect marine mammals and other Arctic species, such as NMFS' initiation of status reviews of ice seals and the recent FWS' ESA-listing of polar bears, combined with prudent natural resources management and regulations on industrial activities by Federal Agencies would reduce these adverse impacts to biologically non-significant or negligible levels. In addition, monitoring and mitigation measures required for certain industrial activities would further reduce and minimize such negative effects to marine mammal species and stocks. Long term research and monitoring results on ice seals in the Alaska's North Slope have shown that effects of oil and gas development on local distribution of seals and seal lairs are no more than slight, and are small relative to the effects of natural environmental factors (Moulton *et al.*, 2005; Williams *et al.*, 2006).

NMFS does not agree with Ocean and Ocean Conservancy's statement that there has never been a comprehensive evaluation of the cumulative effects of seismic activities in the Arctic. The MMS 2006 PEA, NMFS 2007 SEA, MMS 2007 draft PEIS, and NMFS 2008 SEA for the proposed issuance of five seismic survey and shallow hazard and site clearance survey activities for the 2008 open water season all provide comprehensive evaluation of the cumulative effects of seismic activities in the Arctic.

Comment 49: NSB and CBD are both concerned about cumulative impacts from multiple operations. CPAI's proposal is only one of numerous oil industry activities recently occurring, planned, or ongoing in the U.S. portions of the Chukchi and Beaufort Seas (e.g., proposed IHA for on-ice seismic surveys in Harrison Bay; proposed scientific seismic survey by the National Science Foundation (NSF); NMFS' 5-year regulations for activities related to Northstar; SOI IHA for Beaufort Sea exploratory drilling; CPAI IHA for Beaufort Sea; SOI IHA for Beaufort Sea; two proposed IHAs for Chukchi Sea and two proposed for the Beaufort Sea; and FWS 5-year regulations for oil and gas activities in the Beaufort Sea). No analysis of seismic surveys in the Russian or Canadian portions of the Chukchi and Beaufort seas is mentioned

either. Similarly, significant increases in onshore oil and gas development with attendant direct impacts and indirect impacts on marine mammals such as through increased ship traffic are also occurring and projected to occur at greater rates than in the past. CBD states that further cumulative effects impacting the marine mammals of the Beaufort and Chukchi Seas are outlined in their NEPA comments on the MMS PEA and the DPEIS.

The NSB points out that in addition to the proposed offshore industrial operations listed above, there will be supply and fuel barging to villages, barging for support of onshore development and exploration, scientific cruises, climate change studies, USCG operations, tourist vessel traffic, and other activities as well. The cumulative impacts of all these activities must be factored into any negligible impact determination. Further, without an analysis of the effects of all of the planned operations, it is impossible to determine whether the monitoring plans are sufficient.

Response: Under section 101(a)(5)(D) of the MMPA, NMFS is required to determine whether the taking by the applicant's specified activity will have a negligible impact on the affected marine mammal species or population stocks. Cumulative impact assessments are NMFS' responsibility under NEPA, not the MMPA. In that regard, the MMS Final PEA and NMFS SEA address cumulative impacts. The Final PEA's cumulative activities scenario and cumulative impact analysis focused on oil and gas-related and non-oil and gas-related noise-generating events/activities in both Federal and State of Alaska waters that were likely and foreseeable. Other appropriate factors, such as Arctic warming, military activities, and noise contributions from community and commercial activities were also considered. Appendix D of the Final PEA addresses similar comments on cumulative impacts, including global warming. That information was incorporated into and updated in the NMFS 2008 SEA and into this document by citation. NMFS adopted the MMS Final PEA, and it is part of NMFS' Administrative Record. Finally, NMFS does not require authorizations under section 101(a)(5) of the MMPA for normal shipping or transit.

Comment 50: According to CBD, another factor causing NMFS' ''negligible impact'' findings to be suspect is the fact that the Chukchi Sea area is undergoing rapid change as a result of global warming. For species under NMFS' jurisdiction, and therefore subject to the proposed IHA, seals are likely to face the most severe consequences. The Arctic Climate Impact Assessment (ACIA) concluded that ringed, spotted, and bearded seals would all be severely negatively impacted by global warming this century. The ACIA stated that ringed seals are particularly vulnerable: ''Ringed seals are likely to be the most highly affected species of seal because all aspects of their lives are tied to sea ice'' (ACIA, 2004). In 2003, the NRC noted that oil and gas activities combined with global warming presented a serious cumulative impact to the species: ''Climate warming at predicted rates in the Beaufort Sea region is likely to have serious consequences for ringed seals and polar bears, and those effects will accumulate with the effects of oil and gas activities in the region.'' NMFS' failure to address global warming as a cumulative effect renders its negligible impact findings invalid.

Response: Under section 101(a)(5)(D) of the MMPA, ''the Secretary shall authorize... taking by harassment of small numbers of marine mammals of a species or population stock by such citizens while engaging in that activity within that region if the Secretary finds that such harassment during each period concerned (I) will have a negligible impact on such species or stock, and (II) will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses.'' Section 101(a)(5)(D) of the MMPA does not require NMFS to base its negligible impact determination on the possibility of cumulative effects of other actions.

As stated in previous responses, cumulative impact assessments are NMFS' responsibility under NEPA, not the MMPA. In that regard, the MMS 2006 Final PEA and NMFS' 2008 SEA address cumulative impacts. The PEA's cumulative activities scenario and cumulative impact analysis focused on oil and gas-related and non-oil and gas-related noise-generating events/activities in both Federal and State of Alaska waters that were likely and foreseeable. Other appropriate factors, such as Arctic warming, military activities, and noise contributions from community and commercial activities were also considered. Appendix D of the PEA addresses similar comments on cumulative impacts, including global warming. That information was incorporated into and updated in the NMFS 2008 SEA and into this document by citation. NMFS adopted the MMS Final PEA, and it is part of NMFS' Administrative Record.

Endangered Species Act

Comment 51: The CBD states that the proposed IHA will affect, at a minimum, four endangered species, the bowhead, humpback and fin whales, and the polar bear. The CBD and ICAS states that as a consequence, NMFS must engage in consultation under Section 7 of the ESA prior to issuing the IHA. Previous recent biological opinions for industrial activities in the Arctic (e.g., the 2006 Arctic Regional Biological Opinion (ARBO)) have suffered from inadequate descriptions of the proposed action, inadequate descriptions of the status of the species, inadequate descriptions of the environmental baseline, inadequate descriptions of the effects of the action, inadequate analysis of cumulative effects, and inadequate descriptions and analysis of proposed mitigation. The CBD hopes NMFS performs the full analysis required by law and avoids these problems in its consultation for the proposed IHA. CPAI encourages NMFS to complete a thorough section 7 consultation with FWS to assure that coverage for polar bear and walrus is addressed.

Response: Under section 7 of the ESA, NMFS has completed consultation with the MMS on the issuance of seismic permits for offshore oil and gas activities in the Beaufort and Chukchi seas. In a Biological Opinion issued on July 17, 2008, NMFS concluded that the issuance of seismic survey permits by MMS and the issuance of the associated IHAs for seismic surveys are not likely to jeopardize the continued existence of threatened or endangered species (specifically the bowhead, humpback, and fin whales) under the jurisdiction of NMFS or destroy or adversely modify any designated critical habitat. The 2008 Biological Opinion takes into consideration all oil and gas related activities that are reasonably likely to occur, including exploratory (but not production) oil drilling activities. In addition, NMFS has issued an Incidental Take Statement under this Biological Opinion which contains reasonable and prudent measures with implementing terms and conditions to minimize the effects of take of bowhead, humpback, and fin whales. Regarding the polar bear, MMS has contacted the FWS about conducting a section 7 consultation. Walrus is not an ESA-listed species, therefore, a section 7 consultation is not warranted.

Comment 52: The CBD states that NMFS may authorize incidental take of the listed marine mammals under the ESA pursuant to Section 7(b)(4) of the ESA, but only where such take occurs while ''carrying out an otherwise lawful

activity.'' To be ''lawful,'' such activities must ''meet all State and Federal legal requirements except for the prohibition against taking in section 9 of the ESA.'' The CBD states that CPAI's proposed activities violate the MMPA and NEPA and therefore are ''not otherwise lawful.'' The CBD concludes that any take authorization for listed marine mammals would, therefore, violate the ESA, as well as these other statutes.

Response: NMFS does not agree with the CBD statement. As noted in this document, NMFS has made the necessary determinations under the MMPA, the ESA, and NEPA regarding the incidental harassment of marine mammals by CPAI while it is conducting activities permitted legally under MMS' jurisdiction.

Other Comments

Comment 53: To assist with its ability to plan and coordinate its programs in the remote area of the Chukchi Sea, CPAI requests that NMFS expedite their decision on the IHA after the 30-day public comment period closes on June 23, 2008.

Response: Comment noted. Nevertheless, in order to make an sound determination regarding whether CPAI's proposed shallow hazard and site clearance surveys would have a negligible impacts to marine mammals and unmitigable adverse affects to subsistence harvest of marine mammals in the Arctic region, NMFS has taken the time to thoroughly review all relevant documents on the proposed activities. Especially as CPAI indicated that it will not sign a CAA with the AEWC, NMFS is obligated to review and evaluate the CAA and stipulate certain conditions in the IHA to CPAI to ensure that the shallow hazard and site clearance survey would not have an unmitigable adverse impact on the availability of marine mammal species or stocks for taking for subsistence uses.

Description of Marine Mammals in the Activity Area

In general, the marine mammal species under NMFS' management authority that occur in or near the proposed survey area within the Chukchi Sea are the bowhead (*Balaena mysticetus*), gray (*Eschrichtius robustus*), humpback (*Megaptera novaeangliae*), fin (*Balaenoptera physalus*), minke (*B. acutorostrata*), beluga (*Delphinapterus leucas*), and killer whales (*Orcinus orca*); harbor porpoises (*Phocoena phocoena*); and the bearded (*Erignathus barbatus*), ringed (*Phoca hispida*), spotted (*P. largha*), and ribbon seals (*P. fasciata*). Among these species, the bowhead, humpback, and fin whales are listed as ''Endangered'' under the Endangered Species Act (ESA).

A detailed description of the biology, population estimates, and distribution and abundance of these species is provided in CPAI's IHA application. Additional information regarding the stock assessments of these species is in NMFS Alaska Marine Mammal Stock Assessment Report (Angliss and Outlaw, 2008), and can also be assessed via the following URL link: *http://www.nmfs.noaa.gov/pr/pdfs/sars/ak2007.pdf*. Additional information on those species that are under NMFS' management authority within or near the proposed survey areas is described in the FR Notice of Proposed IHA and is not repeated here.

Potential Effects on Marine Mammals

Operating a variety of acoustic equipment such as side-scan sonars, echo-sounders, bottom profiling systems, and airguns for seafloor imagery, bathymetry, and seismic profiling has the potential for adverse affects on marine mammals.

Potential Effects of Airgun Sounds on Marine Mammals

The effects of sounds from airguns might include one or more of the following: tolerance, masking of natural sounds, behavioral disturbance, and, at least in theory, temporary or permanent hearing impairment, or non-auditory physical or physiological effects (Richardson *et al.*, 1995)

The potential effects of airguns discussed below are presented without consideration of the mitigation measures that CPAI has presented and that will be required by NMFS. When these measures are taken into account, it is unlikely that this project would result in temporary, or especially, permanent hearing impairment or any significant non-auditory physical or physiological effects.

(1) Tolerance

Numerous studies have shown that pulsed sounds from airguns are often readily detectable in the water at distances of many kilometers. Studies have also shown that marine mammals at distances more than a few kilometers from operating seismic vessels often show no apparent response (tolerance). That is often true even in cases when the pulsed sounds must be readily audible to the animals based on measured received levels and the hearing sensitivity of that mammal group. Although various baleen whales, toothed whales, and (less frequently) pinnipeds have been shown to react behaviorally to airgun pulses under some conditions, at other times mammals of all three types have shown no overt reactions. In general, pinnipeds, and small odontocetes seem to be more tolerant of exposure to airgun pulses than are baleen whales.

(2) Masking

Masking effects of pulsed sounds (even from large arrays of airguns) on marine mammal calls and other natural sounds are expected to be limited, although there are very few specific data of relevance. Some whales are known to continue calling in the presence of seismic pulses. Their calls can be heard between the seismic pulses (e.g., Richardson *et al.*, 1986; McDonald *et al.*, 1995; Greene *et al.*, 1999; Nieukirk *et al.*, 2004). Although there has been one report that sperm whales cease calling when exposed to pulses from a very distant seismic ship (Bowles *et al.*, 1994), a more recent study reports that sperm whales off northern Norway continued calling in the presence of seismic pulses (Madsen *et al.*, 2002). That has also been shown during recent work in the Gulf of Mexico (Tyack *et al.*, 2003; Smultea *et al.*, 2004). Masking effects of seismic pulses are expected to be negligible in the case of the smaller odontocete cetaceans, given the intermittent nature of seismic pulses. Dolphins and porpoises commonly are heard calling while airguns are operating (e.g., Gordon *et al.*, 2004; Smultea *et al.*, 2004; Holst *et al.*, 2005a; 2005b). Also, the sounds important to small odontocetes are predominantly at much higher frequencies than are airgun sounds.

(3) Disturbance Reactions

Disturbance includes a variety of effects, including subtle changes in behavior, more conspicuous changes in activities, and displacement.

Reactions to sound, if any, depend on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors. If a marine mammal does react briefly to an underwater sound by slightly changing its behavior or moving a small distance, the impacts of the change are unlikely to be biologically significant to the individual, let alone the stock or the species as a whole. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on the animals could be significant.

(4) Hearing Impairment and Other Physical Effects

Temporary or permanent hearing impairment is a possibility when marine

mammals are exposed to very strong sounds, but there has been no specific documentation of this for marine mammals exposed to sequences of airgun pulses. NMFS advises against exposing cetaceans and pinnipeds to impulsive sounds above 180 and 190 dB re 1 microPa (rms), respectively (NMFS, 2000). Those thresholds have been used in defining the safety (shut down) radii planned for the proposed seismic surveys. Although those thresholds were established before there were any data on the minimum received levels of sounds necessary to cause temporary auditory impairment in marine mammals, they are considered to be conservative.

Several aspects of the planned monitoring and mitigation measures for this project are designed to detect marine mammals occurring near the airguns to avoid exposing them to sound pulses that might, at least in theory, cause hearing impairment (see Mitigation and Monitoring section below). In addition, many cetaceans are likely to show some avoidance of the area with high received levels of airgun sound. In those cases, the avoidance responses of the animals themselves will reduce or (most likely) avoid any possibility of hearing impairment.

Non-auditory physical effects may also occur in marine mammals exposed to strong underwater pulsed sound. Possible types of non-auditory physiological effects or injuries that theoretically might occur in mammals close to a strong sound source include stress, neurological effects, bubble formation, and other types of organ or tissue damage. It is possible that some marine mammal species (i.e., beaked whales) may be especially susceptible to injury and/or stranding when exposed to strong pulsed sounds. However, there is no definitive evidence that any of these effects occur even for marine mammals in close proximity to large arrays of airguns. It is unlikely that any effects of these types would occur during the proposed project given the brief duration of exposure of any given mammal, and the planned monitoring and mitigation measures (see below).

(5) Strandings and Mortality

Marine mammals close to underwater detonations of high explosive can be killed or severely injured, and the auditory organs are especially susceptible to injury (Ketten *et al.*, 1993; Ketten, 1995). Airgun pulses are less energetic and have slower rise times, and there is no evidence that they can cause serious injury, death, or stranding even in the case of large airgun arrays.

Nonetheless, the airgun array proposed to be used in the proposed site clearance surveys in Chukchi Sea is small in volume (40 cu inches) and the source level is expected at 196 dB re 1 mircoPa (peak), which is approximately 190 dB re 1 microPa (rms). The 160, 170, and 180 dB re 1 microPa (rms) radii, in the beam below the transducer, would be 32 m (104 ft), 10 m (33 ft), and 3.2 m (10 ft), respectively, for the 40-cu-inch airgun array, assuming spherical spreading.

Possible Effects of Bathymetry Echo Sounder Signals

Two types of bathymetry echo sounders are planned to be used for the proposed surveys. The Odom Hydrotrac Digital Echo Sounder is a single beam echo sounder that emits a single pulse of sound directly below the ship along the vessel trackline and provides a continuous recording of water depth along the survey track. The second sonar is a Reson Seabat 8101 Multibeam Echo Sounder, which consists of a transducer array that emits a swath of sound. The seafloor coverage swath of the multibeam sonar is water depth dependent, but is usually equal to two to four times the water depth. Nonetheless both echo sounders produce acoustic signals above 200 kHz which is above any marine mammal species' upper hearing threshold, therefore, NMFS does not believe that there will be any effects on marine mammals as a result from operating these sonars.

Possible Effects of Sub-bottom Profiler Signals

A high resolution subbottom profiler (GeoAcoustics GeoPulse sub-bottom profiling system or GeoAcoustics GeoChirp II sub-bottom profiling system) and an intermediate frequency seismic profiling system (''boomer'') are planned to be used for the proposed surveys.

The frequency range for these high resolution subbottom profilers are 3.5 to 5 kHz for the GeoPulse and 500 Hz to 13 kHz for the GeoChirp II. Either subbottom profiler has a source level at approximately 214 dB re 1 microPa-m (rms). The 160, 170, 180, and 190 dB re 1 microPa (rms) radii, in the beam below the transducer, would be 501 m (1,644 ft), 158 m (520 ft), 50 m (164 ft), and 16 m (52 ft), respectively, for either subbottom profiler, assuming spherical spreading.

The Applied Acoustics Model AA300 intermediate frequency seismic profiler (''boomer'') has a maximum energy input of 350 J per shot, though the maximum energy would be used in the surveys is 300 J. The pulse length ranges from 150 msec to 400 msec with a reverberation of less than 1/10 of the initial pulse. The peak in the source level beam reaches 218 dB re 1 microPa-m (or 209 dB re 1 microPa-m (rms)) at 300 J with a frequency range of 500 Hz to 300 kHz. The 160, 170, 180, and 190 dB re 1 microPa (rms) radii, in the beam below the transducer, would be 282 m (925 ft), 89 m (292 ft), 28 m (92 ft), and 9 m (29 ft), respectively, assuming spherical spreading.

The corresponding distances for an animal in the horizontal direction of these transducers would be much smaller due to the direct downward beam pattern of the subbottom profilers. Therefore, the horizontal received levels of 180 and 190 dB re 1 microPa (rms) would be within much smaller radii than 50 m (164 ft) and 16 m (52 ft) when using the GeoAcoustics subbottom profilers, which have the highest downward source level, respectively. In addition, the pulse duration of these subbottom profilers is extremely short, in the order of tens to hundreds of msec, and the survey is constantly moving. Therefore, for a marine mammal to receive prolonged exposure, the animal has to stay in a very small zone of ensonification and keep with the vessel's speed, which is very unlikely.

Possible Effects of Side-Scan Sonar Signals for Seafloor Imagery

One of the two types of side-scan sonars is planned to be used for the proposed shallow hazard and site clearance surveys for seafloor imagery. The EdgeTech 4200 dual-frequency side scan sonar operates at 120 kHz up to 410 kHz, with source level reaching 210 dB re 1 microPa-m (rms). The 160, 170, 180, and 190 dB re 1 microPa (rms) radii, in the beam below the transducer, would be 316 m (1,037 ft), 100 m (328 ft), 32 m (104 ft), and 10 m (33 ft), respectively, assuming spherical spreading.

The Klein System 3000 dual-frequency digital side-scan sonar emits pulses between 25 msec and 400 msec. The peak in the 132 kHz source level beam reaches 234 dB re 1 microPa-m (or 225 dB re 1 microPa-m (rms)). The peak in the 445 kHz source level beam reaches 242 dB re 1 microPa-m. The 445 kHz frequency band is outside any marine mammal species' hearing range, therefore, there would be no effect to marine mammals when this frequency is chosen. The 160, 170, 180, and 190 dB re 1 microPa (rms) radii, in the beam below the transducer, would be 1,778 m (5,834 ft), 562 m (1,844 ft), 178 m (583 ft), and 56 m (184 ft), respectively, assuming spherical spreading.

Nonetheless, these side scan sonars operate in an extremely high frequency range (over 120 kHz) relative to marine mammal hearing (Richardson *et al.*, 1995; Southall *et al.*, 2007). The frequency range from these side scan sonars is beyond the hearing range of mysticetes (baleen whales) and pinnipeds. Therefore, these sonars are not expected to affect bowhead, gray, humpback, fin, and minke whales and pinniped species in the proposed project area. The frequency range from these side scan sonars falls within the upper end of odontocete (toothed whale) hearing spectrum (Richardson *et al.*, 1995), which means that they are not perceived as loud acoustic signals with frequencies below 120 kHz by these animals. Therefore, these animals would not react to the sound in a biologically significant way. Further, in addition to spreading loss for acoustic propagation in the water column, high frequency acoustic energies are more quickly absorbed through the water column than sounds with lower frequencies (Urick, 1983). Therefore, NMFS believes that the potential effects from side scan sonar to marine mammals are negligible.

Numbers of Marine Mammals Estimated to be Taken

All anticipated takes would be takes by Level B harassment, involving temporary changes in behavior. The proposed mitigation measures to be applied would prevent the possibility of injurious takes.

Take was calculated for the two areas of the study area using vessel-based density estimates. Few bowheads and no belugas were observed during the vessel surveys conducted in the Chukchi Sea by LGL *et al.* (2008), although the surveys used multiple vessels achieving substantial effort and coverage from early July to mid November. This result is generally consistent with the historic information, which shows that bowheads generally migrated through the Chukchi Sea to the Beaufort Sea by mid-late June, and do not return until about late October and November, probably reaching the region of the project area no earlier than late October (LGL *et al.*, 2008). Similarly, most belugas migrate to the northern Chukchi Sea and westward into the Beaufort Sea by mid to late July and return to the region of the project area in late October and November (Suydam *et al.*, 2005). Although LGL *et al.*, (2008) did not observe belugas offshore in 2006 or 2007, they did encounter belugas along the coast in decreasing numbers from July to October/November during aerial surveys. LGL *et al.* (2008) also observed bowheads in the fall near Barrow during nearshore aerial surveys, suggesting the whales had not moved very far into Chukchi Sea at that time. While these data and the historic information suggest the take calculations are reasonable for belugas and bowheads, the take numbers have been adjusted to 10 animals for each species to account for the possible occurrence of more animals than estimated in the project area during operations due to an early freeze-up or other unanticipated changes in the environment. This adjustment is generally consistent with estimates based on less current densities used in past IHAs for bowhead (0.0011/km2) and beluga (0.0034/km^2) whales for late fall.

The vessel-based density estimates for ringed and spotted seals were reported in the LGL *et al.* (2008) study as a combined estimate for the two species, since observers were not able to distinguish the two species in the open water. However, since ringed seals typically comprise almost 95 percent of the combined ringed/spotted seal sightings recorded during surveys in offshore waters of the Chukchi Sea during 1989–1991 (Brueggeman *et al.*, 1990; 1991; 1992), the LGL *et al.* (2008) ringed/spotted seal data were corrected by applying 95 percent of the sightings as ringed, and 5 percent as spotted seals, respectively.

JASCO modeled the sound levels of different configurations of seismic profilers (10 kj and 16 kj sparkers, 10 in^3 and 20 in^3 2-gun arrays, 40 cu^3 single gun, and 10 in^3 4-gun array) and found the 4-gun array produced the highest sound levels. Therefore, all take estimates of marine mammals are calculated for the 4-gun array in this proposed activity, which reaches the 160 dB re 1 microPa sound level at 1,665 m (5,463 ft) from the source, the 180 dB re 1 microPa level at 115 m (377 ft), and the 190 dB level at 20 m (66 ft).

The average estimates of ''take'' were calculated by multiplying the expected average animal densities by the area of ensonification for the 160 dB re 1 microPa (rms). The area of ensonification was determined by multiplying the total proposed trackline of 5,300 km (3,294 mi)(2,120 km, or 1,318 mi, in August; 2,120 km, or 1,318 mi, in September; and 1,060 km, or 659 mi, in October) times 2 (both sides of the trackline) times the distance to the 160-dB isopleth. The distance to the 160-dB isopleth was estimated as approximately 1,665 m (5,463 ft) with a corresponding area of ensonification of 17,649 km^2 (6,817 mi^2).

The Level B harassment take estimate of 1,379 ringed seals is a small number at least in relative terms, in that it represents approximately 0.55 percent of the Alaska stock size of that species (249,000) in the Chukchi Sea, if each ''exposure'' at 160 dB represents an individual ringed seal. The percentage would be even lower if a higher SPL is required for a behavioral reaction (as is expected), or, if as expected, animals move out of the seismic area. As a result, we believe that these ''exposure'' estimates are conservative, and seismic surveys will actually affect less than 0.55 percent of the ringed seal population. For the remaining potentially affected marine mammal species, NMFS expects that approximately 10 bowhead, 37 gray whales, 42 harbor porpoises, and 376 bearded seals would be taken by Level B behavioral harassment as a result of the proposed site clearance surveys. These take numbers represent 0.09, 0.19, 0.66, and 0.15 percent of the western Arctic stock of bowhead whales, eastern North Pacific stock of gray whales, Bering Sea stock of harbor porpoise, and Arctic stock of bearded seals in the Chukchi Sea region. These numbers are small relative to their respective stock or population sizes. In addition, NMFS expects that 4 minke whales and 72 spotted seals would be taken by Level B harassment. However, a specific estimate of the percentage of Level B harassment of these species cannot be determined because no accurate current population estimates of minke whales and spotted seals are available. Nevertheless, based on the information available, NMFS believes these numbers are very low relative to the populations of these species in the proposed project area because: (1) for the minke whales, the Chukchi Sea is not typical habitat, and visual surveys in 1999 and 2000 counted 810 and 1,003 minke whales in the central-eastern and southeastern Bering Sea, respectively, not including animals missed on the trackline, or animals submerged when the ship passed; and (2) for the spotted seal, the early population estimate of this species ranged from 335,000–450,000 seals, and there is no reason to believe that the population of this species has declined significantly. In addition, a number of beluga, humpback, and killer whales, and ribbon seals could also be affected by Level B behavioral harassment as a result of the proposed marine surveys in the Chukchi Sea. However, since the occurrence of these marine mammals is very rare within the proposed project area during the late summer and fall in the Chukchi Sea, take numbers cannot be estimated. In the event these species

are present in the proposed project area, NMFS believes their numbers would be limited; thus, should take occur from the seismic survey, NMFS would expect the numbers to be small, particularly in light of the fact that these animals do not frequent the project area.

NMFS believes the number of potential takes by harassment is small and may be reduced further because of the proposed mitigation measures, including curtailing seismic activities during the bowhead migratory period to protect the Native subsistence hunt. Additionally, because the seismic airguns used by CPAI are of small discharge volumes (40 in^3, compared to the 3,000+ in^3 arrays used in 2D or 3D deep seismic surveys), the ensonified zones within which marine mammals could be adversely affected are very small (approximately 50 km^2 for the 160-dB isopleths at any given time as compared to 15,000 km2 for a 3,000+ in^3 array [e.g., SOI's proposed 3D seismic survey in the Chukchi Sea]).

Potential Impacts to Subsistence Harvest of Marine Mammals

Subsistence hunting and fishing has historically, and continues to be, an essential aspect of Native life, especially in rural coastal villages. The Inupiat participate in subsistence hunting and fishing activities in and around the Chukchi Sea.

Alaska Natives, including the Inupiat, legally hunt several species of marine mammals. Communities that participate in subsistence activities potentially affected by seismic surveys within the proposed survey areas are Point Hope, Point Lay, Wainwright, and Barrow. Marine mammals used for subsistence in the proposed area include: bowhead whales, beluga whales, ringed seals, spotted seals, bearded seals, Pacific walrus, and polar bears. In each village, there are key subsistence species. Hunts for these animals occur during different seasons throughout the year. Depending upon the village's success of the hunt for a certain species, another species may become a priority in order to provide enough nourishment to sustain the village.

Point Hope residents hunt for bowhead and beluga whales, polar bears and walrus. Bowhead and beluga whales are hunted in the spring and early summer along the ice edge. Beluga whales may also be hunted later in the summer along the shore. Walrus are harvested in late spring and early summer, and polar bear are hunted from October to April (MMS, 2007). Seals are available from October through June, but are harvested primarily during the winter months, from November through March, due to the availability of other resources during the other periods of the year (MMS, 2007).

With Point Lay situated near Kasegaluk Lagoon, the community's main subsistence focus is on beluga whales. Seals are available year-round, and polar bears and walruses are normally hunted in the winter. Hunters typically travel to Barrow, Wainwright, or Point Hope to participate in bowhead whale harvest, but there is interest in reestablishing a local Point Lay harvest.

Wainwright residents subsist on both beluga and bowhead whales in the spring and early summer. During these two seasons the chances of landing a whale are higher than during other seasons. Seals are hunted by this community year-round and polar bears are hunted in the winter.

Barrow residents' main subsistence focus is concentrated on biannual bowhead whale hunts. They hunt these whales during the spring and fall. Other animals, such as seals, walruses, and polar bears are hunted outside of the whaling season, but they are not the primary source of the subsistence harvest (URS Corporation, 2005).

The potential impact of the noise produced by the proposed survey on subsistence could be substantial. If bowhead or beluga whales are permanently deflected away from their migration path, there could be significant repercussions to the subsistence use villages. However, mitigation efforts will be put into action to minimize or avoid completely any adverse affects on all marine mammals.

In an effort to minimize or avoid any adverse effects to subsistence harvest, CPAI has met with key native organizations responsible for managing marine mammals in the Arctic. In accordance with 50 CFR 126.104(a)(12), CPAI has met with subsistence stakeholder in the communities and villages of Kivalina, Kotzebue, Wainwright, Barrow, Point Lay, and Point Hope and developed a POC for its proposed 2008 shallow hazard and site clearance survey.

CPAI has not signed the 2008 CAA with Alaska Natives and has informed NMFS that it does not intend to do so. As explained above in *Response* to *Comment 33*, NMFS has scrutinized all of the documents submitted by CPAI (e.g., IHA application, Plan of Cooperation and other correspondence to NMFS and affected stakeholders) and documents submitted by other affected stakeholders and concluded that harassment of marine mammals incidental to CPAI's activities will not have an unmitigable adverse impact on the availability of marine mammals for taking for subsistence uses.

In addition, CPAI has indicated that a number of actions would be taken by CPAI during the surveys to minimize any adverse effect on the availability of marine mammals for subsistence, which have been proposed in the CPAI application. They include the following:

(1) Site clearance and shallow hazard surveys will occur in areas considerably distant to the villages during the hunting periods (i.e., up to 70 miles offshore);

(2) Site clearance and shallow hazard surveys will follow procedures of changing vessel course, powering down, and shutting down acoustic equipment to minimize effects on the behavior of marine mammals. These measures are likely to afford greater access by subsistence users to marine mammals should any harvest occur in the project area; and

(3) In the unlikely event that a hunter is encountered, operations will be managed to keep the hunter and seismic vessel at least 5 km (3.1 mi) apart.

The combination of the low volume air guns, timing, location, mitigation measures, and input from local communities and organization is expected to mitigate any adverse effect of the seismic surveys on availability of marine mammals for subsistence uses.

Finally, in the event harvest activities do occur this far offshore, the required mitigation and monitoring measures are expected to reduce any adverse impacts on marine mammals for taking for subsistence uses to the extent practicable. These measures include, but are not limited to, the 180 dB and 190 dB safety (shut-down/power-down) zones; a requirement to monitor the 160 dB isopleth for aggregations of 12 or more non-migratory balaenidae whales and when necessary shut-down seismic airguns; maintaining a distance of at least 15 miles from other operating seismic vessels; reducing vessel speed when a vessel is within 300 yards of whales to avoid a collision; utilizing communication centers to avoid any conflict with subsistence hunting activities; and the use of marine mammal observers. Many of these requirements are consistent with the measures contained in the 2008 CAA entered into between other industry participants who operate in the Chukchi Sea and Alaska Natives.

Potential Impacts on Habitat

The proposed site clearance surveys would not result in any permanent impact on habitats used by marine mammals, or to the food sources they use. The main impact issue associated

with the proposed activity would be temporarily elevated noise levels and the associated direct effects on marine mammals, as discussed above.

Monitoring and Mitigation Measures

Monitoring

In order to further reduce and minimize the potential impacts to marine mammals from the proposed site clearance surveys, NMFS requires the following monitoring and mitigation measures to be implemented for the proposed project in Chukchi Sea.

(1) Proposed Safety Zones

Based acoustic propagation modeling performed by JASCO, it is estimated that distance from the seismic sources to the 180 dB isopleth is approximately 115 m (377 ft), and the distance to the 190 dB isopleth is about 20 m (66 ft). Because these values are based on modeling instead of field measurement during actual operations, NMFS requires, as a precautionary measure, safety radii of 120 m (393 ft) for cetaceans and 24 m (79 ft) for pinnipeds.

In addition, a 160-dB vessel monitoring zone for bowhead and gray whales shall be established and monitored during all seismic surveys. Whenever an aggregation of 12 or more bowhead whales or gray whales are observed during a vessel monitoring program within the 160-dB safety zone around the seismic activity, the seismic operation will not commence, or will shut down, until two consecutive surveys indicate they are no longer present within the 160-dB safety zone of seismic-surveying operations. The radius of 160-dB isopleth based on modeling is 1,665 m (5,463 ft).

Before the commencement of the shallow hazard and site clearance survey, CPAI is required to conduct empirical measurements of acoustic sources to be used in the seismic survey and verify the radii of the modeled safety zones at 160, 170, 180, and 190 dB re 1 microPa (rms).

(2) Vessel-based Visual Monitoring

Marine mammal monitoring during the site clearance surveys would be conducted by qualified, NMFS-approved marine mammal observers (MMOs). Vessel-based MMOs would be on board the seismic source vessel to ensure that no marine mammals would enter the relevant safety radii of 180 and 190-dB isopleths while noise-generating equipment is operating. Monitoring will also be conducted to include the larger 160-dB safety zone for an aggregation of 12 or more bowhead or gray whales.

(3) Communication between Vessel and Shore

Communication of vessel operations and transit would occur in accordance with protocols set forth by the Com and Call Centers proposed to be operated in Barrow, Point Hope, and Point Lay. This would further enable vessel operators to be aware of marine mammals and subsistence activity in the area.

Mitigation

Mitigation measures include (1) vessel speed or course alteration, provided that doing so will not compromise operational safety requirements, (2) acoustic equipment shut down, and (3) acoustic source ramp up.

(1) Speed or Course Alteration

If a marine mammal is detected outside the relevant safety zone but appears likely to enter it based on relative movement of the vessel and the animal, then if safety and survey objectives allow, the vessel speed and/or course would be adjusted to minimize the likelihood of the animal entering the safety zone.

(2) Shut down Procedures

If a marine mammal is detected within, or appears likely to enter, the relevant safety zone of the array in use, and if vessel course and/or speed changes are impractical or will not be effective to prevent the animal from entering the safety zone, then the acoustic sources that relate to the seismic surveys would be shut down.

Following a shut down, acoustic equipment would not be turned on until the marine mammal is outside the safety zone. The animal would be considered to have cleared the safety zone if it (1) is visually observed to have left the 120-m or 24-m safety zone, for a cetacean or a pinniped species, respectively; or (2) has not been seen within the relevant safety zone for 15 minutes in the case of odontocetes and pinnipeds, and for 30 minutes in the case of mysticetes. For the aggregation of bowhead or gray whales, the seismic equipment will not be turned on until the aggregation has left the 1,665-m safety zone or the animals forming the aggregation are reduced to fewer than 12 bowhead or gray whales.

Following a shut down and subsequent animal departure as above, the acoustic sources may be turned on to resume operations following ramp-up procedures described below.

(3) Ramp-up Procedures

A ramp-up procedure will be followed when the acoustic sources begin operating after a specified period without operations. It is proposed that, for the present survey, this period would be 30 min. Ramp up would begin with the power on of the smallest acoustic equipment for the survey at its lowest power output. The power output would be gradually turned up and other acoustic sources would be added in a way such that the source level would increase in steps not exceeding 6 dB per 5-min period. During ramp-up, the MMOs would monitor the safety zone, and if marine mammals are sighted, decisions about course/speed changes and/or shutdown would be implemented as though the acoustic equipment is operating at full power.

(4) Poor Visibility Conditions

CPAI plans to conduct 24-hr operations. The proposed provisions associated with operations at night or in periods of poor visibility include:

(1) During any nighttime operations, if the entire 180-dB safety radius is visible using vessel lights and/or night vision devices, then start of a ramp-up procedure after a complete shutdown of the airgun array may occur following a 30-min period of observation without sighting marine mammals in the safety zone.

(2) If during foggy conditions or darkness (which may be encountered starting in late August), the full 180-dB safety zone is not visible, the airguns cannot be ramped-up if the seismic source is in a full shutdown mode.

(3) If one or more airguns has been operational before nightfall or before the onset of foggy conditions, they can remain operational throughout the night or foggy conditions. In this case, ramp-up procedures can be initiated, even though the entire safety radius may not be visible, on the assumption that marine mammals will be alerted by the sounds from the single airgun and have moved away.

Data Collection and Reporting

MMOs would record data to estimate the numbers of marine mammals present and to document apparent disturbance reactions or lack thereof. Data would be used to estimate numbers of animals potentially ''taken'' by harassment. They would also provide information needed to order a shut down of acoustic equipment when marine mammals are within or entering the safety zone.

When a sighting is made, the following information about the sighting would be recorded:

(1) Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing

and distance from seismic vessel, and apparent reaction to the acoustic sources or vessel.

(2) Time, location relative to the acoustic sources, heading, speed, activity of the vessel (including whether and the level at which acoustic sources are operating), sea state, visibility, and sun glare.

The data listed under (2) would also be recorded at the start and end of each observation watch, and during a watch whenever there is a change in one or more of the variables.

A final report will be submitted to NMFS within 90 days after the end of the shallow hazard and site clearance surveys. The report will describe the operations that were conducted and sightings of marine mammals near the operations. The report also will provide full documentation of methods, results, and interpretation pertaining to all monitoring. The report will summarize the dates and locations of seismic operations, and all marine mammal sightings (dates, times, locations, activities, associated seismic survey activities), and the amount and nature of potential take of marine mammals by harassment or in other ways.

Endangered Species Act

Under section 7 of the ESA, NMFS has completed consultation with the MMS on the issuance of seismic permits for offshore oil and gas activities in the Beaufort and Chukchi seas. In a Biological Opinion issued on July 17, 2008, NMFS concluded that the issuance of seismic survey permits by MMS and the issuance of the associated IHAs for seismic surveys are not likely to jeopardize the continued existence of threatened or endangered species (specifically the bowhead, humpback, and fin whales) under the jurisdiction of NMFS or destroy or adversely modify any designated critical habitat. The 2008 Biological Opinion takes into consideration all oil and gas related activities that are reasonably likely to occur, including exploratory (but not production) oil drilling activities. In addition, NMFS has issued an Incidental Take Statement under this Biological Opinion which contains reasonable and prudent measures with implementing terms and conditions to minimize the effects of take of bowhead whales.

NEPA

In 2006, the MMS prepared Draft and Final PEAs for seismic surveys in the Beaufort and Chukchi Seas. NMFS was a cooperating agency in the preparation of the MMS PEA. On November 17, 2006 (71 FR 66912), NMFS and MMS announced that they were preparing a DPEIS in order to assess the impacts of MMS' annual authorizations under the Outer Continental Shelf Lands Act to the U.S. oil and gas industry to conduct offshore geophysical seismic surveys in the Chukchi and Beaufort Seas off Alaska and NMFS' authorizations under the MMPA to incidentally harass marine mammals while conducting those surveys.

On March 30, 2007 (72 FR 15135), the Environmental Protection Agency (EPA) noted the availability for comment of the NMFS/MMS DPEIS. Based upon several verbal and written requests to NMFS for additional time to review the DPEIS, EPA has twice announced an extension of the comment period until July 30, 2007 (72 FR 28044, May 18, 2007; 72 FR 38576, July 13, 2007). Because NMFS has been unable to complete the PEIS, it was determined that the 2006 PEA would need to be updated in order to meet NMFS' NEPA requirement. This approach was warranted as it was reviewing five proposed Arctic seismic survey IHAs for 2008, well within the scope of the PEA's eight consecutive seismic surveys. To update the 2006 Final PEA, NMFS prepared a SEA which incorporates by reference the 2006 Final PEA and other related documents.

Determination

Based on the preceding information, and provided that the mitigation and monitoring are incorporated, NMFS has determined that the impact of conducting the shallow hazard and site clearance surveys in Chukchi Sea may result, at worst, in a temporary modification in behavior of small numbers of certain species of marine mammals. While behavioral and avoidance reactions may be made by these species in response to the resultant noise from the airguns, side-scan sonars, seismic profilers, and other acoustic equipment, these behavioral changes are expected to have a negligible impact on the affected species and stocks of marine mammals. In addition, NMFS has determined that the CPAI's shallow hazard and site clearance survey would no have an unmitigable adverse impact on the availability of marine mammal species and/or stocks for taking for subsistence uses.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals in the area of site clearance operations, the number of potential harassment takings is estimated to be small relative to the species' population or stock size. NMFS anticipates the actual take of individuals would be lower than the numbers presented in the analysis because those numbers do not reflect either the implementation of the mitigation measures or the fact that some animals will avoid the sound at levels lower than those expected to result in harassment.

In addition, no take by death and/or injury is anticipated, and the potential for temporary or permanent hearing impairment will be avoided through the incorporation of the required mitigation measures described in this document. This determination is supported by (1) the likelihood that, given sufficient notice through slow ship speed and ramp-up of the acoustic equipment, marine mammals are expected to move away from a noise source that it is annoying prior to its becoming potentially injurious; (2) TTS is unlikely to occur, especially in odontocetes, until levels much above 180 dB re 1 microPa (rms) are reached; and (3) the fact that injurious levels of sound are only likely if an animal is very close to the vessel.

Authorization

As a result of these determinations, NMFS has issued an IHA to CPAI for conducting a shallow hazard and site clearance survey in the Chukchi Sea in 2008, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: August 15, 2008.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XJ18

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active Sonar

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

ACTION: Notice; issuance of two Letters of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that NMFS has issued

two 1–year Letters of Authorization (LOAs) to take marine mammals by harassment incidental to the U.S. Navy's operation of Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) sonar operations to the Chief of Naval Operations, Department of the Navy, 2000 Navy Pentagon, Washington, DC, and persons operating under his authority.

DATES: Effective from August 16, 2008, through August 15, 2009.

ADDRESSES: Copies of the Navy's April 9, 2008, LOA application letter, the LOAs, the Navy's 2007 annual report and the Navy's 2007 5–Year Comprehensive Report are available by writing to Michael Payne, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**), or online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, Office of Protected Resources, NMFS (301–713–2289, ext 128).

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a military readiness activity if certain findings are made and regulations are issued.

Authorization may be granted for periods of 5 years or less if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for certain subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations also must include requirements pertaining to the monitoring and reporting of such taking.

Regulations governing the taking of marine mammals incidental to the U.S. Navy's operation of SURTASS LFA sonar were published on August 21, 2007 (72 FR 46846), and remain in effect through August 15, 2012. They are codified at 50 CFR part 216 subpart Q. These regulations include mitigation, monitoring, and reporting requirements for the incidental taking of marine mammals by the SURTASS LFA sonar system. For detailed information on this action, please refer to the August 21, 2007 **Federal Register** Notice and 50 CFR part 216 subpart Q.

Summary of LOA Request

NMFS received an application from the U.S. Navy for two LOAs, one covering the USNS ABLE (T-AGOS 20) and one covering the USNS IMPECCABLE (T-AGOS 23), under the regulations issued on August 21, 2007 (72 FR 46846). (The *R/V Cory Chouest* has been retired and has been replaced by the USNS ABLE.) The Navy requested that these LOAs become effective on August 16, 2008. The application requested authorization, for a period not to exceed 1 year, to take, by harassment, marine mammals incidental to employment of the SURTASS LFA sonar system for training, testing and routine military operations on the aforementioned ships in areas of the North Pacific Ocean.

Monitoring and Reporting

In compliance with NMFS' SURTASS LFA sonar regulations for the 2002–2007 period, the Navy submitted an annual report for SURTASS LFA sonar operations during 2006–2007. The Navy also submitted a comprehensive report on SURTASS LFA sonar operations and the mitigation and monitoring activities conducted under the LOAs issued under its previous rule. A copy of these reports can be viewed and/or downloaded at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*. In accordance with the current SURTASS LFA sonar regulations (50 CFR 216.186), the Navy's has submitted classified quarterly mission reports, and its annual report for the 2007–2008 LOA is due on September 30, 2008. Upon receipt, NMFS will post this annual report on the same Internet address.

Authorization

NMFS has issued two LOAs to the U.S. Navy, authorizing the incidental harassment of marine mammals incidental to operating the two SURTASS LFA sonar systems for training, testing and routine military operations. Issuance of these two LOAs is based on findings, described in the preamble to the final rule (August 21, 2007, 72 FR 46846)) and supported by information contained in the Navy's required reports on SURTASS LFA sonar, that the activities described under these two LOAs will have no more than a negligible impact on marine mammal stocks and will not have an unmitigable adverse impact on the availability of the affected marine mammal stocks for subsistence uses.

These LOAs remain valid through August 15, 2009, provided the Navy remains in conformance with the conditions of the regulations and the LOAs, and the mitigation, monitoring, and reporting requirements described in 50 CFR 216.184–216.186 (August 21, 2007, 72 FR 46846) and in the LOAs are undertaken.

Dated: August 15, 2008.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E8–19417 Filed 8–20–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Patent and Trademark Financial Transactions

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before October 20, 2008.

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

- *E-mail: Susan.Fawcett@uspto.gov.* Include ''0651–0043 comment'' in the subject line of the message.
- *Fax:* 571–273–0112, marked to the attention of Susan Fawcett.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.
- *Federal Rulemaking Portal: http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tamara McClure, Office of Finance, United States Patent

and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–6345; or by e-mail to *Tamara.McClure@uspto.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Under 35 U.S.C. 41 and 15 U.S.C. 1113, the United States Patent and Trademark Office (USPTO) charges fees for processing and other services related to patents, trademarks, and information products. Customers may submit payments to the USPTO by several methods, including credit card, deposit account, electronic funds transfer (EFT), and paper check transactions. The provisions of 35 U.S.C. 41 and 15 U.S.C. 1113 are implemented in 37 CFR 1.16–1.28, 2.6–2.7, and 2.206–2.209.

This information collection includes the Credit Card Payment Form (PTO–2038), which provides the public with a convenient way to submit a credit card payment for fees related to a patent, trademark, or information product. Customers may also submit credit card payments via the Electronic Credit Card Payment Form (PTO–2231) when using online systems through the USPTO Web site for paying fees related to patents, trademarks, or information products.

The USPTO will not include credit card information submitted using the credit card payment forms among the patent or trademark records open to public inspection.

Customers may establish a deposit account for making fee payments by completing a Deposit Account Application Form (PTO–2232) and sending the required information, initial deposit, and service fee to the USPTO. Deposit accounts eliminate the need to submit a check, credit card information, or other form of payment for each transaction with the USPTO. Additionally, in the event that a fee amount due is miscalculated, customers may authorize the USPTO to charge any remaining balance to the deposit account and therefore avoid the potential consequences of underpayment. As customers use their deposit accounts to make payments, they may deposit funds to replenish their accounts by mailing a check to the USPTO or making a deposit online via EFT using the Electronic Deposit Account Replenishment Form (PTO–2233) available at the USPTO Web site. Replenishments may not be made by credit card. Customers may also close their deposit accounts by submitting a written request or by using the Deposit Account Closure Request Form (PTO–2234).

In addition to credit cards and deposit accounts, customers may also use EFT to make online fee payments to the USPTO. Customers must first establish a user profile with their banking information by submitting the EFT User Profile Form (PTO–2236) through the USPTO Web site. Once their profile is created, customers may use their User ID and password to perform EFT transactions.

Under 37 CFR 1.26 and 2.209, the USPTO may refund fees paid by mistake or in excess of the required amount. For refund amounts of $25 or less, customers must submit a written request to the Refund Branch of the USPTO Office of Finance.

In order to access and manage their financial activity records online, customers may create a Financial Profile through the USPTO web site. Customers create a profile by registering a username and password, providing contact information, and specifying the types of notifications and alerts they would like to receive. After establishing a Financial Profile, customers may then add the relevant account information to the profile in order to track their credit card, deposit account, and EFT transactions with the USPTO.

II. Method of Collection

By mail, facsimile, hand delivery, or electronically to the USPTO.

III. Data

OMB Number: 0651–0043.

Form Number(s): PTO–2038, PTO–2231, PTO–2232, PTO–2233, PTO–2234, PTO–2236.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households; businesses or other for-profits; and not-for-profit institutions.

Estimated Number of Respondents: 1,929,205 responses per year.

Estimated Time per Response: The USPTO estimates that it will take the public approximately two to six minutes (0.03 to 0.10 hours) to gather the necessary information, prepare, and submit the items in this collection.

Estimated Total Annual Respondent Burden Hours: 58,166 hours per year.

Estimated Total Annual Respondent Cost Burden: $2,617,470 per year. The USPTO expects that 75% of the submissions for this information collection will be prepared by fee administrators/coordinators and that 25% of the submissions will be prepared by paraprofessionals. Using those proportions and the estimated rates of $30 per hour for fee administrators/coordinators and $90 per hour for paraprofessionals, the USPTO estimates that the average hourly rate for all respondents will be approximately $45 per hour. Using this estimated rate of $45 per hour, the USPTO estimates that the respondent cost burden for submitting the information in this collection will be approximately $2,617,470 per year.

Item	Estimated time for response (minutes)	Estimated annual responses	Estimated annual burden hours
Credit Card Payment Form (PTO–2038)	2	863,389	25,902
Electronic Credit Card Payment Form (PTO–2231)	2	1,017,322	30,520
Deposit Account Application Form (PTO–2232)	2	298	9
Deposit Account Replenishment	2	20,837	625
Electronic Deposit Account Replenishment Form (PTO–2233)	2	17,664	530
Deposit Account Closure Request Form (PTO–2234)	4	132	9
EFT User Profile Form (PTO–2236)	2	2,850	86
Refund Request	4	6,213	435
Financial Profiles	6	500	50
Total		1,929,205	58,166

Estimated Total Annual Non-Hour Respondent Cost Burden: $248,603. There are no capital start-up costs or maintenance costs associated with this information collection. However, this collection does have associated service fees for deposit accounts and returned payments, postage costs for mailing submissions to the USPTO, and

recordkeeping costs related to electronic credit card payments and electronic deposit account replenishments.

There are service fees for setting up a deposit account at the USPTO, for not maintaining the minimum balance required for the deposit account, and for returned payments. The service charge to establish a deposit account is $10, and the USPTO estimates that it processes 298 Deposit Account Application Forms annually, for a total of $2,980 per year. There is also a $25 service charge for deposit accounts that are below the minimum balance ($1,000 minimum balance for an unrestricted deposit account or $300 minimum balance for a restricted deposit account) at the end of the month. The USPTO estimates that it assesses 4,000 of these low balance charges annually, for a total of $100,000 per year. There is a $50 service charge for processing a payment refused (including a check returned ''unpaid'') or charged back by a financial institution. The USPTO estimates that it assesses 456 of these returned payment charges annually, for a total of $22,800 per year. The total estimated service fees for this collection are $125,780 per year.

Customers may incur postage costs when submitting the Credit Card Payment Form and other paper forms or requests to the USPTO by mail. Customers generally send the Credit Card Payment Form to the USPTO along with other documents related to the fee or service being paid for by credit card, but some customers may submit just the Credit Card Payment Form without additional supporting documents. The USPTO estimates that roughly 5 percent of the 863,389 paper Credit Card Payment Forms submitted annually may be mailed in by themselves, approximately 43,169 per year. The USPTO estimates that it will receive an additional 27,480 submissions per year that may be mailed, including Deposit Account Application Forms, Deposit Account Replenishments, Deposit Account Closure Requests, and Refund Requests, for a total of 70,649 mailed submissions per year. The USPTO estimates that the first-class postage cost for a mailed submission will be 42 cents, for a total postage cost of approximately $29,673 per year.

Customers using the Electronic Credit Card Payment Form or the Electronic Deposit Account Replenishment Form may incur recordkeeping costs from printing a copy of the electronic receipt confirming their successful online transaction. The USPTO estimates that it will take 5 seconds (0.001 hours) to print a copy of the confirmation receipt and that approximately 1,034,986 submissions per year will use the Electronic Credit Card Payment Form or the Electronic Deposit Account Replenishment Form, for a total recordkeeping burden of 1,035 hours per year. Using the paraprofessional rate of $90 per hour, the USPTO estimates that the recordkeeping cost associated with this collection will be approximately $93,150 per year.

The total non-hour respondent cost burden for this collection in the form of service fees, postage costs, and recordkeeping costs is estimated to be $248,603 per year.

IV. Request for Comments

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

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

Dated: August 14, 2008.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division.

[FR Doc. E8–19375 Filed 8–20–08; 8:45 am]

BILLING CODE 3510–16–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 08–C0018]

Cobmex, Inc., Provisional Acceptance of a Settlement Agreement and Order

Correction

In notice document Z8–18395 beginning on page 46877 in the issue of Tuesday, August 12, 2008, make the following correction:

On page 46877, in the third column, under the **DATES** heading, in the fifth line, ''(insert date that is 15 calendar days from publication date)'' should read ''August 27, 2008''.

[FR Doc. Z8–18395 Filed 8–20–08; 8:45 am]

BILLING CODE 1505–01–D

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 08–C0017]

Siegfried & Parzifal, Inc., Provisional Acceptance of a Settlement Agreement and Order

Correction

In notice document Z8–18399 beginning on page 46885 in the issue of Tuesday, August 12, 2008, make the following correction:

On page 46885, in the first column, under the **DATES** heading, in the fifth line, ''(insert date that is 15 calendar days from publication date)'' should read ''August 27, 2008''.

[FR Doc. Z8–18399 Filed 8–20–08; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Membership of the Defense Logistics Agency (DLA) Senior Executive Service (SES) Performance Review Board (PRB)

AGENCY: Defense Logistics Agency, Department of Defense.

ACTION: Notice of membership—2008 DLA PRB.

SUMMARY: This notice announces the appointment of members to the Defense Logistics Agency Senior Executive Service (SES) Performance Review Board (PRB). The publication of PRB composition is required by 5 U.S.C. 4314(c)(4). The PRB provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations to the Director, Defense Logistics Agency (DLA), with respect to pay level adjustments and performance awards and other actions related to management of the SES cadre.

DATES: *Effective Date:* September 26, 2008.

ADDRESSES: Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, Virginia 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Julie Brown, SES Program Manager, Human Resources (J–1), Defense Logistics Agency, Department of Defense, (703) 767–5041.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are the names and titles of DLA career executives appointed to serve as members of the SES PRB. Members will serve a 12-month term, which begins on September 26, 2008.

PRB Chair: Major General Arthur Morrill III, USAF.

Members: Mr. Jeffrey Neal, Director, Human Resources. Mr. Larry Glasco, Deputy Director, Logistics Operations & Readiness. Mr. James McClaugherty, Deputy Commander, Defense Supply Center Columbus.

Robert T. Dail,

USA, Director, Defense Logistics Agency.

[FR Doc. E8–19252 Filed 8–20–08; 8:45 am]

BILLING CODE 3620–01–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

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

DATES: Interested persons are invited to submit comments on or before September 22, 2008.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by email to *oira__submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, e.g., ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

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

Dated: August 18, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New.

Title: National Study on Alternate Assessments Teacher Survey.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 600.

Burden Hours: 1,335.

Abstract: The National Study on Alternate Assessments (NSAA) Teacher Survey will examine the use of alternate assessments based on alternate achievement standards by surveying a sample of teachers who use these assessments with students who have significant cognitive disabilities. The survey will study motivation and expectations, professional capacity and support, instructional resources, and opportunity to learn academic content.

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 3695. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–19430 Filed 8–20–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket No. PP–304]

Record of Decision and Floodplain Statement of Findings; Generadora del Desierto SA de C.V. (GDD) San Luis Rio Colorado (SLRC) Project

AGENCY: Office of Electricity Delivery and Energy Reliability (OE), Department of Energy (DOE).

ACTION: Record of Decision (ROD) and Floodplain Statement of Findings.

SUMMARY: DOE announces its decision to issue a Presidential Permit that would authorize Generadora del Desierto SA de C.V. (GDD) to construct, operate, maintain, and connect a new double-circuit 230,000-volt (230-kV) electric transmission line across the U.S.-Mexico border into Yuma County, southeast of San Luis, Arizona. The environmental impacts that would be associated with the line were analyzed in the *Environmental Impact Statement (EIS) for the San Luis Rio Colorado Project* (DOE/EIS–0395, SLRC EIS). The transmission line, known as the San Luis Rio Colorado (SLRC) Project, would extend from a new gas-fired electric power plant, known as the SLRC Power Center (to be constructed by GDD approximately one mile south of the U.S.-Mexico border in San Luis Rio Colorado, Sonora, Mexico), cross the U.S.-Mexico border, extend approximately 21 miles north, and connect to the existing Gila Substation that is owned and operated by the Western Area Power Administration (Western), an organizational element within DOE. From the Gila Substation, the line would extend an additional five miles north and connect to the existing North Gila Substation that is owned and operated by the Arizona Public Service Company (APS).

In reaching this decision, DOE considered the low environmental impacts in the United States from constructing, operating, maintaining, and connecting the proposed international transmission line and from the construction and operation of the SLRC Power Center, the absence of adverse impacts to the reliability of the U.S. electric power supply system, and the absence of major issues of concern to the public. On October 12, 2007, Western issued a ROD (72 FR 58074) in which it decided to allow the proposed international transmission line and the SLRC Power Center to interconnect with Western's transmission system at the Gila Substation.

DOE has prepared this ROD and Floodplain Statement of Findings in accordance with the regulations of the

Council on Environmental Quality (40 CFR Parts 1500–1508) for implementing the National Environmental Policy Act (NEPA), DOE's NEPA Implementing Procedures (10 CFR Part 1021), and DOE's Compliance with Floodplain and Wetland Environmental Review Requirements (10 CFR Part 1022).

ADDRESSES: The Final EIS is available from Western and can be requested on its Web site at *http://www.wapa.gov/transmission/intersanluis.htm.* The Western ROD is available on the Western Web site at *http://www.wapa.gov/fedreg/FRNpdfs/frn2007/72FR58074.pdf* and on the DOE NEPA Web site at *http://www.eh.doe.gov/nepa/pub_rods_toc.html.* This OE ROD also will be available on both the Western Web site and the DOE NEPA Web site. This ROD may be requested by contacting Dr. Jerry Pell, Project Manager, Office of Electricity Delivery and Energy Reliability, U.S. Department of Energy, OE–20, 1000 Independence Avenue, SW., Washington, DC 20585, by telephone at 202–586–3362, by facsimile at 202–586–8008, or at *Jerry.Pell@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: For further information on the SLRC EIS, contact Dr. Jerry Pell as indicated in the **ADDRESSES** section above, or Mr. John Holt, Environmental Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005, by telephone at 602–605–2592, or at *holt@wapa.gov.* Copies of the EIS also are available from Mr. Holt. For general information on the DOE NEPA process, contact Ms. Carol Borgstrom, Director, Office of NEPA Policy and Compliance, GC–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, by telephone at 202–586–4600, or leave a message at 800–472–2756.

SUPPLEMENTARY INFORMATION: Western and OE are the lead DOE offices responsible for the SLRC EIS. The U.S. Department of the Navy (acting through the U.S. Marine Corps Air Station Yuma), the Bureau of Land Management (BLM),[1] the Bureau of Reclamation (BOR), and the City of Yuma, Arizona, are cooperating agencies. Western is the lead office for complying with Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. Section 1531, and for complying with Section 7 of the Endangered Species Act, as amended, 16 U.S.C. 1536(a)(2).

Background

Executive Order (E.O.) 10485 (September 9, 1953), as amended by E.O. 12038 (February 7, 1978), requires that a Presidential Permit be issued by DOE before electric transmission facilities may be constructed, operated, maintained, or connected at the U.S. international border.[2] DOE may issue or amend a permit if it determines that the permit is in the public interest and after obtaining favorable recommendations from the U.S. Departments of State and Defense. In determining whether issuance of a permit for a proposed action is in the public interest, DOE considers the environmental impacts of the proposed project pursuant to NEPA, determines the project's impact on electric reliability by ascertaining whether the proposed project would adversely affect the operation of the U.S. electric power supply system under normal and contingency conditions, and considers any other factors that DOE believes are relevant to the public interest.

On September 23, 2005, GDD, a Mexican corporation and wholly owned affiliate of North Branch Holding, LLC, a Delaware limited liability company, filed an application with DOE for a Presidential Permit. GDD proposed to construct a double-circuit 500-kilovolt (500-kV) electric transmission line across the U.S.-Mexico border that would extend from a new gas-fired electric power plant to be built by GDD approximately one mile south of the U.S.-Mexico border in San Luis Rio Colorado, Sonora, Mexico; cross the U.S.-Mexico border into Yuma County, southeast of San Luis, Arizona; extend approximately 21 miles north; and connect to the existing Gila Substation owned and operated by Western. From the Gila Substation, the line would extend an additional five miles north and connect to the existing North Gila Substation owned and operated by APS. DOE published a notice of the application for a Presidential Permit in the **Federal Register** on March 20, 2006 (71 FR 13970).

In a related proceeding, North Branch Resources, LLC (NBR), also a wholly owned subsidiary of North Branch Holding, LLC, has applied to Western to connect the proposed international transmission line and the SLRC Power Center to Western's transmission system. (GDD and NBR are referred to, collectively, as the ''Applicants'' in this ROD.) Relying on the SLRC EIS, on October 12, 2007 (72 FR 58074), Western issued a ROD allowing the proposed international transmission line and the SLRC Power Center to interconnect with Western's transmission system.

NEPA Review

Given the length of the transmission line proposed for the United States, DOE determined that issuing a Presidential Permit, as requested by GDD, and authorizing the interconnection to the Western transmission system, as requested by NBR, would likely constitute major Federal actions that could significantly affect the quality of the human environment within the meaning of NEPA (Pub. L. 91–190, as amended). Experience with proposed transmission line projects of a similar nature has indicated the probability of significant environmental impacts that would appropriately be analyzed in an EIS. For this reason, DOE prepared an EIS to address potential environmental impacts from a range of reasonable alternatives that would satisfy DOE's purpose and need. DOE also examined a No Action alternative. On February 10, 2006, DOE published in the **Federal Register** (71 FR 7033) a Notice of Intent (NOI) to prepare an EIS and to hold public scoping meetings in Yuma and San Luis. DOE also announced these meetings locally, in both English and Spanish.

On November 9, 2006, the U.S. Environmental Protection Agency (EPA) published a notice of availability of the Draft EIS in the **Federal Register** (71 FR 65812), which began a two-month public comment period that ended on January 10, 2007. All comments received on the Draft EIS were considered in the preparation of the Final EIS. Because the Draft EIS required only minor text changes (factual corrections and clarifications) in response to comments, the Final EIS for the proposed DOE actions consist of a Comment-Response Addendum together with the Draft EIS (40 CFR 1503.4 (c)). A notice of availability of the Final EIS was published by EPA in the **Federal Register** on August 3, 2007 (72 FR 43271).

Applicants' Proposed Action

In their respective applications to OE and Western, the Applicants proposed a double-circuit 500-kV transmission line that would originate at the SLRC Power

[1] Although BLM does not have a Federal action it must take for the proposed project to be implemented, BLM is participating as a cooperating agency because of its special expertise with respect to environmental impacts in a flat-tailed horned lizard management area, part of which would be crossed by any of the action alternatives.

[2] The authority to administer the International Electricity Regulatory Program through the regulation of electricity exports and the issuance of Presidential Permits has been delegated to the Assistant Secretary of OE in Redelegation Order No. 00–002.10C issued on May 29, 2008.

Center in Sonora, Mexico, interconnect with Western's transmission system at the existing Gila Substation, and continue to APS's North Gila Substation. The Proposed Action would require expanding the Gila Substation with a 500/69-kV transformer and associated switchgear adjacent to the Substation and constructing a double-circuit 500-kV transmission line between the Gila and the North Gila Substations. All of the proposed transmission components within the United States would be located in Yuma County. In addition, modifications would be made to the North Gila Substation based on an agreement between Western and APS, and that substation would remain under the operational control of APS.

The total length of the proposed transmission line within the United States would be approximately 26 miles: 21 miles from the international border to the Gila Substation and 5 miles from the Gila Substation to the North Gila Substation. Portions of the proposed transmission line would cross private lands and lands owned and/or managed by the BOR, the U.S. Department of the Navy, and the State of Arizona. In Mexico, GDD plans to construct and operate the SLRC Power Center, a new 550-megawatt (MW) natural gas-fired, combined-cycle power plant located approximately 3 miles east of San Luis Rio Colorado, Sonora, Mexico, and about 1 mile south of the U.S.-Mexico border. This facility is not subject to U.S. regulatory requirements; however, the EIS evaluates impacts that would occur within the United States from its construction and operation.

The Alternatives

The Applicants' Proposed Action was presented at stakeholder and scoping meetings to provide a basis for discussion of issues to be considered in the EIS and to assist with identifying potential alternatives. Based on the suggestions received at those meetings, DOE identified and analyzed two additional alternatives that either responded to public issues and concerns or were directly recommended by the public. Alternatives proposed by the public were evaluated to determine whether they were consistent with the Applicants' stated purpose and need and were technically and economically feasible. Based on these criteria, DOE identified and added to its analysis a ''Route Alternative'' and a ''230-kV Alternative,'' both of which vary from the Applicants' Proposed Action.

Route Alternative

Under the Route Alternative, the proposed transmission line would be constructed as a 500-kV line and the transmission system components would be identical to those of the Applicants' Proposed Action, but the route of the proposed transmission line would be modified. During the public meetings, commenters identified various routing options for numerous segments of the proposed transmission line. The Route Alternative was developed by combining the suggested routing segments that would avoid engineering constraints associated with existing and proposed development, including recreational vehicle (RV) and trailer parks that are encroaching upon the existing transmission line rights-of-way (ROWs) into the North Gila Substation.

230-kV Alternative

Under the 230-kV Alternative, the transmission system components would follow the route of the Applicants' Proposed Action, but be constructed to operate at 230 kV instead of 500 kV. The 230-kV Alternative would meet the Applicants' objectives to transport electric power and create additional transmission capacity in the Yuma area. This alternative would require 25 percent less ROW area and shorter, less massive support structures than a 500-kV line, and smaller substation modifications.

No Action Alternative

Under the No Action Alternative, OE would not issue the Presidential Permit and Western would not approve an interconnection agreement. In this instance, no transmission line would cross the U.S.-Mexico border; the proposed transmission lines, substation additions and modifications, and access roads within the United States would not be constructed; and the potential environmental impacts associated with their construction and operation would not occur.

The selection of the No Action Alternative would not preclude development of the SLRC Power Center. In the EIS, the Applicants state that two of their objectives are to transmit electric power from the SLRC Power Center across the border into the United States and to transmit power to the Comisión Federal de Electricidad (CFE), the national electric system in Mexico. Furthermore, correspondence from NBR dated July 22, 2008, asserts that, '' * * * if the [Presidential] permit is not granted, the [SLRC] Project would be built pursuant to the permits it has received from Mexican governmental authorities and the power output of the Project would be provided within Mexico since the cross border sale of power would not be available. The Mexican government has identified a significant need for power in the area where the Project will be built and the project would help meet this demand.'' Therefore, if the Presidential Permit were not granted, as would be the case under the No Action Alternative, the SLRC Power Center would still be constructed, maintained, and operated solely for the purpose of serving electric power needs within Mexico, and impacts in the United States would be similar to those described in the EIS from the construction and operation of the SLRC Power Center, which is not subject to United States regulation because these activities would occur entirely within Mexico.

The DOE Preferred Alternative

In the Draft EIS, DOE identified the Route Alternative and the 230-kV Alternative as the environmentally preferable alternatives, and stated that its preferred alternative was a combination of these two alternatives, whereby the final project would use the route from the Route Alternative, but be constructed to 230-kV standards. The Applicants' Proposed Action was not selected as the preferred alternative in the Draft EIS because of higher impacts on flat-tailed horned lizard habitat, increased engineering constraints, and increased impacts on residential dwellers as compared to the DOE Preferred Alternative.

The DOE Preferred Alternative would include:

1. A new 21-mile, double-circuit, 230-kV transmission line constructed between the international border and Western's existing Gila Substation along the Route Alternative defined in the EIS;
2. A new 230/69-kV transformer and associated switchgear addition constructed adjacent to Gila Substation as identified in the 230-kV Alternative in the EIS;
3. A new 5-mile, double-circuit, 230-kV transmission line constructed between Gila Substation and APS' North Gila Substation along the Route Alternative defined in the EIS. (The majority of this portion of the alignment would utilize existing ROW; Western anticipates that the existing double-circuit 69-kV line would be underbuilt; *i.e.*, placed below the new line on the same poles or towers.)
4. Modifications to North Gila Substation necessary to interconnect the 230-kV transmission lines into the substation as identified in the 230-kV Alternative in the EIS (these

modifications will be made through an agreement with APS); and

5. Associated access roads, as needed.

Analysis of Environmental Impacts

This section summarizes the environmental impacts of all of the alternatives. In the discussion below, the impacts of the 230-kV Alternative are based on following the alignment in the Applicants' Proposed Action.

The only potential for adverse impacts from the No Action Alternative are those that might occur if the SLRC Power Center were constructed, maintained, and operated solely for the purpose of serving electric power needs within Mexico. Such potential impacts are identified only for water resources and air quality. Thus, the environmental impacts of the No Action Alternative are discussed only in relation to those resources.

The DOE Preferred Alternative, a 230-kV line along the alignment of the Route Alternative, would combine the favorable features of the Route Alternative and the 230-kV Alternative; overall, its impacts would be lower than those of the other action alternatives. The DOE Preferred Alternative would avoid conflicts with military aviation operations, would avoid potential impacts to the Yuma Lakes recreation area, and would meet local concerns about 500-kV transmission lines. Land requirements and impacts to biological and visual resources would be smaller than under the Applicants' Proposed Action and the other action alternatives.

Land Use and Recreation: Under all action alternatives, portions of the ROW could be shared with existing ROWs, but new ROWs would be required on BOR, State of Arizona, and private lands, and a permit would be required to cross the Barry M. Goldwater Range (BMGR). Under the 230-kV Alternative and the DOE Preferred Alternative, the 150-foot wide ROW would require 25 percent less land than needed for the 200-foot wide ROW under the Applicants' Proposed Action and the Route Alternative.

Yuma Lakes is the only recreational facility in the project area. Located southeast of the North Gila Substation, it includes RV parks and Redondo Pond, a lake used for fishing and small boats. Existing and proposed development of the RV parks is encroaching upon the existing transmission ROW. Widening the existing 230-kV ROW within Yuma Lakes for a 500-kV ROW would impact the RV parks by causing the relocation of the recreational activities that currently occur within the existing ROW. However, this is not considered to be a significant impact because the recreational activities could occur within other areas of Yuma Lakes. The DOE Preferred Alternative and the Route Alternative would not traverse the RV and trailer park area; therefore, impacts would be less than under the Applicants' Proposed Action and the 230-kV Alternative.

Geology, Paleontology, Seismicity, and Soils: There are no unique or important geologic features within the project area. All of the action alternatives would use locally abundant sand and gravel resources to make concrete footings for the transmission support structures; the routes would be located near, but not within, an active sand and gravel operation. Geologic and seismic risks are well-understood and are addressed by building codes and utility industry standards. To minimize potential damage from earth shaking, structures would be constructed and maintained to Federal Uniform Building Code standards for Zone 4 areas, the highest category of risk for seismic activity. Structures would be designed to withstand an earthquake measuring 8.0 on the Richter scale. The potential for direct geologic or seismic impacts under all action alternatives would, thus, be mitigated by proper engineering design and construction of all proposed project structures. Although vegetation clearing and soil disruption during construction would result in an increased potential for wind and water erosion of surface soils, none of the action alternatives would result in appreciable soil erosion.

Water Resources: Under all alternatives, the SLRC Power Center would obtain its potable water by converting an existing groundwater withdrawal from agricultural irrigation use to power plant use, so there would be no change in the pumping or consumptive use of groundwater. Cooling water for the proposed power plant would be obtained from the San Luis Rio Colorado municipal wastewater treatment plant in Mexico, so there would be no effect on water resources in the United States.

Temporary sedimentation of water resources resulting from transmission line construction would be managed by erosion control measures required pursuant to a Storm Water Pollution Prevention Plan, such that construction under any of the action alternatives would not result in discharges of contaminants or sediment into water or watercourses or substantially alter the flow of a water body. A ''Waters of the United States'' delineation and characterization survey was completed for DOE's Preferred Alternative and the report was submitted to the U.S. Army Corps of Engineers (USACE) for review. In a letter dated March 1, 2007, USACE determined that DOE's Preferred Alternative would not discharge dredged or fill material into a water of the United States or adjacent wetland. Therefore, the Preferred Alternative will not require a permit under Section 404 of the Clean Water Act or a Section 401 water quality certification.

Temporary dewatering of the ground might be necessary during construction in the Gila Valley under any of the action alternatives due to high groundwater levels, but dewatering would be short-term and localized, and the water would be returned to the ground, thus it would not substantially deplete groundwater resources.

Air Quality Impacts within the United States: Assessment of potential impacts to air quality considered impacts in the United States from activities both within the United States (transmission line construction) and outside the United States (construction and operation of the associated SLRC Power Center in Mexico). For all action alternatives, construction and maintenance of the proposed transmission line and associated modifications at the Gila Substation would generate fugitive dust from construction activities and emissions from motor vehicles. With proposed dust control mitigation, these impacts would be temporary and minor. Emissions of PM_{10} (*i.e.*, particles less than 10 microns in diameter) within the Yuma PM_{10} non-attainment area would be 22 tons per year, which is 0.2 percent of total PM_{10} emissions for Yuma County, and is below the 100 tons-per-year threshold for applicability of Clean Air Act general conformity requirements. Therefore, there would be no issue with regard to conformity with State air quality implementation plans.

For all alternatives, including the No Action Alternative, dispersion modeling results indicate that ambient air quality impacts in the United States from the SLRC Power Center located in Mexico would be low relative to both the National Ambient Air Quality Standards (NAAQS) and the Prevention of Significant Deterioration criteria. The estimated contribution from the SLRC Power Center would be no higher than 0.3 percent of the NAAQS for any pollutant. The effects of anticipated SLRC Power Center emissions combined with the existing background levels would be below 20 percent of the annual NAAQS for any pollutant, except PM_{10}. PM_{10} is of particular concern because the area of the proposed project has been designated a non-attainment area for PM_{10} due to the

high existing background levels. However, monitoring has demonstrated compliance with the NAAQS standard for PM_{10} since 1990 and the results of dispersion modeling have demonstrated that anticipated SLRC Power Center PM_{10} emissions combined with the existing background levels would result in concentrations of 78 percent of the annual NAAQS.

Global Climate Change and Carbon Dioxide Emissions

Climate change has evolved into a matter of global concern because it is expected to have widespread adverse effects on natural resources and systems. A growing body of evidence points to anthropogenic (man-made) sources of greenhouse gases (GHGs), such as carbon dioxide (CO_2), as major contributors to climate change. Here, DOE's decision to permit a transmission line and grant an interconnection does not itself authorize activities that emit CO_2 or any other GHG. However, the SLRC Power Center, where the proposed transmission line would originate, does emit CO_2. The SLRC Power Center is not a ''connected action'' because it is not dependent on the Proposed Action. Further, it is located in Mexico and, as such, its construction and operation are not subject to NEPA.

Nonetheless, DOE has examined impacts to the United States from the SLRC Power Center in the Final EIS.

Impacts of Climate Change on the Environment

According to the Intergovernmental Panel on Climate Change (IPCC) Fourth Assessment Report (IPCC Report), published in 2007, global climate change is consistent with observed changes to the world's natural systems and the IPCC expects these changes to continue.

Changes that are consistent with global warming include warming of the world's oceans to a depth of 3,000 meters (9,840 feet); global average sea level rise at an average rate of 1.8 mm (0.07 inches) per year from 1961 to 2003; loss of annual average Arctic sea ice at a rate of 2.7 percent per decade, changes in wind patterns that affect extra-tropical storm tracks and temperature patterns, increases in intense precipitation in some parts of the world, as well as increased drought and more frequent heat waves in many locations worldwide, and numerous ecological changes.

Looking forward, the IPCC describes continued global warming of about 0.2 °C (0.36 °F) per decade for the next two decades under a wide range of emission scenarios for carbon dioxide (CO_2), other GHGs, and aerosols. After that period, the rate of increase is less certain. The IPCC Report describes increases in average global temperatures of about 1.1 °C (1.98 °F) to 6.4 °C (11.52 °F) at the end of the century relative to today. These increases vary depending on the model and emissions scenarios.

Causes of Global Climate Change

The IPCC Report states that the world has warmed by about 0.74 °C (1.33 °F) in the last 100 years. The IPCC Report finds that most of the temperature increase since the mid-20th century is very likely due to the increase in anthropogenic emissions of CO_2 and other long-lived GHGs such as methane and nitrous oxide in the atmosphere, rather than from natural causes.

The IPCC Report estimates that CO_2 makes up about 77 percent of the total CO_2-equivalent [3] global warming potential in GHGs emitted from human activities, with the vast majority (74 percent) of the CO_2 attributable to fossil fuel use. For the future, the IPCC Report describes a wide range of GHG emissions scenarios, but under each scenario CO_2 would continue to comprise above 70 percent of the total global warming potential.

The Incremental Impact of the SLRC Project on Global Climate Change

The SLRC Power Center would generate a maximum of 1.3 million metric tons of CO_2 per year. The United States' CO_2 emissions from energy consumption were estimated by DOE's Energy Information Administration (EIA) to be about 5.9 billion metric tons in 2006, about 15 percent of which comes from combustion of natural gas.

Based on EIA information, the CO_2 emissions from the SLRC Power Center would represent about 0.0000026 percent (2.6×10^{-6} percent), or 2.6 millionths of one percent of the estimated 49 billion metric tons of global anthropogenic emissions of CO_2.

It is difficult to correlate specific emission rates with atmospheric concentrations of CO_2 and specific atmospheric concentrations with future temperatures because the IPCC Report describes a clear lag in the climate system between any given concentration of CO_2 (even if maintained for long periods) and the subsequent average worldwide and regional temperature, precipitation, and extreme weather regimes. For example, a major determinant of climate response is ''equilibrium climate sensitivity,'' a measure of the climate system response to sustained radiative forcing. It is defined as the global average surface warming following a doubling of carbon dioxide concentrations. The IPCC Report describes its estimated, numeric value as about 3 °C (5.40 °F), but the likely range of that value is 2 °C (3.60 °F) to 4.5 °C (8.10 °F), with cloud feedbacks the largest source of uncertainty. Thus, climate sensitivity is a key uncertainty for CO_2 mitigation scenarios that aim to meet specific temperature levels.

Because of the complexity of global climate systems, it is difficult to know to what extent and when particular CO_2 emissions rates will impact global warming, much less to foresee how this contribution to warming will impact the United States. However, the SLRC Power Center does contribute CO_2 emissions that will have an incremental impact on global CO_2 emissions, however small. Those emissions will, in combination with global CO_2 emissions from a variety of different sources, very likely impact global warming and its related environmental impacts. As such, even though it is not currently possible to measure the degree of impact that the SLRC Power Center's emissions has on climate change, or where the related environmental impacts will occur, those emissions may contribute to climate change and its related environmental impacts. Some of those impacts very likely will occur in the United States.

Biological Resources: Impacts to biological resources from the 230-kV Alternative and the DOE Preferred Alternative would be similar to, but slightly less than, those from the Applicants' Proposed Action and the Route Alternative because the ROW would be narrower and the area of the structural footprint would be slightly smaller. Impacts to specific biological resources are described below.

Vegetation

All of the action alternatives would cause some disturbance to vegetation, but the disturbance would be a small fraction of the total area of similar resources in the immediate proposed project area. Construction of any of the action alternatives would neither result

[3] GHGs differ in their global warming potential (GWP; radiative forcing) on a global climate system due to their different radiative properties and lifetimes in the atmosphere. These warming influences may be expressed through a common metric based on the radiative forcing of CO_2, *i.e.*, CO_2-equivalent. CO_2-equivalent emission is the amount of CO_2 emission that would cause the same-time integrated radiative forcing, over a given time horizon, as an emitted amount of other long-lived GHG or mixture of GHGs. Accordingly, for comparative purposes, the GWP of CO_2 is normalized to 1, against which all other GHG are measured. For example, as compared to CO_2, the GWP of methane (CH_4) over a 100-year time horizon is 25, for nitrous oxide (N_2O) is 298, and for sulfur hexafluoride (SF_6) is 22,800.

in the long-term loss of riparian vegetation, nor result in a long-term loss of habitat causing the listing of, or jeopardizing the continued existence of, any plant species. Overall, the construction of the DOE Preferred Alternative would have the lowest level of impacts on vegetation resources among the action alternatives because it would have a narrower ROW and smaller footprint of disturbance than a 500-kV line and fewer new access roads than would be needed along the alignment of the Applicants' Proposed Action.

Special Status Species

The flat-tailed horned lizard is identified as a species of concern by the U.S. Fish and Wildlife Service (FWS) of the U.S. Department of the Interior, a BLM sensitive species, and an Arizona Game and Fish Department wildlife species of special concern. The relevant regulatory agencies have authorized only minimal surface disturbing activities in the Yuma Desert FWS Flat-Tailed Horned Lizard Management Area (FTHL MA), which is in the western part of the BMGR and adjacent BOR land, in order to conserve sufficient habitat to maintain viable populations of this species. The Route Alternative and the DOE Preferred Alternative use more existing access roads than the Applicants' Proposed Action and the 230-kV Alternative in the FTHL MA, thus resulting in less impact on this area. The Route Alternative and the DOE Preferred Alternative would permanently disturb 0.07 acres in the FTHL MA from the steel monopoles, as compared to 0.15 acres for the Applicants' Proposed Action and the 230-kV Alternative.

All of the action alternatives would avoid construction at the Gila River crossing during nesting season of two endangered birds, the Yuma clapper rail and southwestern willow flycatcher. All of the action alternatives would also incorporate mitigation identified in the FTHL Rangewide Management Strategy of the FWS.

All action alternatives would be sited and constructed following the guidelines of the Avian Powerline Interaction Committee (*http://www.aplic.org*) for standard raptor protection (*i.e.*, a horizontal separation of 60 inches and a vertical separation of 48 inches).

A Biological Assessment for compliance with Section 7 of the Endangered Species Act was prepared and submitted to the FWS with a determination that the Proposed Project ''may affect but is not likely to adversely affect'' any candidate, proposed, or listed species. In a reply dated March 26, 2007, FWS concurred with this determination.

Cultural Resources: For all of the action alternatives, impacts to cultural resources such as prehistoric properties, historic properties, and cultural landscapes could not be determined until a 100-percent Class III cultural resources survey as defined by the NHPA is available. The applicant has submitted a draft survey report for the DOE Preferred Alternative, but it has not been issued in final form as of this writing. DOE's mitigation goal is to avoid any identified sites. A Programmatic Agreement has been developed and signed by Western, the Arizona State Historic Preservation Office, affected Federal agencies, the Applicants, and the 22 interested Native American Tribes. Compliance with the Programmatic Agreement provisions would ensure that requirements of Section 106 (Protection of Historic Properties) of NHPA are met.

Transportation: For all action alternatives, use of local highways during construction would result in a less than one percent increase in annual average daily vehicular traffic. All of the action alternatives would be sited to avoid adverse impact to the civilian-use aviation corridor, which is located in open space between the areas of restricted airspace associated with the Marine Corps Air Station Yuma/Yuma International Airport and the BMGR. The Applicants' Proposed Action and the 230-kV Alternative would go through the intersection of County 19th and Avenue 4E. In that location transmission support structures would have to be taller to comply with safety clearances for the proposed County 19th overpass of the planned Area Service Highway (ASH)[4]. Support structures of that height would, however, conflict with military aviation operations within the area. The lower structures that would be used for the 230-kV Alternative would result in the same conflicts. Either conflict would, thus, result in a significant transportation impact from the Applicants' Proposed Action and the 230-kV Alternative. The Route Alternative and the DOE Preferred Alternative would avoid that intersection and would thus avoid these conflicts.

Visual Resources: For the majority of the proposed alignments under both the Applicants' Proposed Action and the Route Alternative, the transmission facilities would not substantially modify the overall existing visual character of the area. Visual changes would remain subordinate within the existing visual landscape. There is an area of increased viewer sensitivity near the northwest corner of the BMGR. However, because the Applicants are proposing to use steel monopoles as support structures for the entire length of the proposed project, the impacts to this visually sensitive area are expected to be minimal. The Route Alternative would be farther from this area of increased sensitivity than the Applicants' Proposed Action and would thus appear smaller and be less noticeable. For the 230-kV Alternative and the DOE Preferred Alternative, impacts would be less than for the other action alternatives because structures would be 25 feet shorter and less massive than 500-kV structures. Thus, the DOE Preferred Alternative would have overall lower visual impacts than the other action alternatives.

Noise: The estimated construction noise level from the Applicants' Proposed Action and the 230-kV Alternative at the nearest existing residence, 420 feet away, would be 65.6 dBA. For the Route Alternative and the DOE Preferred Alternative, the estimated construction noise level at the nearest existing residence, 145 feet away, would be 74.8 dBA. (As a point of reference, busy traffic has a noise level of about 75 dBA.) EPA has established 70 dBA as the highest level of environmental noise that will prevent any measurable hearing loss over the course of a lifetime. Construction noise levels at the nearest existing residence would be reduced below 70 dBA by designing the transmission line such that structures would be sited and construction activities would occur a minimum of 260 feet away from that residence. Under all action alternatives construction noise from substation modifications would be 61.9 dBA at the nearest residence, which is 642 feet away. Construction noise under all action alternatives would be temporary and with the careful siting of transmission structures would not be significant.

Socioeconomics: Due to the small construction workforce (30 to 40 workers) and availability of existing resources, impacts from all the action alternatives to population size, housing availability, employment and pay rates, governmental services, and infrastructure services would be

[4] The Yuma Area Service Highway (ASH) is a proposed direct transportation route between the Greater Yuma Port Authority's future commercial International Port of Entry (POE) near San Luis, Arizona, and Interstate 8 (I–8). Greater detail is available at *http://www.azdot.gov/EEG_common/documents/files/planning/195_ash_highway/fonsi_main_text.pdf*.

minimal. An increase to the local economy would be expected from any action alternative of about $4.7 million for the year of construction ($3.2 million for payroll and $1.5 million for materials).

Environmental Justice: For all of the action alternatives, no minority or low-income populations within the area of influence were identified based on Council on Environmental Quality (CEQ) criteria (*Environmental Justice Guidance Under the National Environmental Policy Act*, 1997; *http://www.nepa.gov*). There would be no disproportionately high and adverse impacts to minority or low-income populations.

Health and Safety

Electric and Magnetic Fields

No Federal regulations have been established specifying environmental limits on the strengths of electric and magnetic fields from electric transmission lines. Under the Applicants' Proposed Action and the Route Alternative, the electric field of the 500-kV transmission line on and at the edge of the ROW would be higher than that for the 230-kV lines under the other action alternatives. Human health and safety impacts from electric and magnetic fields remain controversial, but field strengths decrease rapidly with distance, such that they are expected to pose little or no increased exposure at and beyond the edge of the ROW for all action alternatives.

Worker Health and Safety

For all action alternatives, worker health and safety impacts from the construction, operation, and maintenance of the proposed project would be related to typical work-related injuries and fugitive dust. Risk associated with the action alternatives would be minimized through facility design, safe work practices, and continuous maintenance in compliance with Occupational Safety and Health Administration and State of Arizona regulations.

Public Health and Safety

For all action alternatives temporary fences would be placed wherever feasible to control public access to construction areas. In addition, construction equipment would be secured at night. Therefore, the potential for injury due to trespassing in construction areas would be minimal.

Environmentally Preferable and DOE Preferred Alternative

As described above, in the process of preparing the Draft EIS, DOE identified a combination of the Route Alternative and the 230-kV Alternative as both the Environmentally Preferable Alternative and also the DOE Preferred Alternative. In this case, the DOE Preferred Alternative would adopt the route from the Route Alternative as described in the EIS and be constructed to 230-kV standards. The Applicants' Proposed Action was not selected as the DOE Preferred Alternative because of higher impacts on flat-tailed horned lizard habitat, increased engineering constraints, and increased visual impacts on residential dwellers as compared to the DOE Preferred Alternative.

Comments Received on the Final EIS

After publication of the Final EIS, three additional comments were received that expressed concerns about property values, visual impacts, lack of notification about the Applicant's Proposed Action, and potential interference with radio, television, and amateur radio signal reception and transmission. Property value issues are addressed in the EIS; potential effects generally range from somewhat positive to a negative impact of up to 15 percent. Studies find that property value impacts can be quite different from case to case, and that perceptions of impacts on value vary depending on the individual. Furthermore, the presence of a transmission line is generally not the major determinant of property values, and any impact of its existence generally diminishes over time.

Visual impacts are also addressed in the EIS and are closely linked to property value concerns. Like perceptions of property value impacts, visual impacts are also highly subjective, depending on the individual. DOE conducted a visual impact analysis using the BLM Visual Resource Management (VRM) system to determine the level of visual impact. The VRM system imposes a somewhat artificial structure on very subjective visual values, and looks at visual impacts from more of a societal view. However, the VRM system is the best and most widely accepted tool now available for impartial analysis of visual impacts. The analysis found that visual impacts would result from constructing the Proposed Project, but that they would not be significant. However, due to the subjective nature of visual impacts and personal perceptions, DOE acknowledges that some residents may consider the impact of the proposed project on them to be more significant than on others.

A few comments were received from residents who had not previously heard about the project, and who felt they had not had the opportunity for meaningful input. Following the 2006 issuance of the NOI, DOE held 12 stakeholder meetings, four public scoping meetings, and two public hearings in the area that would be affected by the ''Applicants'' Proposed Action.'' The public scoping meetings were announced in the **Federal Register**, paid advertisements in the *Yuma Sun* and *Bajo el Sol*, and direct newsletter/local NOI mailings in both English and Spanish to the project mailing list. Additional paid advertisements and direct mailings announced the public hearings. In addition, the *Yuma Sun* published several articles, editorials, and letters to the editor about the proposed project during the EIS process. The project mailing list included landowners up to 0.5 miles from the centerline of all identified alternative routes, as identified from the county assessor records. The mailing list was updated as new mailings were prepared. While DOE regrets that some residents feel that they were not effectively notified, it believes that its public outreach effort was adequate.

Potential interference with radio and television transmission and reception is also addressed in the EIS. Most cases of interference are directly related to spark gap discharges, also known as coronal discharges, due to loose, worn, or defective transmission line hardware. Western operates about 17,000 miles of transmission lines, and interference issues are rarely reported. In the unlikely event that an interference problem is encountered, Western has committed in its ROD to work with the affected party to eliminate the interference (72 FR 58074).

The Environmental Protection Agency did not comment on the Final EIS, and the proposed project has not been controversial beyond the concerns of local residents and property owners.

Mitigation Measures

All mitigation measures identified in the EIS to minimize impacts from the transmission system additions are adopted in this ROD. Sections 2.1.1.8 and 2.1.1.9 of the EIS list Western's standard mitigation measures and additional mitigation measures included as part of the DOE Preferred Alternative. Some of Western's standard measures include restricting vehicular traffic to existing access roads or public roads, recontouring and reseeding disturbed areas, environmental awareness training for all construction and supervisory personnel, and mitigation of radio and television interference generated by transmission lines. Additional measures

identified for the DOE Preferred Alternative include mitigation methods within flat-tailed horned lizard habitat and measures identified in the Arizona Administrative Code pertaining to fugitive dust control to be employed during transmission line construction.

Western is the lead DOE element for compliance with Section 106 of the NHPA. Western's preferred form of mitigation for cultural resources is to avoid all identified sites. To the extent possible, cultural sites determined eligible for the National Register of Historic Places in consultation with the Arizona State Historic Preservation Office and interested tribes will be avoided by the DOE Preferred Alternative project activities. Impacts on cultural sites that cannot be avoided will be mitigated in accordance with the Programmatic Agreement developed for the DOE Preferred Alternative, which will govern all remaining activities necessary for Section 106 compliance.

Mitigation Action Plan

Although Western stated in its 2007 ROD an intention to prepare a mitigation action plan to explain how mitigation will be planned and implemented, DOE has now determined that a mitigation action plan is not needed because the mitigation measures identified in the Western ROD and above either have been incorporated into the selected alternative or are included among Western's standard construction practices.

Floodplain Statement of Findings

In accordance with 10 CFR Part 1022, OE considered the potential impacts of the DOE Preferred Alternative on floodplains and wetlands. The DOE Preferred Alternative project area is located in an arid region of low annual precipitation (less than 4 inches annually) with relatively low runoff potential, currently consisting primarily of open desert and agriculture interspersed with residences. Construction of the DOE Preferred Alternative would not substantially alter the normal drainage patterns or affect runoff rates because the DOE Preferred Alternative project area typically does not experience runoff following a heavy rainfall due to the soils and geology of the area.

All transmission system alternatives, including the DOE Preferred Alternative, would traverse the 100-year floodplain of the Gila River. DOE has found no practical alternative to locating or conducting the action in the floodplain. The DOE Preferred Alternative will be designed to span the width of the 100-year floodplain; accordingly, no new structures are expected to be placed within the Gila River channel or associated 100-year floodplain. If transmission would be consolidated and a 69-kV circuit underbuilt on the proposed transmission line, removal of two existing 69-kV transmission line structures would result in a temporary disturbance of the Gila River floodplain, but this would have no impact on the normal flow of the water body and would remove objects currently within the floodplain. Structures located adjacent to the floodplain would be constructed with additional concrete reinforcement around the footing to withstand potential flood flow-rates. The footings would not present a barrier to flood flows if they should exceed the 100-year floodplain and reach these locations. If, after final project design, additional new structures are needed in the floodplain, they will be designed to conform to applicable Federal, State, and local floodplain protection standards. No wetlands would be affected by the DOE Preferred Alternative.

Decision

OE has decided to issue Presidential Permit PP–304 authorizing GDD to construct, operate, maintain, and connect a 230-kV electric transmission line across the U.S.-Mexico border along the Route Alternative identified and analyzed in the EIS. This action is identified as the DOE Preferred Alternative in the EIS. The Presidential Permit will require GDD to implement all of Western's standard and additional mitigation measures which are described in Sections 2.1.1.8 and 2.1.1.9 of the EIS.

Basis for Decision

In reaching this decision, DOE considered the low environmental impacts in the U.S. from constructing, operating, maintaining, and connecting the proposed international transmission line and from the construction and operation of the associated Mexico power plant, the absence of adverse impacts to the reliability of the U.S. electric power supply system, and the absence of major issues of concern to the public.

OE has determined that the potential impacts from the DOE Preferred Alternative, *i.e.*, the Route Alternative combined with the transmission line constructed to 230-kV standards (the 230-kV Alternative), and with implementation of the stipulated mitigation measures, are expected to be small, as discussed above, and overall less than the expected impacts from any of the other alternatives except the No Action Alternative, which would deny the issuance of the Presidential Permit, hence prohibiting construction of the line across the international border. OE did not select the No Action Alternative because it would neither satisfy the Applicants' stated purpose and need nor address the need for additional transmission capacity in the region. Also, the DOE Preferred Alternative has been determined to be consistent with the public interest based on the consideration of environmental impacts, the lack of adverse impacts on electric reliability, and the favorable recommendations of the Departments of State and Defense.

In reaching this decision, OE also considered the project's impact on electric reliability by ascertaining whether the proposed project would adversely affect the operation of the U.S. electric power supply system under normal and contingency conditions. In reaching this determination, DOE considered the information contained in the System Impact Study dated June 25, 2007, which was submitted by the Applicants in support of their application for a Presidential Permit. The results of the System Impact Study indicate that the proposed international transmission line is capable of delivering the entire electrical output of the SLRC without violating any industry-established reliability criteria provided that the transmission line and the SLRC are operated consistent with the operating nomograms and remedial action schemes [5] that will be developed by Western during the Project's Operating Studies prior to energizing the proposed transmission line. The Presidential Permit to be issued to GDD will contain a condition requiring it to adhere to these operating requirements.

For the foregoing reasons, OE has decided to issue Presidential Permit PP–304 to authorize GDD to construct, operate, maintain, and connect the San Luis Rio Colorado Project across the international border at the 230-kV operating voltage level along the Route Alternative as defined in the EIS, with the mitigation conditions noted above.

[5] Nomograms and remedial action schemes are operating procedures that establish limits on the amount of electric power that may be transmitted over a particular transmission line or produced by a generating unit under varying electric system conditions of load and equipment availability. These operating procedures establish a means of avoiding or mitigating any reliability problems that are expected to exist under various system contingencies.

Dated: August 15, 2008.

Kevin M. Kolevar,

Assistant Secretary, Office of Electricity Delivery and Energy Reliability.

[FR Doc. E8–19392 Filed 8–20–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

August 13, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER99–3665–008; ER02–1947–009.

Applicants: Occidental Power Marketing LP; Occidental Power Services, Inc.

Description: Occidental Power Marketing, LP *et al.* submits an updated market power analysis and rate schedule revisions pursuant to Order 697 and 697–A.

Filed Date: 08/12/2008.

Accession Number: 20080813–0157.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 02, 2008.

Docket Numbers: ER00–3080–003.

Applicants: Otter Tail Power Company.

Description: Otter Tail Power Company submits revisions to Substitute First Revised Sheet 2 to FERC Electric Tariff, Original Volume 9 to comply with Order 697 and 697–A.

Filed Date: 08/11/2008.

Accession Number: 20080813–0158.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 02, 2008.

Docket Numbers: ER01–2636–004.

Applicants: ALLETE, Inc.

Description: ALLETE, Inc. submits revisions to its Wholesale Coordination Sales Tariff 2 to participate in the Midwest Independent Transmission System Operator, Inc.'s Ancillary Services Market etc. pursuant to Order 697 and 697–A.

Filed Date: 08/11/2008.

Accession Number: 20080813–0106.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 02, 2008.

Docket Numbers: ER01–3103–015.

Applicants: Astoria Energy LLC.

Description: Astoria Energy LLC submits a revised original Tariff submitted on 6/30/08 with a red-line and designated in the fashion requested by FERC staff.

Filed Date: 08/11/2008.

Accession Number: 20080813–0160.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 02, 2008.

Docket Numbers: ER04–452–002.

Applicants: PurEnergy, LLC.

Description: Pure Energy, Inc. submits its Order 697 Compliance Filing and Application for Category 1 Status.

Filed Date: 08/11/2008.

Accession Number: 20080813–0114.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 02, 2008.

Docket Numbers: ER06–270–001; ER06–271–001.

Applicants: Solios Power LLC, Solios Asset Management LLC; Solios Power LLC.

Description: Solios Power, LLC *et al.* submits Substitute Original Sheet 3 to First Revised Rate Schedule 1, which includes a full citation to the order granting waivers and blanket authorizations.

Filed Date: 08/11/2008.

Accession Number: 20080813–0161.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 02, 2008.

Docket Numbers: ER07–515–001.

Applicants: Domtar Corporation.

Description: Domtar Corporation submits Substitute First Revised Sheets 1 and 2 to Rate Schedule FERC 1 to clarify its 6/27/08 triennial market power update etc.

Filed Date: 08/07/2008.

Accession Number: 20080811–0002.

Comment Date: 5 p.m. Eastern Time on Thursday, August 28, 2008.

Docket Numbers: ER08–824–002.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits First Revised Sheet 388F *et al.* to FERC Electric Tariff, Sixth Revised Volume 1 in compliance with FERC's 6/12/08 Order.

Filed Date: 08/12/2008.

Accession Number: 20080813–0108.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 02, 2008.

Docket Numbers: ER08–1189–001.

Applicants: Indeckyerkes Ltd Partnership.

Description: Indeck-Yerkes Limited Partnership submits an amendment to their 6/30/08 application for order accepting initial tariff and granting Category 1 Status, Certain Waivers, and Blanket Approvals.

Filed Date: 08/07/2008.

Accession Number: 20080811–0088.

Comment Date: 5 p.m. Eastern Time on Thursday, August 28, 2008.

Docket Numbers: ER08–1243–001.

Applicants: New York Independent System Operator, Inc.

Description: Amendment to request for limited waiver and request for waiver of notice and comment procedures of the New York Independent System Operator, Inc.

Filed Date: 08/11/2008.

Accession Number: 20080813–0103.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 02, 2008.

Docket Numbers: ER08–1293–001; ER08–1294–001; ER08–1296–001; ER08–1297–001; ER08–1300–001.

Applicants: Crystal Lake Wind, LLC; Crystal Lake Wind II, LLC; Osceola Windpower II, LLC; Ashtabula Wind, LLC; Story Wind, LLC.

Description: Crystal Lake Wind, LLC *et al.* submits a revised Appendix B–1 to the applications filed on 7/25/08 for market-based rate authority and generation assets.

Filed Date: 08/11/2008.

Accession Number: 20080813–0101.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 02, 2008.

Docket Numbers: ER08–1340–001; ER08–1341–001; ER08–1342–001.

Applicants: Florida Power & Light Company; Progress Energy Florida; Tampa Electric Company.

Description: Tampa Electric Co *et al.* submits omitted signature pages for Homestead Energy Services and Progress Energy—Florida of the Florida Reserve Sharing Group Agreement.

Filed Date: 08/11/2008.

Accession Number: 20080813–0104.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 02, 2008.

Docket Numbers: ER08–1383–000.

Applicants: Golden Spread Electric Cooperative, Inc.

Description: Golden Spread Electric Cooperative, Inc. submits Special Facilities Agreement with Country Electric Cooperative, Inc, First Revised Sheet 221–299 to Golden Spread's First Revised Rate Schedule 28.

Filed Date: 08/11/2008.

Accession Number: 20080813–0107.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 02, 2008.

Docket Numbers: ER98–2640–028.

Applicants: Northern States Power Company—Wisconsin, Northern States Power Company—Minnesota, Northern States Power Company and Northe.

Description: Northern States Power Co—Minnesota and Northern States Power Co—Wisconsin submits compliance filing to include language in NSP market-based rate tariff, Fourth Revised Sheet 1 to FERC Electric Tariff, Original Volume 6.

Filed Date: 08/11/2008.

Accession Number: 20080813–0105.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 02, 2008.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES08–58–000.

Applicants: AEP Texas Central Company.

Description: Authorization to Issue Securities.

Filed Date: 08/12/2008.

Accession Number: 20080812–5075.

Comment Date: 5 p.m. Eastern Time on Friday, August 22, 2008.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA07–44–004.

Applicants: El Paso Electric Company.

Description: El Paso Electric Company's Compliance Filing revised sheets to its open Access Transmission Tariff pursuant to Order No. 890 OATT.

Filed Date: 08/12/2008.

Accession Number: 20080812–5067.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 02, 2008.

Docket Numbers: OA07–60–004.

Applicants: Idaho Power Company.

Description: Idaho Power Company's Compliance Filing and corresponding revised Open Access Transmission Tariff sheets.

Filed Date: 08/07/2008.

Accession Number: 20080807–5089.

Comment Date: 5 p.m. Eastern Time on Thursday, August 28, 2008.

Docket Numbers: OA08–5–003.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits revisions to its Open Access Transmission Tariff in compliance with the Commission's Order 890, to be effective 8/11/08.

Filed Date: 08/11/2008.

Accession Number: 20080813–0102.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 02, 2008.

Docket Numbers: OA08–41–001.

Applicants: MidAmerican Energy Company.

Description: Compliance filing.

Filed Date: 08/12/2008.

Accession Number: 20080812–5094.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 02, 2008.

Docket Numbers: OA08–45–001.

Applicants: Portland General Electric Company.

Description: Amendment to Application of Portland General Electric Company for its revised Order 890 OATT Attachment K.

Filed Date: 08/12/2008.

Accession Number: 20080812–5120.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 02, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–19347 Filed 8–20–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0630; FRL–8379–1]

Pesticide Program Dialogue Committee Work Group on Comparative Safety Statements or Logos for Pesticide Product Labeling; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, EPA gives notice of a public meeting of the Pesticide Program Dialogue Committee (PPDC) Work Group on Comparative Safety Statements or Logos for Pesticide Product Labeling on September 10, 2008. An agenda is under development and will be posted on EPA's website by August 25, 2008.

DATES: The PPDC meeting will be held on Wednesday, September 10, 2008, from 9 a.m. to 4 p.m.

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATIONN CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held in the Conference Center on the lobby level at the U.S. Environmental Protection Agency's location at One Potomac Yard (South Bldg.), 2777 S. Crystal Drive, Arlington, VA. This location is approximately a mile from the Crystal City Metro Station.

FOR FURTHER INFORMATION CONTACT: Margie Fehrenbach, Office of Pesticide Programs (7501P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–4775; fax number: (703) 308–4776; e-mail address:*fehrenbach.margie@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to persons who work in agricultural settings or persons who are concerned about implementation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); the Federal Food, Drug, and Cosmetic Act (FFDCA); and the amendments to both of these major pesticide laws by the Food Quality Protection Act (FQPA) of 1996. Potentially affected entities may include, but are not limited to: Agricultural workers and farmers; pesticide industry and trade associations; environmental, consumer, and farmworker groups; pesticide users and growers; pest consultants; State, local and Tribal governments; academia; public health organizations; food processors; and the public. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0630. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr.* A draft agenda is under development and will be posted by August 25, 2008, on EPA's website at:*http://www.epa.gov/pesticides/ppdc/*.

II. Background

EPA's Office of Pesticide Programs (OPP) is entrusted with the responsibility to help ensure the safety of the American food supply, the education and protection from unreasonable risk of those who apply or are exposed to pesticides occupationally or through use of products, and general protection of the environment and special ecosystems from potential risks posed by pesticides.

The Charter for the Environmental Protection Agency's Pesticide Program Dialogue Committee (PPDC) was established under the Federal Advisory Committee Act (FACA), Public Law 92–463, in September 1995, and was renewed November 2, 2007, for another 2–year period. The purpose of PPDC is to provide advice and recommendations to the EPA Administrator on issues associated with pesticide regulatory development and reform initiatives, evolving public policy and program implementation issues, and science issues associated with evaluating and reducing risks from use of pesticides. It is determined that PPDC is in the public interest in connection with the performance of duties imposed on the Agency by law. The following sectors are represented on the PPDC: Pesticide industry and trade associations; environmental/public interest, consumer, and animal rights groups; farm worker organizations; pesticide user, grower, and commodity groups; Federal and State/local/Tribal governments; the general public; academia; and public health organizations. The objective of the PPDC Work Group on Comparative Safety Statements or Logos for Pesticide Product Labeling is to address the interest being expressed by the public for possible development of Agency or third party endorsements/statements or logos on labels regarding comparative product safety. The work group will make recommendations to the full PPDC as to whether the government should pursue a policy and regulatory change in order to develop or allow these types of statements or logos.

Copies of the PPDC Charter are filed with appropriate committees of Congress and the Library of Congress and are available upon request.

III. How Can I Request to Participate in this Meeting?

PPDC meetings are open to the public and seating is available on a first-come basis. Persons interested in attending do not need to register in advance of the meeting.

List of Subjects

Environmental protection, Agricultural workers, Agriculture, Chemicals, Foods, Pesticides and pests, Public health.

Dated: August 14, 2008.

Debra Edwards,

Director, Office of Pesticide Programs.

[FR Doc. E8–19423 Filed 8–20–08; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

August 6, 2008.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before September 22, 2008. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, (202) 395–5887, or via fax at 202–395–5167 or via internet at *Nicholas_A._Fraser@omb.eop.gov* and to *Judith-B.Herman@fcc.gov*, Federal Communications Commission, or an e-mail to *PRA@fcc.gov*. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called ''Currently Under Review'', (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0139.

Title: Application for Antenna Structure Registration.

Form No.: FCC Form 854.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 4,500 respondents; 4,500 responses.

Estimated Time per Response: .50 hours estimated burden per response.

Frequency of Response: On occasion reporting requirements and third party disclosure requirement (labeling/posting requirements).

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 6,750 hours.

Total Annual Cost: $98,000.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: Respondents may request materials submitted to the Commission be withheld from public inspection under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this information collection (IC) to the OMB as an extension (no change in reporting, recordkeeping and/or third party disclosure requirements) during this comment period to obtain the full three-year clearance from them. The Commission is reporting a −$85,000 annual cost adjustment. This adjustment is due to a decrease in the number of responses and therefore, annual costs, since the last submission to the OMB. FCC Form 854 is to be used to register structures used for wire or radio communication service in any area where radio services are regulated by the Commission; to make changes to existing registered structures or pending applications; or to notify the Commission of the completion of construction or dismantlement of structures, as required by Commission rules and regulations.

Currently, each antenna structure owner proposing to construct or alter an antenna structure that is more than 60.96 meters (200 feet) in height, or that may interfere with the approach or departure space of a nearby airport runway must notify the Federal Aviation Administration (FAA) of proposed construction. The FAA determines whether the antenna structure constitutes a potential hazard, and may recommend appropriate painting and lighting for the structure. The Commission then uses the FAA's recommendation to impose specific painting and/or lighting requirements on subject licensees.

The information will be used by the Commission to maintain a current registration database which increases air safety by allowing the FAA and the Commission to identify potential hazards. One of the Commission's primary responsibilities is to ensure that antenna structures do not pose a threat to air safety.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–19174 Filed 8–20–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

July 31, 2008.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before September 22, 2008. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, (202) 395–5887, or via fax at 202–395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov* and to *Judith-B.Herman@fcc.gov*, Federal Communications Commission, or an e-mail to *PRA@fcc.gov*. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://reginfo.gov/public/do/PRAMain*, (2) look for the section of the web page called ''Currently Under Review'', (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1008.

Title: Section 27.50, Power and Antenna Height Limits; and Section 27.602, Guard Band Manager Agreements.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit and state, local and tribal government.

Number of Respondents: 580 respondents; 580 responses.

Estimated Time per Response: .50–6 hours average burden per response.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement, and third party disclosure requirement.

Obligation to Respond: Mandatory.

Total Annual Burden: 631 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Commission will submit this information collection (IC) to the OMB as a revision during this comment period to obtain the full three-year clearance from them.

The FCC adopted and released a Report and Order in FCC 07–72 in April 2007 which contained modified information collection requirements. Additionally, the Commission is revising this information collection to consolidate two information collections (ICs) into one comprehensive (IC). After OMB approves 3060–1008, the Commission will discontinue 3060–1027 and retain 3060–1008 as the active

OMB Control Number in OMB's inventory.

The April 2007 Report and Order made two changes. First 47 CFR 27.50(c)(5) now designated as 27.50(c)(8) and its scope is changed slightly. The section previously covered stations operating ''at a power level greater than 1 Kw ERP'' and is now ''under the provisions of (c)(6),'' which defines the group as ''transmitting a signal at an ERP greater than 1000 watts and greater than 1000 watts/MHz'' or in rural counties ''if transmitting a signal with an ERP greater than 2000 watts and greater than 2000 watts/MHz.''

Specifically, lower 700 MHz licensees intending to operate a base or fixed station at a power level permitted under the provisions of paragraph (c)(6) must provide advanced notice of such operation to the Commission and to licensees authorized in their area of operation. Licensees who must be notified are all licensees authorized under this part to operate on an adjacent spectrum block within 75 miles (120 km) of the base or fixed station, including the station's ERP, antenna coordinates, antenna height above ground, and vertical antenna pattern, and such notifications must be provided at least 90 days prior to the commencement of station operation. Second, in relation to lower 700 MHz service rules, in the April 2007 Report and Order, the Commission, in response to proposals by parties seeking greater power limits for rural area operations, permits power levels of up to 2 kw/MHz ERP in rural areas. In an effort to be consistent with its Part 27 rules with respect to the Advanced Wireless Service (AWS), the Commission allowed rural licensees operating with bandwidths less than one megahertz to operate at power levels up to 2 kW ERP over their bandwidth, but at the same time imposed on licensees operating at such increased power levels a requirement to coordinate with other licensees in nearby areas similar to that requirement applied to similarly-situated AWS licensees under 47 CFR 27.50(d)(1).

Specifically, section 27.50(c)(5)(i) and (ii) requires that lower 700 MHz licensees seeking to operate a fixed or base station located in a county with population density of 100 or fewer persons per square mile, based upon the most recently available population statistics from the Bureau of the Census, and transmitting a signal at an ERP greater than 1000 watts must:

(i) Coordinate in advance with all licensees authorized to operate in the 698–764 MHz and 776–794 MHz bands within 120 kilometers (75 miles) of the base or fixed station;

(ii) Coordinate in advance with all regional planning committees, as identified in section 90.527 of FCC's rules, with jurisdiction within 120 kilometers (75 miles) of the base or fixed station.

Note: The notification requirement in section 27.50(c)(5) includes a material change to the collection instrument in that more stations may be captured by the regulation if they take advantage of the new power limits.

Finally, in relation to the Guard Bands service rules, the April 2007 Report and Order replaced the ''band manager'' leasing regime which previously applied to Guard Bands licensees with spectrum leasing policies and rules adopted in the Secondary Markets proceeding in WT Docket 00–230, to provide Guard Band licensees and spectrum users additional flexibility to enter into spectrum leasing agreements. Because the Commission will now apply the different spectrum leasing rules, the requirement previously found in OMB Control Number 3060–1027, pursuant to 47 CFR 27.602, was revised to reflect the change in leasing policies.

Pursuant to 47 CFR 27.602, Guard Band Managers are required to enter into written agreements regarding the use of their licensed spectrum by others, subject to certain conditions outlined in the rules. Section 27.602(h) requires Guard Band Managers to maintain their written agreements with spectrum users at their principal place of business, and retain such records for at least two years after the date such agreements expire. Such records shall be kept current and made available upon request for inspection by the Commission or its representatives.

The service rules have been designed to promote the development and rapid deployment of new technologies, products and services for the benefit of the public; to promote economic opportunity and competition; and to create an efficient and intensive use of the spectrum by promoting the objectives identified in 47 U.S.C. 309(j), and to alleviate any problems associated with the increased power limits available to rural licensees.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–19175 Filed 8–20–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

August 6, 2008.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act 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 October 20, 2008. 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), (202) 395–5887, or via fax at 202–395–5167, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to *Judith-B.Herman@fcc.gov*, Federal Communications Commission (FCC). To submit your comments by e-mail send them to: *PRA@fcc.gov*.

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called ''Currently Under Review'', (3) click the downward-pointing arrow in the ''Select Agency'' box below the

''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information, send an e-mail to Judith B. Herman at 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0347.

Title: Section 97.311, Spread Spectrum (SS) Emission Types.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households.

Number of Respondents: 10 respondents; 10 responses.

Estimated Time per Response: 6 seconds.

Frequency of Response: Recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 1 minute (1 hour placeholder in OMB's system).

Annual Cost Burden: N/A.

Privacy Act Impact Assessment: Yes.

Nature and Extent of Confidentiality: There is no need for confidentiality. The Commission has a System of Records, FCC/WTB–1, ''Wireless Services Licensing Records,'' which covers this personally identifiable information (PII) that individual applicants may include in their submissions for licenses or grants of equipment authorization. At such time as the Commission revises this System of Records Notice (SORN), the Commission will conduct a Privacy Impact Assessment (PIA) and publish the revised SORN in the **Federal Register**. In addition, the Commission will post a copy of both the PIA and the SORN on the FCC's Privacy Web page.

Needs and Uses: This collection will be submitted as an extension (no change in recordkeeping requirements) after this 60 day comment period to Office of Management and Budget (OMB) in order to obtain the full three year clearance.

The recordkeeping requirement in Section 97.311 is necessary to document all spread spectrum (ss) transmissions by amateur radio operators. This requirement is necessary so that quick resolution of any harmful interference problems can be achieved and to ensure that the station is operating in accordance with the Communications Act of 1934, as amended.

The information is used by FCC's Enforcement Bureau (EB) personnel during inspections and investigations to ensure compliance with applicable rules, statutes, and treaties. In the absence of this recordkeeping requirement, field inspections and investigations related to the solution of cases initiated by causes of harmful interference would be severely hampered and needlessly prolonged due to the inability to quickly obtain vital information used to demodulate spread spectrum (ss) transmissions.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–19176 Filed 8–20–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to OMB for Review and Approval, Comments Requested

August 15, 2008.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before September 22, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via Internet at *Nicholas_A._Fraser@omb.eop.gov* or via fax at (202) 395–5167 and to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC or via Internet at *Cathy.Williams@fcc.gov* or *PRA@fcc.gov*.

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB control number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.''

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1115.

Title: DTV Consumer Education Initiative; Sections 15.124, 27.20, 54.418, 73.674, and 76.1630.

Form Number: FCC Form 388.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions, State, local or tribal governments.

Number of Respondents/Responses: 11,022 respondents; 70,026 responses.

Estimated Time per Response: 0.50 hours–85 hours.

Frequency of Response: On occasion reporting requirement; Monthly reporting requirement; Quarterly reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain benefits—Statutory authority for this collection of information is contained in Sections 4(i), 303(r), 335, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. Section 154(I), 303(r), 335, and 336.

Total Annual Burden: 155,646 hours.

Total Annual Cost: None.

Confidentiality: No need for confidentiality required.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The Commission adopted on April 23, 2008, an Order of Reconsideration, In the Matter of DTV Consumer Education Initiative, MB Docket 07–148, FCC 08–119. In this Order, we modify our requirements regarding the timing, scope, and content of manufacturer notices and the method of delivery of eligible telecommunications carriers (ETC) notices, and clarify other manufacturer requirements. The revised requirements are as follows:

a. Consumer Electronics Manufacturer Notices (47 CFR 15.124).

The ''responsible party,'' as defined in the Commission's rules, has to include a notice about the digital television (DTV) transition on television receivers and related devices manufactured between May 30, 2008 and March 31, 2009. The notices themselves must include the Commission's contact information (rather than the manufacturer's), convey information about the DTV transition, and must be included with covered devices.

b. Eligible Telecommunications Carriers (ETCs) Federal Universal Service Low-Income Program Participant Notices (47 CFR 54.418).

ETCs that receive federal universal service funds shall provide their Lifeline or Link-up customers (low-income customers) with notices about the transition for over-the-air full power broadcasting from analog to digital service (the ''DTV Transition'') in monthly bills, bill notices, or as a monthly stand-alone mailer (e.g., postcard, brochure), beginning May 30, 2008 through March 31, 2009.

These information collection requirements are also a part of this information collection:

(1) Broadcaster Education and Reporting (47 CFR 73.674).

(a) On-Air Education. Broadcasters must provide on-air DTV Transition consumer education information (e.g., via Public Service Announcements (PSAs), information crawls, snipes or tickers) to their viewers. Broadcasters must comply with one of three alternative sets of rules as provided in the Report and Order.

(b) DTV Consumer Education Quarterly Activity Report, FCC Form 388. Broadcasters must electronically file a report about its DTV Transition consumer education efforts to the Commission on a quarterly basis. Broadcasters must begin filing these quarterly reports no later than April 10, 2008. In addition, if the broadcaster has a public Web site, they must post these reports on that Web site.

(2) Multichannel Video Programming Distributor (MVPD) Customer Bill Notices (47 CFR 76.1630). MVPDs must provide monthly notices about the DTV transition in their customer billing statements. They include (but are not limited to), for example: cable operators, direct broadcast satellite (DBS) carriers, open video system operators, and private cable operators.

(3) DTV.Gov Partner Consumer Education Reporting. DTV.gov Transition Partners must report their consumer education efforts, as a condition of continuing Partner status. They must begin filing these quarterly reports no later than April 10, 2008.

(4) 700 MHz Wireless Service Licensee/Permitees Consumer Education Reporting (47 CFR 27.20). Winners of the 700 MHz spectrum auction must report their consumer education efforts to the Commission on a quarterly basis. These parties must file the first by the tenth day of the first calendar quarter following the initial grant of the license authorization that the entity holds. Also, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–1117.

Title: Viewer Notification Requirements in Third DTV Periodic Report and Order, FCC 07–228.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents/Responses: 1,050 respondents; 174,000 responses.

Estimated Hours per Response: 0.01–0.33 hours.

Frequency of Response: Recordkeeping requirement; Third party disclosure requirement; On occasion reporting requirement.

Obligation To Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in Section 154(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 12,015 hours.

Total Annual Costs: $210,000.

Confidentiality: No need for confidentiality required.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: Congress has mandated that after February 17, 2009, full-power television broadcast stations must transmit only in digital signals, and may no longer transmit analog signals. On December 22, 2007, the Commission adopted a Report and Order, In the Matter of the Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, MB Docket No. 07–91, FCC 07–228 (''Third DTV Periodic Report and Order'') to establish the rules, policies and procedures necessary to complete the nation's transition to DTV. In the Report and Order, the Commission adopted rules to ensure that, by the February 17, 2009 transition date, all full-power television broadcast stations (1) cease analog broadcasting and (2) complete construction of, and begin operations on, their final, full-authorized post-transition (DTV) facility. The Commission recognized that broadcasters may need regulatory flexibility in order to achieve these goals. Accordingly, the Commission affords broadcasters the opportunity for regulatory flexibility, if necessary, to meet their DTV construction deadlines. The Commission, however, must also ensure that no consumers are left behind in the DTV transition. Therefore, the Commission requires broadcasters that choose to reduce or terminate TV service to comply with viewer notification requirements.

Specifically, as a result of the Third DTV Periodic Report and Order, stations must comply with a viewer notification requirement (i.e., stations must notify viewers about their planned service reduction or termination) if:

(1) The station will permanently reduce or terminate analog or pre-transition digital service before the transition date; or

(2) The station will not serve at least the same population that receives their current analog TV and DTV service after the transition date.

Viewer notifications must occur every day on-air at least four times a day including at least once in primetime for the 30 days prior to the station's termination of full, authorized analog service. These notifications must include: (1) The station's call sign and community of license; (2) the fact that the station must delay the construction and operation of its post-transition (DTV) service or the fact that the station is planning to or has reduced or terminated its analog or digital operations before the transition date; (3) information about the nature, scope, and anticipated duration of the station's post-transition service limitations; (4) what viewers can do to continue to receive the station, i.e., how and when the station's digital signal can be

received; (5) information about the availability of digital-to-analog converter boxes in their service area; and (6) the street address, e-mail address (if available), and phone number of the station where viewers may register comments or request information.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. E8–19177 Filed 8–20–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 15, 2008.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. Twin Lakes Bancshares, Inc., Flippin, Arkansas, has applied to become a bank holding company by acquiring 100 percent of the voting shares of Twin Lakes Community Bank, Flippin, Arkansas.

2. First National Corporation of Wynne, Wynne, Arkansas, to acquire 35 percent of the voting shares of Twin Lakes Bancshares, Inc., and thereby retain voting shares of Twin Lakes Community Bank, both of Flippin, Arkansas.

3. Twin Lakes Bancshares, Inc., has applied to acquire 100 percent of the voting shares of Smith Associated Banking Corporation, Hot Springs, Arkansas, and thereby indirectly acquire voting shares of Bank of Salem, Salem, Arkansas, immediately following the bank holding company formation.

In connection with this application, First National Corporation of Wynne, also has applied to indirectly acquire Smith Associated Banking Corporation, Hot Springs, Arkansas, and thereby indirectly acquire Bank of Salem, Salem, Arkansas.

B. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. MOW/RPW Holdings II, LLC, and MOW/RPW II, Ltd., both of Victoria, Texas, to acquire up to 21.11 percent of the voting shares of FVNB Corp, Victoria, Texas, and thereby indirectly acquire voting shares of FVNB Delaware Corp., Wilmington, Delaware, and First Victoria National Bank, Victoria, Texas.

Board of Governors of the Federal Reserve System, August 15, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–19293 Filed 8–20–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 4, 2008.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. First Cecilian Bancorp, Inc., Cecilia, Kentucky, to engage in lending activities, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, August 15, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–19292 Filed 8–20–08; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''AHRQ Healthcare Innovations Exchange Innovator Interview and AHRQ Healthcare Innovations Exchange Innovator E-mail Submission Guidelines.'' In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by October 20, 2008.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz,

Reports Clearance Officer, AHRQ, by e-mail at *doris.lefkowitz@ahrq.hhs.gov*.

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@ahrq.hhs.gov*.

SUPPLEMENTARY INFORMATION:

Proposed Project

''AHRQ Healthcare Innovations Exchange Innovator Interview and AHRQ Healthcare Innovations Exchange Innovator E-mail Submission Guidelines''

To support its objective of accelerating the diffusion and adoption of innovative health care delivery changes, see, e.g., 42 U.S.C. 299b–5(a), the Agency for Healthcare Research and Quality (AHRQ) is launching the AHRQ Healthcare Innovations Exchange Web site (Innovations Exchange). The Innovations Exchange will make profiles of health care service innovations accessible to the public. These innovations must meet the following six criteria: (1) The innovation focuses directly or indirectly on patient care; (2) the innovation is intended to improve one or more domains of health care quality; (3) the activity is truly innovative in the context of its setting or target population; (4) information about the innovation is publicly available; (5) the innovator (or a representative) is willing and able to contribute information to the Health Care Innovations Exchange; and (6) there is reason to believe that the innovation will be effective. These are minimum requirements. The ultimate decision to publish a detailed profile of the innovation will depend on several factors, including an evaluation by AHRQ, AHRQ's priorities, and the number of similar ideas in the Innovations Exchange. AHRQ's priorities include identifying and highlighting innovations that will help reduce disparities in health care and health status, that will have significant impact on the overall value of health care, where the innovators have a strong interest in participating, and that have received support from AHRQ.

A purposively selected group of 825 health care innovations will be selected to be considered for the profiles that will be published on the Innovations Exchange. These 825 innovations will be selected to ensure that innovations included in the Innovations Exchange cover a broad range of health care settings, care processes, priority populations, and clinical conditions. To collect the information required for these profiles, approximately 825 health care innovators associated with these innovations will submit information on their innovation using the AHRQ Healthcare Innovations Exchange E-mail Submission Guidelines or be contacted by project staff. Innovators will be interviewed by telephone about their innovative activities.

Method of Collection

Approximately 825 innovators associated with innovations selected for consideration will either submit their innovation through e-mail for consideration or be contacted by telephone and asked to participate. Once their agreement to participate is secured, the innovators will be interviewed by telephone as needed (e-mail submitters will be instructed to provide specific information about their innovation in their initial submissions and may require only abbreviated telephone interviews) about the following aspects of their innovation: health care problem addressed, impetus for the innovation, goals of the innovation, description of the innovation, evaluation results for the innovation, setting for the innovation, history of planning and implementation for the innovation, and lessons learned concerning the implementation of the innovation. If the innovation is approved, a draft profile will be developed based on the information and sent by e-mail to the innovator for review and approval to publish. After the profile is published, on a yearly basis, innovators will be asked to review and update their profiles. No assurances of confidentiality will be made to the innovator.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondents. Approximately 275 innovators will participate in the initial data collection each year for a total of 825 over the three year period. Of the 275 respondents per year, we estimate that approximately 15% (41) will submit information via e-mail and will thus be interviewed for a shorter period of time. The remaining 234 respondents that did not submit information via e-mail will be interviewed more extensively to capture the information required. The estimated annualized hours for the respondents' time to participate in the project is 401 hours.

Based on a review of materials from potential innovations, we estimate that approximately 10% of the candidate innovations either will not meet the inclusion criteria or their innovators will decide not to continue their participation. Therefore, about 90% (750) of the original 825 profiles will move into the publication stage.

For the 750 published profiles, annual follow-up interviews will be conducted to update the information about the innovation, which will average 30 minutes. Because the profiles will be prepared on a rolling basis over three years, the average number of yearly follow-up reviews per innovator will vary:

- One third (250) of the profiles will be prepared in the first year and will have 2 annual reviews;
- One third (250) of the profiles will be prepared in the second year and will have 1 annual review; and
- One third (250) of the profiles will be prepared in the third year and will have 0 annual reviews.

Approximately 750 follow-up interviews will be conducted over the 3 years of this project resulting in an annualized average of 250 follow-up interviews per year, even though no follow-up interviews will be conducted in the first year.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
E-mail submission	41	1	30/60	21
Health care innovator interview—following e-mail submission	41	1	30/60	21
Health care innovator interview—without e-mail submission	234	1	1	234
Annual follow-up interview	250	1	30/60	125
Total	566			401

Exhibit 2 shows the estimated annualized cost burden for the respondents. The Bureau of Labor Statistics reported that the average hourly wage for ''healthcare practitioner and technical occupations'' in the United States was $29.82 in May 2006. An estimate of $30 per hour allows for inflation and represents a conservative estimate of the wages of the respondents. Therefore, the total estimated cost burden for respondents is $12,030, based on the total estimated annualized burden of 401 hours.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate *	Total cost burden
E-mail submission	41	21	$30	$630
Health care innovator interview—following e-mail submission	41	21	30	630
Health care innovator interview without e-mail submission	234	234	30	7,020
Annual follow-up interview	250	125	30	3,750
Total	566	401		12,030

* Based upon the average wages, ''National Compensation Survey: Occupational Wages in the United States, May 2006,'' U.S. Department of Labor, Bureau of Labor Statistics.

Estimated Annual Costs to the Federal Government

The total cost to the Government is approximately $3,349,560 over three years (on average, $1,116,520 per year). These costs cover the total editorial and content development processes associated with the project; which include developing an on-line authoring tool for preparing the profiles, identifying innovation leads, reviewing e-mail submissions, contacting the innovators, conducting interviews, preparing the draft profiles, securing innovator approval, and publishing the profiles on the Innovations Exchange Web site.

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research, quality improvement and information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: August 12, 2008.

Carolyn M. Clancy,

Director.

[FR Doc. E8–19302 Filed 8–20–08; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: State Plan for the Temporary Assistance for Needy Families (TANF).

OMB No.: 0970–0145.

Description: The State plan is a mandatory statement submitted to the Secretary of the Department of Health and Human Services by the State. It consists of an outline of how the States TANF program will be administered and operated and certain required certifications by the States Chief Executive Officer. Its submittal triggers the States family assistance grant funding and it is used to provide the public with information about the program. If a State makes changes in its program, it must submit a State plan amendment.

Respondents: The 50 States, the District of Columbia, Guam, Puerto Rico and the Virgin Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Temporary Assistance to Needy Families State Plan Guidance	54	0.50	33	891

Estimated Total Annual Burden Hours: 891.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, *Fax:* 202–395–6974, *Attn:* Desk Officer for the Administration for Children and Families.

Dated: August 14, 2008.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. E8–19220 Filed 8–20–08; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0039]

Chloramine-T for Control of Bacterial Gill Disease in Freshwater-Reared Salmonids; Availability of Data

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of effectiveness and target animal safety data that may be used in support of a new animal drug application (NADA) or supplemental NADA for use of chloramine-T by immersion for the control of mortality in freshwater-reared salmonids due to bacterial gill disease. The data, contained in Public Master File (PMF) 5893, were compiled by the U.S. Department of the Interior, U.S. Fish and Wildlife Service, Aquatic Animal Drug Approval Partnership Program.

ADDRESSES: Submit NADAs or supplemental NADAs to the Document Control Unit (HFV–199), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT: Donald A. Prater, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8343, e-mail: *donald.prater@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Chloramine-T used by immersion for control of mortality in freshwater-reared salmonids due to bacterial gill disease is a new animal drug under section 201(v) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(v)). As a new animal drug, chloramine-T is subject to section 512 of the act (21 U.S.C. 360b) which requires that its uses be the subject of an approved NADA or supplemental NADA. Fish are a minor species under § 514.1(d)(1)(ii) (21 CFR 514.1(d)(1)(ii)).

The U.S. Department of the Interior, U.S. Fish and Wildlife Service, Aquatic Animal Drug Approval Partnership Program, 4050 Bridger Canyon Rd., Bozeman, MT 59715, has provided effectiveness and target animal safety data for use of chloramine-T by immersion for control of mortality in freshwater-reared salmonids due to bacterial gill disease. These data are contained in PMF 5893.

Sponsors of NADAs or supplemental NADAs may, without further authorization, reference the PMF 5893 to support approval of an application filed under § 514.1(d). An NADA or supplemental NADA must include, in addition to reference to the PMF, animal drug labeling and other information needed for approval, such as: data concerning human food safety; and manufacturing methods, facilities, and controls. Persons desiring more information concerning PMF 5893 or requirements for approval of an NADA or supplemental NADA may contact the Center for Veterinary Medicine (see **FOR FURTHER INFORMATION CONTACT**).

In accordance with the freedom of information provisions of 21 CFR part 20, a summary of safety and effectiveness data provided in PMF 5893 to support approval of an application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, from 9 a.m. to 4 p.m., Monday through Friday.

Dated: August 8, 2008.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. E8–19299 Filed 8–20–08; 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. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Shared Instrumentation (S10) Review.

Date: September 8, 2008.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency O'Hare, 9300 Bryn Mawr Avenue, Rosemont, IL 60018.

Contact Person: Barbara Whitmarsh, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC 7890, Bethesda, MD 20892, (301) 435–4511, *whitmarshb@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: Cell Biology Integrated Review Group Intercellular Interactions Study Section.

Date: September 22–23, 2008.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: George Washington University Inn, 824 New Hampshire Avenue, NW., Washington, DC 20037.

Contact Person: David Balasundaram, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5189, MSC 7840, Bethesda, MD 20892, 301–435–1022, *balasundaramd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Applications Related to Dementia, Substance Abuse, or Behavioral Development.

Date: September 24, 2008.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ellen K. Schwartz, EDD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7770, Bethesda, MD 20892, 301–435–0681, *schwarte@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Biomaterials and Biointerfaces Study Section.

Date: September 25, 2008.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ross D. Shonat, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7849, Bethesda, MD 20892, 301–435–2786, *shonatr@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Nanotechnology Study Section.

Date: September 30–October 1, 2008.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Joseph D. Mosca, PhD, Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7808, Bethesda, MD 20892, (301) 435–2344, *moscajos@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group Vaccines Against Microbial Diseases Study Section.
Date: October 2–3, 2008.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Chicago Marriott Downtown, 540 North Michigan Avenue, Chicago, IL 60611.
Contact Person: Jian Wang, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7812, Bethesda, MD 20892, (301) 435–2778, *wangjia@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Molecular Genetics B Study Section.
Date: October 2–3, 2008.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Admiral Fell Inn, 888 South Broadway, Baltimore, MD 21231.
Contact Person: Richard A. Currie, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7840, Bethesda, MD 20892, (301) 435–1219, *currieri@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Virology—A Study Section.
Date: October 2, 2008.
Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Sheraton Fisherman's Wharf Hotel, 2500 Mason Street, San Francisco, CA 94133.
Contact Person: Joanna M. Pyper, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892, (301) 435–1151, *pyperj@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Virology—B Study Section.
Date: October 2–3, 2008.
Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Sheraton Fisherman's Wharf Hotel, 2500 Mason Street, San Francisco, CA 94133.
Contact Person: Robert Freund, PHD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3200, MSC 7848, Bethesda, MD 20892, 301–435–1050, *freundr@csr.nih gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Biodata Management and Analysis Study Section.
Date: October 2, 2008.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.
Contact Person: Ping Fan, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7840, Bethesda, MD 20892, 301–435–1740, *fanp@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts: GMPB and HBPP.
Date: October 3, 2008.
Time: 12 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Patricia Greenwel, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2174, MSC 7818, Bethesda, MD 20892, 301–435–1169, *greenwep@csr.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group; Nursing Science: Adults and Older Adults Study Section.
Date: October 5–6, 2008.
Time: 5 p.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: Melinda Tinkle, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3141, MSC 7770, Bethesda, MD 20892, (301) 594–6594, *tinklem@csr.nih.gov.*

Name of Committee: Digestive Sciences Integrated Review Group; Clinical and Integrative Gastrointestinal Pathobiology Study Section.
Date: October 6, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Mushtaq A. Khan, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2176, MSC 7818, Bethesda, MD 20892, 301–435–1778, *khanm@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Cellular and Molecular Biology of Glia Study Section.
Date: October 6–7, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Sir Francis Drake Hotel, 450 Powell Street, San Francisco, CA 94102.
Contact Person: Toby Behar, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7850, Bethesda, MD 20892, (301) 435–4433, *behart@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function C Study Section.
Date: October 6–7, 2008.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Georgetown Suites, 1111 30th Street, NW, Washington, DC 20007.
Contact Person: Denise Beusen, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7806, Bethesda, MD 20892, (301) 435–1267, *beusend@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function B Study Section.
Date: October 6–7, 2008.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.
Contact Person: Arnold Revzin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7824, Bethesda, MD 20892, (301) 435–1153, *revzina@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Social Psychology, Personality and Interpersonal Processes Study Section.
Date: October 6, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Admiral Fell Inn, 888 South Broadway, Baltimore, MD 21231.
Contact Person: Michael Micklin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3136, MSC 7759, Bethesda, MD 20892, (301) 435–1258, *micklinm@csr.nih.gov.*

Name of Committee: Biology of Development and Aging Integrated Review Group; Aging Systems and Geriatrics Study Section.
Date: October 6–7, 2008.
Time: 8 a.m. to 5 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: Francois Boiler, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3206, MSC 7848, Bethesda, MD 20892, 301–435–1019, *bollerf@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Biological Rhythms and Sleep Study Section.
Date: October 6, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Sir Frances Drake, 450 Powell Street, San Francisco, CA 94102.
Contact Person: Michael Selmanoff, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1208,

MSC 7844, Bethesda, MD 20892, 301–435–1119, *mselmanoff@csr.nih.gov*.

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group, Modeling and Analysis of Biological Systems Study Section.
Date: October 6, 2008.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Malgorzata Klosek, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7849, Bethesda, MD 20892, (301) 435–2211, *klosekm@mail.nih.gov*.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Central Visual Processing Study Section.
Date: October 6, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Sir Frances Drake, 450 Powell Street, San Francisco, CA 94102.
Contact Person: Judith A. Finkelstein, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20892, 301–435–1249, *finkelsj@csr.nih.gov*.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Anterior Eye Disease Study Section.
Date: October 6–7, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.
Contact Person: Jerry L. Taylor, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7846, Bethesda, MD 20892, 301–435–1175, *taylorje@csr.nih.gov*.

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Biomedical Imaging Technology Study Section.
Date: October 6–7, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Crystal City, 2399 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Lee Rosen, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171, *rosenk@csr.nih.gov*.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neural Oxidative Metabolism and Death Study Section.
Date: October 6–7, 2008.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.
Contact Person: Carol Hamelink, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5040H, MSC 7850, Bethesda, MD 20892, (301) 451–1328, *hamelinc@csr.nih.gov*.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Pregnancy and Neonatology Study Section.
Date: October 6, 2008.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: The Legacy Hotel, 1775 Rockville Pike, Rockville, MD 20852.
Contact Person: Michael Knecht, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435–1046, *knechtm@csr.nih.gov*.

Name of Committee: Health of the Population Integrated Review Group; Neurological, Aging and Musculoskeletal Epidemiology Study Section.
Date: October 6–7, 2008.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.
Contact Person: Heidi B. Friedman, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1012A, MSC 7770, Bethesda, MD 20892, 301–435–1721, *hfriedman@csr.nih.gov*.

Name of Committee: Cardiovascular Sciences Integrated Review Group; Electrical Signaling, Ion Transport, and Arrhythmias Study Section.
Date: October 6, 2008.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue, NW., Washington, DC 20036.
Contact Person: Rajiv Kumar, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7802, Bethesda, MD 20892, 301–435–1212, *kumarra@csr.nih.gov*.

Name of Committee: Digestive Sciences Integrated Review Group; Gastrointestinal Mucosal Pathobiology Study Section.
Date: October 6, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Express Hotel & Suites, 550 North Point Street, San Francisco, CA 94133.
Contact Person: Peter J. Perrin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, (301) 435–0682, *perrinp@csr.nih.gov*.

Name of Committee: Respiratory Sciences Integrated Review Group; Lung Cellular, Molecular, and Immunobiology Study Section.
Date: October 6–7, 2008.
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: George M. Barnas, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, 301–435–0696, *barnasg@csr.nih.gov*.

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Language and Communication Study Section.
Date: October 6–7, 2008.
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: Weijia Ni, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435–1507, *niw@csr.nih.gov*.

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Child Psychopathology and Developmental Disabilities Study Section.
Date: October 6–7, 2008.
Time: 8:30 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.
Contact Person: Jane A. Doussard-Roosevelt, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435–4445, *doussarj@csr.nih.gov*.

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Behavioral Medicine, Interventions and Outcomes Study Section.
Date: October 6–7, 2008.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Reston, 1800 Presidents Street, Reston, VA 20190.
Contact Person: Lee S. Mann, JO, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, 301–435–0677, *mannl@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: August 13, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–19222 Filed 8–20–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Eye Institute.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Eye Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Eye Institute.

Date: September 8–9, 2008.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, C1/C2, Bethesda, MD 20892.

Contact Person: Sheldon S Miller, Ph.D., Scientific Director, National Institutes of Health, National Eye Institute, Bethesda, MD 20892, (301) 451–6763.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institutes/Centers home page: *http://www.nei.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: August 13, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–19221 Filed 8–20–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council for Nursing Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Nursing Research.

Date: September 16–17, 2008.

Open: September 16, 2008, 1 p.m. to Adjournment.

Agenda: Discussion of Program Policies and Issues.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conf. 6C, Room 10, Bethesda, MD 20892.

Closed: September 17, 2008, 9:15 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conf. 6C, Room 10, Bethesda, MD 20892.

Contact Person: Mary E. Kerr, FAAN, RN, Ph.D., Deputy Director, National Institute of Nursing, National Institutes of Health, 31 Center Drive, Room 5B–05, Bethesda, MD 20892–2178 , 301/496–8230, *kerrme@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nih.gov/ninr/a_advisory.html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: August 13, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–19223 Filed 8–20–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory General Medical Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory General Medical Sciences Council.

Date: September 18–19, 2008.

Closed: September 18, 2008, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 9000 Rockville Pike, Bethesda, MD 20892.

Closed: September 19, 2008, 8 a.m. to 8:45 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 9000 Rockville Pike, Bethesda, MD 20892.

Open: September 19, 2008, 8:45 a.m. to adjournment.

Agenda: For the discussion of program policies and issues, opening remarks, report of the Director, NIGMS, and other business of the Council.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Ann A. Hagan, PhD, Associate Director for Extramural Activities, NIGMS, NIH, DHHS, 45 Center Drive, Room 2AN24H, MSC6200, Bethesda, MD 20892–6200, (301) 594–4499, *hagana@nigms.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nigms.nih.gov/about/advisory_council.html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: August 12, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–19224 Filed 8–20–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Mental Health Services; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given that the Center for Mental Health Services (CMHS) National Advisory Council will meet on August 25, 2008 from 3 p.m. to 4 p.m. via teleconference.

The meeting will include the review, discussion and evaluation of grant applications. Therefore the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App. 2. § 10(d).

Substantive program information, a summary of the meetings and a roster of Council members may be obtained as soon as possible after each meeting, either by accessing the SAMHSA Committee Web site at *http://www.nac.samhsa.gov,* or by contacting CMHS National Advisory Council's Designated Federal Official, Ms. Dianne McSwain (see contact information below).

Committee Name: SAMHSA Center for Mental Health Services National Advisory Council.

Date/Time/Type: August 25, 2008, from 3 p.m. to 4 p.m.: Closed.

Place(s): SAMHSA Building, 1 Choke Cherry Road, Conference Room 6–1060, Rockville, Maryland 20857.

Contact: Dianne McSwain, M.S.W., Designated Federal Official, 1 Choke Cherry, Rm. 6–1063, Rockville, Maryland 20857, Telephone: (240) 276–1828, Fax: (240) 276–1850, e-mail: *Dianne.McSwain@samhsa.hhs.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.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. E8–19360 Filed 8–20–08; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5237–N–01]

Notice of HUD's Policy on Quality Assurance Review (QAR) of Electronic Application Submission Difficulties

AGENCY: Office of the Secretary, HUD.

ACTION: Notice for HUD's procedure on quality control review of electronic application submission difficulties.

SUMMARY: Since 2005, HUD has required that applicants for HUD's discretionary funding submit their applications electronically through Grants.gov, unless the applicant previously received a waiver of this requirement. Since July 2, 2008, however, applicants for HUD assistance have indicated that they have encountered technical difficulties in their electronic application submissions. Today's notice announces that HUD is taking action to respond to these concerns and is conducting a Quality Assurance Review (QAR) to identify applicants that correctly followed all electronic application submission instructions, including registration for electronic submission, but were unable to submit an application because of technical problems related to the use of the Adobe Acrobat forms and Grants.gov error messages.

DATES: Applicants that had difficulties submitting an electronic application for assistance in response to a notice of funding availability (NOFA), for which the deadline date has passed, may submit a request for QAR by September 5, 2008. Applicants having difficulties submitting an electronic application for assistance, in response to a NOFA for which the deadline date has not passed, may submit a request for QAR, beginning at 12:01 a.m. eastern time on the day following the deadline date, and must do so by 12:01 a.m. 15 days later. Requests for QAR must be submitted by e-mail to the appropriate program contact listed in the appendix to this notice to facilitate timely receipt.

FOR FURTHER INFORMATION CONTACT: For further information about each funded program, or to submit your QAR appeal, please contact the individual listed in the appendix to this notice. Appeals must be submitted by e-mail. When submitting the appeal, please place in the subject line the program name, applicant name, and any Grants.gov Call-Center ticket number(s).

SUPPLEMENTARY INFORMATION: Since 2005, HUD has required that applicants for HUD's discretionary funding submit their applications electronically through Grants.gov, unless the applicant previously received a waiver of the requirement. Since January 2008, HUD has published a number of documents that provided instructions to meet the requirement, including HUD's Early Registration Notice, published on March 10, 2008 (73 FR 12751); HUD's Notice of FY2008 Funding Availability, Policy Requirements and General Section to HUD's FY2008 Notices of Funding Availability (NOFAs) for HUD's Discretionary Programs (General Section), published on March 19, 2008 (73 FR 14882); and the Introduction to the SuperNOFA published on May 12, 2008 (73 FR 27032) (collectively referred to as ''electronic submission instructions''). Since July 2, 2008, however, applicants for HUD assistance have indicated that they have encountered technical difficulties in their electronic application

submissions. Today's notice announces that HUD is taking action to respond to these concerns and is conducting a QAR to identify applicants that correctly followed all of HUD's electronic submission instructions, including registration for electronic submission, but were unable to submit an application because of technical problems related to the use of the Adobe Acrobat forms and Grants.gov error messages. Today's notice also provides HUD's QAR procedures, as well as outlines the application submission procedures an applicant must follow if HUD determines that the applicant complied with all electronic submission instructions but was unable to submit an application because of technical difficulties. If HUD makes this determination, the applicant will be contacted by HUD and invited to resubmit an application. Applicants planning to apply for assistance for which the deadline date remains open are encouraged to apply early, when the Grants.gov help desk is open, or when HUD staff and program offices are available to help overcome any electronic submission issues. Applicants are also reminded that validation can take 24 to 48 hours to complete and that time should be allotted for that process to occur. In addition, applicants using the facsimile solution to submit portions of their applications must use the form HUD–96011, Transmittal Cover Sheet, on each facsimile submitted. If a facsimile transmission fails, each attempt to fax the information must contain the HUD–96011 cover sheet.

This QAR procedure is in effect for all funding opportunities announced by HUD, except for the Continuum of Care program, for which the deadline date was July 2, 2008, or later. Specifically, this excludes from the QAR those applicants submitting electronic applications in response to HUD's HOPE VI Revitalization Program NOFA published on March 26, 2008 (73 FR 16134) and HUD's Rural Housing and Economic Development NOFA published on April 28, 2008 (73 FR 23051). HUD is making this procedure available to applicants experiencing difficulty submitting an application electronically in response to NOFAs that HUD will publish in the **Federal Register** until the end of this fiscal year. If HUD determines that an applicant met HUD's electronic submission instructions, but was unable to submit its application because of unanticipated technical difficulties, HUD will contact the applicant and invite the applicant to resubmit the application. The following describes HUD's procedures with respect to 2008 applications covered by this QAR.

Policy and Procedures on Quality Assurance Review of Unsuccessful Electronic Applications

HUD's QAR will focus on those electronic application submissions where HUD's records and those of Grants.gov document that the applicant followed all of the electronic submission instructions published in the **Federal Register**.

HUD's records and those of Grants.gov indicate that, of the group of applicants that were unable to submit an application electronically through Grants.gov, some were unable to do so because they failed to register for electronic application submission or failed to allow sufficient time to complete the registration process. As detailed in HUD's **Federal Register** publications, which provide instructions for submitting an application electronically, the registration process required applicants to obtain a Dun and Bradstreet Universal Data (DUNS) number (the DUNS number is a governmentwide and regulatory requirement for all grant applications), register with the Federal Central Contractor Registration, obtain and register credentials from a credential provider for E-Authentication, and, then, have the eBusiness Point of Contact grant authority to submit on behalf of the applicant organization. As HUD has explained in its electronic submission instructions, this registration process is necessary to ensure that the electronically submitted application is that of the applicant, and that the individual or organization that submitted the application is authorized to submit it on behalf of the applicant.[1] HUD has also advised applicants to allow at least 2 weeks to 4 weeks to complete the registration process. Applicants that failed to complete the registration process will not be considered for review.

Similarly, if HUD's records and those of Grants.gov reflect that applicants were unable to submit an electronic application because of the following applicant errors, the applicant will not be considered under the QAR:

- The applicant typed in a wrong DUNS number;
- The applicant provided a password and ID that were not associated to the DUNS number used in the application;
- The applicant used a password and ID that were not authorized for submission by submitting entity's eBusiness Point of Contact.

These aforesaid applicant submission problems will not be reviewed under the QAR, because it is HUD's position that it is the applicant's responsibility to manage its passwords, IDs, and DUNS numbers, and to ensure that the authorization process is accurately completed.

HUD's quality assurance review for application submission will focus on circumstances where an applicant met the electronic application instructions, but was unable to submit an application because of unanticipated technical problems due to use of the Adobe Acrobat forms package and/or error messages emanating from the Grants.gov system. In these cases, HUD will hold the applicant harmless and permit the applicant to resubmit the application.

Examples of unanticipated technical difficulties that may have resulted in an applicant's failure to submit an electronic application include:

- Grants.gov system records, Call Center records, or e-mail records from the applicant to *Support@Grants.gov* or to HUD staff demonstrate that the applicant attempted submission in accordance with HUD instructions with time allowed for the validation process to occur prior to the deadline date, but the applicant was unable to successfully submit its application prior to the deadline due to difficulties uploading its application or due to error messages by the Grants.gov system. HUD acknowledges that numerous attempts to overcome the ''broken pipe'' and other error messages emanating from Grants.gov can result in confusion on the part of the applicant and while initial attempts to submit allowed time for validation to occur as documented by calls or e-mails to the Grants.gov help desk, the Grants.gov help desk did not provide guidance to resolve the applicant's submission issues;
- The records demonstrate the Grants.gov Call Center's help desk advised the applicant to leave the application processing for a period of time longer than 1 hour; or advised the applicant that the Call Center representative was submitting a research ticket to get further assistance for the applicant, even though the Call Center could not provide a response to the research ticket prior to the deadline date. In such cases, where the applicant fully followed the directions provided in HUD's instructions for registration and submission, and due to processing errors or lack of accurate or timely assistance on the part of Grants.gov, the

[1] In addition to the General Section to HUD's 2008 NOFAs and Early Registration Notice, HUD's Internet Web broadcasts discussed the electronic application submission procedures.

applicant was unable to have the application successfully received and validated by Grants.gov by the deadline date and time; or

• Other unique situations brought to HUD's attention that may lead HUD to conclude that an applicant's failure to submit was based on misleading technical advice or other such technology-related problems.

As noted in today's **Federal Register** notice, HUD will base its review on its records; those of Grants.gov, including records from the Grants.gov Call Center; and records submitted by the applicant. HUD's review will be completed when HUD believes that the information provided it by the applicant and, as appropriate Grants.gov, contains sufficient information to determine whether an applicant's failure to submit was because of problems with technology or a failure on the part of the applicant to follow HUD's directions.

Applicants that believe they meet the conditions described in this notice may contact the individuals identified in the appendix to request that HUD review its application submission to determine whether the applicant is eligible to resubmit the application. Applicants seeking to benefit from the QAR must provide HUD with the:

1. Applicant's DUNS number;
2. Authorized Organization Representative's (AOR) ID and password;
3. Catalog of Federal Domestic Assistance (CFDA) number and name of the program for which the applicant is seeking funding;
4. Grants.gov Help Desk Ticket Number;
5. Statement of the problem including dates and times, with whom the applicant spoke, and advice provided, if available;
6. Copies of any error messages received from Grants.gov or responses from the help desk received from the customer service representative or by e-mail;
7. Application submission tracking number(s) received from Grants.gov, if applicable, and date and approximate times of transmission upload attempts; and
8. Applicant contact information, including office and cell phone as well as e-mail information.

Applicants may submit this information by e-mail message to the appropriate program contact listed in the appendix. In the ''subject'' line of the e-mail message include the program name, the applicant name, and any Grants.gov ticket numbers.

Failure to provide the information listed in items 1, 2, and 3 will result in an applicant being ineligible for the quality assurance review procedures outlined in this notice. Applicants that believe they meet the requirements described in today's notice should provide this information to the appropriate program office contact listed in the appendix to today's notice by the deadlines established in the Dates section of today's notice. Applicants that have already provided this information to HUD do not need to resubmit the information. HUD will not review requests for QAR if it has already conducted a review and determined that the applicant did not follow HUD's electronic submission instructions.

Procedures for Submitting Applications

Upon the conclusion of HUD's review, applicants will be notified of HUD's determination through means that provide for confirmation that the applicant has received notification. If HUD determines that the applicant correctly followed its electronic application submission instructions and advice from the Grants.gov help desk but was unable to submit an application because of technical problems, the applicant will be contacted and provided assistance in electronically resubmitting its application. It is HUD's hope that with one-on-one assistance, all applicants will be able to successfully submit an electronic application.

If electronic application submission cannot be accomplished, applicants will be requested to submit their applications on a CD-ROM, with a hard copy, via overnight delivery (United States Postal Service, Federal Express, or UPS) to the applicable addressee(s) listed in the appendix to this notice. HUD will provide e-mail notification to the applicant confirming the need to submit a CD-ROM and hard copy of the application. Applications must be received by HUD within 4 business days after the date of HUD's e-mail notification. Should discrepancies be found between the CD-ROM and the hard copy, HUD will use the application on the CD-ROM as the official submission and incorporate it into HUD's official system of records. Applicants may not submit applications using overnight delivery, unless prior approval has been received from HUD. Hand deliveries will not be accepted.

Dated: August 13, 2008.

Roy A. Bernardi,

Deputy Secretary.

Appendix

Quality Assurance Review Request Contact List

Program name	Program contact	e-Mail address	Address
Community Development Technical Assistance.	Mark A. Horwath	Mark.A.Horwath@hud.gov	U.S. Department of Housing and Urban Development, Room 7218, 451 7th Street, SW., Washington, DC 20410.
Community Development Block Grant for Indian Tribes and Alaskan Native Villages.	Roberta Youmans	Roberta.L.Youmans@hud.gov	U.S. Department of Housing and Urban Development, Room 5156, 451 7th Street, SW., Washington, DC 20410.
Historically Black Colleges and Universities.	Susan Brunson	Susan.S.Brunson@hud.gov	U.S. Department of Housing and Urban Development, Room 8106, 451 7th Street, SW., Washington, DC 20410.
Hispanic Serving Institutions Assisting Communities.	Susan Brunson	Susan.S.Brunson@hud.gov	U.S. Department of Housing and Urban Development, Room 8106, 451 7th Street, SW., Washington, DC 20410.
Alaskan Native/Native Hawaiian Institutions Assisting Communities.	Susan Brunson	Susan.S.Brunson@hud.gov	U.S. Department of Housing and Urban Development, Room 8106, 451 7th Street, SW., Washington, DC 20410.
Tribal Colleges and Universities	Susan Brunson	Susan.S.Brunson@hud.gov	U.S. Department of Housing and Urban Development, Room 8106, 451 7th Street, SW., Washington, DC 20410.
Fair Housing Initiatives Program	Denise L. Brooks	Denise.L.Brooks@hud.gov	U.S. Department of Housing and Urban Development, Room 5222, 451 7th Street, SW., Washington, DC 20410.

Program name	Program contact	e-Mail address	Address
Housing Counseling Program	Brian N. Siebenlist	Brian.N.Siebenlist@hud.gov	U.S. Department of Housing and Urban Development, Room 9274, 451 7th Street, SW., Washington, DC 20410.
Housing Counseling Training	Brian N. Siebenlist	Brian.N.Siebenlist@hud.gov	U.S. Department of Housing and Urban Development, Room 9274, 451 7th Street, SW., Washington, DC 20410.
Healthy Homes Demonstration Program.	Warren Friedman	Warren.Friedman@hud.gov	U.S. Department of Housing and Urban Development, Room 8236, 451 7th Street, SW., Washington, DC 20410.
Lead Outreach Grant Program	Warren Friedman	Warren.Friedman@hud.gov	U.S. Department of Housing and Urban Development, Room 8236, 451 7th Street, SW., Washington, DC 20410.
Lead Technical Studies	Warren Friedman	Warren.Friedman@hud.gov	U.S. Department of Housing and Urban Development, Room 8236, 451 7th Street, SW., Washington, DC 20410.
Healthy Homes Technical Studies.	Warren Friedman	Warren.Friedman@hud.gov	U.S. Department of Housing and Urban Development, Room 8236, 451 7th Street, SW., Washington, DC 20410.
Lead Hazard Control Program	Warren Friedman	Warren.Friedman@hud.gov	U.S. Department of Housing and Urban Development, Room 8236, 451 7th Street, SW., Washington, DC 20410.
Lead Hazard Reduction Demonstration.	Warren Friedman	Warren.Friedman@hud.gov	U.S. Department of Housing and Urban Development, Room 8236, 451 7th Street, SW., Washington, DC 20410.
Operation Lead Elimination Action Program (LEAP).	Warren Friedman	Warren.Friedman@hud.gov	U.S. Department of Housing and Urban Development, Room 8236, 451 7th Street, SW., Washington, DC 20410.
Housing Choice Voucher Family Self-Sufficiency.	James D. Reeves	James.D.Reeves@hud.gov	U.S. Department of Housing and Urban Development Grants Management Center, 3rd Floor, 550 12th Street, SW., Washington, DC 20024.
Resident Opportunities and Self-Sufficiency (ROSS) Service Coordinators.	James D. Reeves	James.D.Reeves@hud.gov	U.S. Department of Housing and Urban Development Grants Management Center, 3rd Floor, 550 12th Street, SW., Washington, DC 20024.
Housing Opportunities for Persons with AIDS (HOPWA).	Benjamin L. Ayers	Benjamin.L.Ayers@hud.gov	U.S. Department of Housing and Urban Development, Room 7212, 451 7th Street, SW., Washington, DC 20410.
Public Housing Family Self-Sufficiency (PHFSS).	James D. Reeves	James.D.Reeves@hud.gov	U.S. Department of Housing and Urban Development Grants Management Center, 3rd Floor, 550 12th Street, SW., Washington, DC 20024.
Self-Help Homeownership Opportunity Program (SHOP).	Louise Thompson	Louise.D.Thompson@hud.gov	U.S. Department of Housing and Urban Development, Room 7162, 451 7th Street, SW., Washington, DC 20410.
Assisted Living Conversion Program.	Aretha Williams	Aretha.M.Williams@hud.gov	U.S. Department of Housing and Urban Development, Room 6142, 451 7th Street, SW., Washington, DC 20410.
Section 202 Supportive Housing for the Elderly.	Aretha Williams	Aretha.M.Williams@hud.gov	U.S. Department of Housing and Urban Development, Room 6142, 451 7th Street, SW., Washington, DC 20410.
Section 811 Supportive Housing for Persons with Disabilities.	Aretha Williams	Aretha.M.Williams@hud.gov	U.S. Department of Housing and Urban Development, Room 6142, 451 7th Street, SW., Washington, DC 20410.
Demonstration Program for Elderly Housing for Intergenerational Families.	Aretha Williams	Aretha.M.Williams@hud.gov	U.S. Department of Housing and Urban Development, Room 6142, 451 7th Street, SW., Washington, DC 20410.
Capacity Building Program	Karen Daly	Karen.E.Daly@hud.gov	U.S. Department of Housing and Urban Development, Room 7340, 451 7th Street, SW., Washington, DC 20410.

[FR Doc. E8–19349 Filed 8–20–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Agency Information Collection: Comment Request

AGENCY: United States Geological Survey (USGS), Interior.

ACTION: Notice of a new collection.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we will submit to OMB a new information collection request (ICR) for review and approval. This notice provides the public an opportunity to comment on the paperwork burden of this collection.

DATE: You must submit comment on or before September 22, 2008.

ADDRESSES: Send your comments to Phadrea Ponds, Information Collections Clearance Officer, U.S. Geological Survey, 2150–C Center Avenue, Fort Collins, CO 80525 (mail); (970) 226–9230 (fax); or *pponds@usgs.gov* (e-mail). Please reference Information Collection 1028–NEW, LANDSAT.

FOR FURTHER INFORMATION CONTACT: Earlene Swann by mail at U.S. Geological Survey, 2150–C Center Avenue, Fort Collins, CO 80525, or by telephone at (970) 226–9346.

SUPPLEMENTARY INFORMATION:

Title: The Societal Value of Moderate Resolution Satellite Imagery.

OMB Control Number: 1028–new.

Abstract:

USGS Geography investigates some of the most pressing natural resource and environmental issues of our Nation. Observing the Earth with remote sensing satellites, the USGS monitors and analyzes changes on the land, studies connections between people and the land, and provides society with relevant science information to inform public decisions. The USGS's Land Remote Sensing (LRS) Program has initiated a study on the benefits of Landsat imagery. The last comprehensive evaluations of the costs of moderate resolution satellite imagery (such as Landsat) were completed over 30 years ago. This study will attempt to understand the current uses and benefits of the Landsat program. This collection is important because it will provide information that the USGS LRS Program needs to better formulate the Program's new strategic plan.

The information collection process will be conducted by scientists and staff in the Policy Analysis and Science Assistance Branch (PASA) of the USGS. The information collection will be conducted online. The electronic collection will use Dilman's TDM method for Internet Surveys.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR Part 2), and under regulations at 30 CFR 250.197, ''Data and information to be made available to the public or for limited inspection.'' Responses are voluntary. No questions of a ''sensitive'' nature are asked.

Frequency of Collection: One time only.

Respondent's Obligation: Voluntary.

Estimated Number and Description of Respondents: 2500 state and local land management officials, scientists, and geographic researchers.

Estimated Number of Responses: 2500 responses.

Annual Burden Hours: 750 hours.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: We estimate the public reporting burden will average 18 minutes per response. This includes the time for reviewing instructions and completing an online survey.

Estimated Annual Reporting and Recordkeeping ''Non-Hour Cost'': We have not identified any ''non-hour cost'' burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) (44 U.S.C. 3501, *et seq.*) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *'' Agencies must specifically solicit comments. We invite comments concerning this information collection on:

(1) Whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on respondents.

Please note that the comments submitted in response to this notice are a matter of public record. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done. To comply with the public process, we publish this **Federal Register** notice announcing that we will submit this ICR to OMB for approval. The notice provided the required 60-day public comment period.

USGS Information Collection Clearance Officer: Phadrea D. Ponds, 970–226–9445.

Dated: August 15, 2008.

D. Bryant Cramer,

Acting Associate Director for Geography.

[FR Doc. E8–19359 Filed 8–20–08; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14935–J; AK–964–1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to NANA Regional Corporation, Inc., Successor in Interest to Isingnakmeut Incorporated. The lands are in the vicinity of Shungnak, Alaska, and are located in:

Kateel River Meridian, Alaska

T. 16 N., R. 7 E.,
Secs. 13 and 24.

Containing 1,280 acres.

T. 16 N., R. 8 E.,
Sec. 18.

Containing 592.20 acres.

T. 16 N., R. 9 E.,
Secs. 5, 6, 8, and 9;
Secs. 16, 21, 28, and 29.

Containing 5,027.98 acres.

Aggregating 6,900.18 acres.

The subsurface estate in these lands will be conveyed to NANA Regional Corporation, Inc. when the surface estate is conveyed to Isingnakmeut Incorporated. Notice of the decision will also be published four times in the Tundra Drums.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until September 22, 2008 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from:

Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Crystal Arroyo,

Land Law Examiner, Land Transfer Adjudication I.

[FR Doc. E8–19382 Filed 8–20–08; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14903–E; AK–964–1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface and subsurface estates in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Toghotthele Corporation. The lands are in the vicinity of Nenana, Alaska, and are located in:

Fairbanks Meridian, Alaska

T. 3 S., R. 9 W.,
Secs. 25 to 29, inclusive;
Secs. 32 to 36, inclusive.

Containing approximately 6,400 acres.

Notice of the decision will also be published four times in the Fairbanks Daily News-Miner.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until September 22, 2008 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Barbara Opp Waldal,

Land Law Examiner, Branch of Land Transfer Adjudication I.

[FR Doc. E8–19385 Filed 8–20–08; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14941–A, F–14941–A2; AK–965–1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to The Kuskokwim Corporation, Successor in Interest to Stony River Limited. The lands are in the vicinity of Stony River, Alaska, and are located in:

T. 20 N., R. 41 W.,
Secs. 4 to 9, inclusive.

Containing 3,757.97 acres.

T. 20 N., R. 42 W.,
Secs. 25 and 35.

Containing 1,280 acres.
Total Aggregating 5,037.97 acres.

The subsurface estate in these lands will be conveyed to Calista Corporation when the surface estate is conveyed to The Kuskokwim Corporation. Notice of the decision will also be published four times in the Tundra Drums.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until September 22, 2008 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Robert Childers,

Land Law Examiner, Land Transfer Adjudication II.

[FR Doc. E8–19389 Filed 8–20–08; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–110–08–1610–DR]

Notice of Availability of the Record of Decision for the Cascade-Siskiyou National Monument Resource Management Plan/Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Record of Decision (ROD).

SUMMARY: In accordance with the National Environmental Policy Act, the Federal Land Policy and Management Act, and Bureau of Land Management (BLM) policies, the BLM announces the availability of the ROD for the Cascade-Siskiyou National Monument Resource Management Plan (RMP) located in Jackson County in southwestern Oregon. The ROD serves as a final decision for the land use plan decisions described in the approved RMP and becomes effective on the date the ROD is signed.

ADDRESSES: Copies of the Cascade-Siskiyou National Monument ROD/RMP are available upon request from the BLM Medford District Office, 3040 Biddle Road, Medford, OR 97504 or by calling (541) 618–2245. It may also be available on the Internet at: *http://www.or.blm.gov/Medford/CSNM.*

FOR FURTHER INFORMATION CONTACT: Howard Hunter, Assistant Monument Manager, BLM, Medford District Office, 3040 Biddle Road, Medford, OR 97504 or at (541) 618–2256.

SUPPLEMENTARY INFORMATION: The Cascade-Siskiyou National Monument ROD/RMP was developed with broad public participation through a six-year

collaborative planning process. This ROD/RMP addresses management of approximately 52,947 acres of public land. The Cascade-Siskiyou National Monument ROD/RMP is designed to meet the primary goal of protecting, maintaining, restoring or enhancing the long-term ecological integrity of the Cascade-Siskiyou National Monument. The management actions detailed in the RMP address vegetation management, transportation and access, livestock grazing, recreation, visitor use, facilities, and rights-of-way. No further administrative remedies are available at this time for land use decisions made in the RMP.

With one exception, the approved Cascade-Siskiyou National Monument RMP is very similar to the proposed management in Cascade-Siskiyou National Monument Proposed RMP/Final EIS (FEIS) published in February 2005. The BLM received 12 protests on the Proposed RMP/FEIS. In response to one of the protests, a decision was made to allow flexibility to lift the peregrine falcon seasonal restrictions on the south and east sides of Pilot Rock, from February 1 to July 30 each year, if it is determined by the BLM that peregrine falcons are not nesting, or that their young have been confirmed to have fledged and moved a sufficient distance from the rock face to avoid disturbance by climbers. Other minor modifications to the proposed plan corrected errors that were noted during review of the Proposed RMP/FEIS and provide further clarification for some of the decisions.

Edward W. Shepard,

State Director.

[FR Doc. E8–19268 Filed 8–20–08; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

Herring River Restoration, Environmental Impact Statement, Cape Cod National Seashore, MA

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Intent to prepare an Environmental Impact Statement for the Herring River Restoration, Cape Cod National Seashore.

SUMMARY: In accordance with § 102(2)(C) of the National Environmental Policy Act of 1969, as amended (NEPA), the National Park Service is preparing an Environmental Impact Statement for the Herring River Restoration Project, Cape Cod National Seashore, Massachusetts. This restoration project is being developed in partnership with the Town of Wellfleet and the Town of Truro, and in cooperation with Massachusetts Coastal Zone Management, U.S. Fish and Wildlife Service, National Oceanic and Atmospheric Administration, and Natural Resources Conservation Service. In addition to satisfying the requirements and intent of the NEPA, this Environmental Impact Statement will also be developed in compliance with the Massachusetts Environmental Policy Act (MEPA) and thus will result in a combined Environmental Impact Statement/Environmental Impact Report (EIS/EIR).

The purpose of this project and EIS/EIR is to provide for the restoration of over 1100 acres of salt-marsh and estuarine habitat in the Herring River which has been degraded by diking and drainage since 1909. Restoration is needed to: (1) Re-establish the physical connection between the estuary and Cape Cod Bay for natural material exchange and for access by marine animals including migratory fish; (2) restore aquatic habitat and ecosystem services both within the estuary and in receiving waters of Wellfleet Harbor by reversing the water-quality impacts of 100 years of diking and drainage; (3) replace existing invasive exotic plant species with native salt-marsh species through the reestablishment of natural estuarine salinity; (4) restore ecosystem productivity through the reestablishment of naturally high tidal range; (5) minimize the long-term management and social costs of continued diking in the face of current, and likely accelerating, sea-level rise; and (6) guide a phased, carefully monitored and adaptively managed long-term restoration program. The EIS/EIR will examine a range of feasible alternatives and evaluate potential impacts on natural resources, cultural resources, and the human environment.

The public is invited to comment on the purpose, need, objectives, preliminary alternatives, or any other issues associated with the plan. A scoping newsletter has been prepared that details the purpose, need, and issues identified to date. The newsletter is available on-line at *http://parkplanning.nps.gov*. Select ''Cape Cod NS'' and follow the link to the Herring River Restoration EIS. Paper copies may also be obtained by e-mailing *CACO_Herring_River@nps.gov*, or from Carrie Phillips, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667, 508–349–3785.

DATES: The NPS will accept comments from the public regarding this Notice of Intent until October 31, 2008. In addition, public scoping meetings will be held in Wellfleet beginning in August 2008. Dates and times will be advertised in local newspapers, the park Web site (*http://www.nps.gov/caco*), the NPS Planning, Environment and Public Comment Web site (*http://parkplanning.nps.gov*) or contact Carrie Phillips, Cape Cod NS, at the address shown below.

ADDRESSES: Written comments may be submitted by mail or hand delivery to Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667. Comments may be submitted electronically at *http://parkplanning.nps.gov*, or by e-mail to *CACO_Herring_River@nps.gov*. Comments may also be provided at the public scoping meetings which will be held at the Wellfleet Senior Center (Council on Aging), 715 Old Kings Highway, Wellfleet, Massachusetts.

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.

FOR FURTHER INFORMATION CONTACT: Carrie Phillips, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667, 508–349–3785; e-mail: *CACO_Herring_River@nps.gov*.

SUPPLEMENTARY INFORMATION: The Herring River estuary comprised over half of the tidal marshes of Wellfleet Harbor prior to diking in 1909, provided 1100 acres of feeding, spawning and nursery habitat to thousands of species of resident and migratory marine and estuarine animals, and exported foods that promoted the high productivity of receiving waters throughout Wellfleet Bay. In particular, the river's herring and eel runs and shellfish beds were an economic and social focus of the maritime community. Thus the 1909 diking was controversial, and is increasingly so in light of the high ecological and social values of natural salt marshes identified over the past few decades. Since 1961, 80 percent of this estuary has been incorporated within the boundaries of Cape Cod National Seashore, a unit of the National Park Service responsible for preserving and restoring native ecosystems.

Nearly 30 years of ecological research by National Park Service and cooperating scientists into the effects of

the 1909 diking of the Herring River estuary have documented chronic and severe water-quality problems and frequent fish kills. In response, the Town of Wellfleet in August 2005 appointed a Herring River Technical Committee, representing the Towns of Wellfleet and Truro, Massachusetts Coastal Zone Management, Cape Cod National Seashore, and other federal, state and regional resource-management agencies, to develop a Conceptual Restoration Plan. The Conceptual Restoration Plan was completed in October 2007 and accepted by the towns and the Seashore shortly thereafter under an agreement that further established a new Herring River Restoration Committee tasked with guiding the project through both federal NEPA and state MEPA review and developing a detailed restoration plan.

Through an extensive preliminary scoping process conducted during the development of the Conceptual Restoration Plan, the Herring River Technical Committee identified these issues: Restoration of the estuary's functions through reconnection to the marine environment, improvement of surface-water quality, protection of shellfish beds, protection of potable groundwater quality, protection of adjacent private properties and public roadways, nuisance mosquito breeding, and exotic plants.

In addition to the no action alternative, alternatives that could be considered in the EIS/EIR include full tidal restoration and a phased and incremental process of tidal restoration, monitoring and analysis of system response, public outreach and adaptive management.

Dated: August 12, 2008.

Dennis R. Reidenbach,

Regional Director, Northeast Region, National Park Service.

[FR Doc. E8–19436 Filed 8–20–08; 8:45 am]

BILLING CODE 4310–WU–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item: Horner Collection, Oregon State University, Corvallis, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item in the possession of the Horner Collection, Oregon State University, Corvallis, OR, that meets the definition of ''unassociated funerary object'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural item. The National Park Service is not responsible for the determinations in this notice.

The Museum of Oregon Country, Oregon Agricultural College was renamed the John B. Horner Museum of the Oregon Country in 1936, and became commonly known as the Horner Museum. The Oregon Agricultural College was renamed the Oregon State College in 1937, and became Oregon State University in 1962. The Horner Museum closed in 1995. Currently, cultural items from the Horner Museum are referred to as the Horner Collection, which is owned by, and in the possession of, Oregon State University.

The Horner Collection, Oregon State University professional staff consulted with representatives of the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians of Oregon; Confederated Tribes of the Grand Ronde Community of Oregon; Confederated Tribes of the Siletz Reservation, Oregon; Coquille Tribe of Oregon; Karuk Tribe of California; Smith River Rancheria, California; and Yurok Tribe of the Yurok Reservation, California. The Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Chehalis Reservation, Washington; Cowlitz Indian Tribe, Washington; Hawai'i Island Burial Council; Hoh Indian Tribe of the Hoh Indian Reservation, Washington; Hui Malama I Na Kupuna O Hawai'i Nei; Jamestown S'Klallam Tribe of Washington; Kauai/Niihau Island Burial Council; Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington; Lummi Tribe of the Lummi Reservation, Washington; Makah Indian Tribe of the Makah Indian Reservation, Washington; Maui/Lanai Island Burial Council; Molokai Island Burial Council; O'ahu Burial Committee; Office of Hawaiian Affairs; Quartz Valley Indian Community of the Quartz Valley Reservation of California; Quileute Tribe of the Quileute Reservation, Washington; Quinault Tribe of the Quinault Reservation, Washington; Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington; Skokomish Indian Tribe of the Skokomish Reservation, Washington; Swinomish Indians of the Swinomish Reservation, Washington; and Tulalip Tribes of the Tulalip Reservation, Washington were informed of the item in this claim, but did not participate in the consultations.

At an unknown date, a trinket basket was removed from Vancouver, Clark County, WA, probably by Mrs. J.E. Barrett. Mrs. Barrett brought the basket to the Horner Museum in 1934 and gifted it to the Horner Museum in 1972. The Horner Collection, Oregon State University has no evidence the trinket basket was ever buried with any individual. However, J.E. Barrett is known to have collected cultural items from burials and mounds. Based on consultation and museum records, the Horner Collection, Oregon State University has identified this cultural item as an unassociated funerary object.

Tribal representatives have identified this basket as typical of those found at the mouth of the Columbia River and displays characteristics of Clatsop, Tillamook, and Chinook basketry techniques and materials. The Clatsop, Nehalem, Tillamook, Nestucca, Neachesna (Salmon River Tillamook), and Siletz Band of Tillamooks were all parties to the 1855 Coast Treaty. The treaty was never ratified and the northern Oregon coastal bands were not forced to remove to the Siletz Reservation as stipulated in the treaty. For the most part, remaining in their traditional territories the northern Oregon coast bands traded and inter-married with members of the Confederated Tribes of Siletz Reservation, Oregon and Confederated Tribes of the Grand Ronde Community of Oregon. Many of the Tillamook families at Salmon River (within the Siletz Reservation and often having Chinook and Clatsop ancestry) received Siletz Reservation Allotments.

Officials of the Horner Collection, Oregon State University have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the one cultural item described above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and is believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the Horner Collection, Oregon State University also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary object and the Confederated Tribes of the Grand Ronde Community of Oregon and Confederated Tribes of the Siletz Reservation, Oregon.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary object should contact Sabah Randhawa, Executive Vice President and Provost, President's Office, Oregon State University, 600 Kerr Administration Building, Corvallis, OR 97331, telephone (541) 737–8260, before September 22, 2008. Repatriation of the unassociated funerary object to the Confederated Tribes of the Siletz Reservation, Oregon may proceed after that date if no additional claimants come forward.

Horner Collection, Oregon State University is responsible for notifying the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Chehalis Reservation, Washington; Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians of Oregon; Confederated Tribes of the Grand Ronde Community of Oregon; Coquille Tribe of Oregon; Confederated Tribes of the Siletz Reservation, Oregon; Cowlitz Indian Tribe, Washington; Hawai'i Island Burial Council; Hoh Indian Tribe of the Hoh Indian Reservation, Washington; Hui Malama I Na Kupuna O Hawai'i Nei; Jamestown S'Klallam Tribe of Washington; Karuk Tribe of California; Kauai/Niihau Island Burial Council; Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington; Lower Umpqua and Siuslaw Indians of Oregon; Lummi Tribe of the Lummi Reservation, Washington; Makah Indian Tribe of the Makah Indian Reservation, Washington; Maui/Lanai Island Burial Council; Molokai Island Burial Council; O'ahu Burial Committee; Office of Hawaiian Affairs; Quileute Tribe of the Quileute Reservation, Washington; Quartz Valley Indian Community of the Quartz Valley Reservation of California; Quinault Tribe of the Quinault Reservation, Washington; Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington; Skokomish Indian Tribe of the Skokomish Reservation, Washington; Smith River Rancheria, California; Swinomish Indians of the Swinomish Reservation, Washington; Tulalip Tribes of the Tulalip Reservation, Washington; and Yurok Tribe of the Yurok Reservation, California that this notice has been published.

Dated: July 14, 2008

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–19338 Filed 8–20–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: Horner Collection, Oregon State University, Corvallis, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Horner Collection, Oregon State University, Corvallis, OR, that meet the definition of ''unassociated funerary objects'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

The 17 cultural items are 1 club, 1 beaded bottle, 9 utility baskets, 1 goblet-shaped basket, 1 small bag, 1 mounted arrow point, 1 porcupine quill headband, 1 string of beads, and 1 beaded sash.

The Museum of Oregon Country, Oregon Agricultural College was renamed the John B. Horner Museum of the Oregon Country in 1936, and became commonly known as the Horner Museum. The Oregon Agricultural College was renamed the Oregon State College in 1937, and became Oregon State University in 1962. The Horner Museum closed in 1995. Currently, cultural items from the Horner Museum are referred to as the Horner Collection, which is owned by, and in the possession of, Oregon State University.

Horner Collection, Oregon State University professional staff consulted with representatives of the Alturas Indian Rancheria, California; Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians of Oregon; Confederated Tribes of the Grand Ronde Community of Oregon; Confederated Tribes of the Siletz Reservation, Oregon; Pit River Tribe, California (includes XL Ranch, Big Bend, Likely, Lookout, Montgomery Creek and Roaring Creek Rancherias); Redding Rancheria, California; Smith River Rancheria, California; and Yurok Tribe of the Yurok Reservation, California. The Bear River Band of the Rohnerville Rancheria, California; Big Lagoon Rancheria, California; Blue Lake Rancheria, California; Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California; Cedarville Rancheria, California; Cher-Ae Heights Indian Community of the Trinidad Rancheria, California; Cortina Indian Rancheria of Wintu Indians of California; Fort Bidwell Indian Community of the Fort Bidwell Reservation of California; Elk Valley Rancheria, California; Grindstone Indian Rancheria of Wintun-Wailaki Indians of California; Hoopa Valley Tribe, California; Modoc Tribe of Oklahoma; Quartz Valley Indian Community of the Quartz Valley Reservation of California; Resighini Rancheria, California; Round Valley Indian Tribes of the Round Valley Reservation, California; Rumsey Indian Rancheria of Wintun Indians of California; and Susanville Indian Rancheria, California were notified of the items in this notice, but chose not to participate in the consultation.

At an unknown date, a club was taken from an unknown site by an unknown person. In 1933, the club was brought to the Horner Museum by J.G. Crawford. The club was accessioned into the Horner Museum in 1958. Tribal representatives of the Redding Rancheria, California have identified this item as Pit River in cultural affiliation and as an item that would typically have been buried with the owner. Horner Collection has no documentation that the item was removed from a burial site, however, the donor, Mr. J. G. Crawford, has donated other items known to have come from graves and mounds to the Horner Museum and has collected from traditional Wintu territy. Based on the history of the collector and consultation evidence, officials of the Horner Collection, Oregon State University reasonably believe the cultural item to be an unassociated funerary object.

At an unknown date, a beaded bottle was obtained from an unknown person at Scott Bar, Siskiyou County, CA, by J.E. Barrett. At an unknown date, three utility baskets were taken from McCloud, CA, by J.E. Barrett. At an unknown date and from an unknown location, a utility basket made by Pit River Indians was collected by J.E. Barrett. At an unknown date, two baskets were taken from an unknown area by J.E. Barrett. Museum records identify these baskets as Pit River Indian. Mrs. J. E. Barrett loaned the beaded bottle, the four utility baskets, and two Pit River Indian baskets to the museum on February 28, 1927. On November 30, 1972, Mrs. Barrett's surviving daughter-in-law, Mrs.

Edmond Barrett, donated the cultural items to the Oregon State University Museum. Tribal representatives of the Redding Rancheria, California have identified these cultural items as Pit River in cultural affiliation and as items that would typically have been buried with the owner. Horner Collection has no documentation that the items were removed from burial sites. However, Mr. J.E Barrett has donated other items known to have come from graves and mounds to the Horner Museum and to have collected from traditional Wintu territory. Based on the history of the collector and consultation, officials of the Horner Collection, Oregon State University reasonably believe the cultural items to be unassociated funerary objects. The seven unassociated funerary objects are one beaded bottle, the four utility baskets, and two Pit River Indian baskets.

In January 1946, Mrs. Nora L. Bingley loaned a mounted arrow point to the Oregon State University Museum. The Horner Collection has no provenience for this item. After 25 years, the Horner Museum considered this cultural item to be abandoned and assumed control because there was no additional contact from Mrs. Bingley. Tribal representatives of the Redding Rancheria, California have identified this item as Pit River in cultural affiliation and as an item that would typically have been buried with the owner. Based on consultation, officials of the Horner Collection, Oregon State University reasonably believe the cultural item to be an unassociated funerary object.

On June 6, 1984, Mrs. Eileen Waring Dew donated two gathering baskets removed from the Pit River Drainage area in southern Oregon and northern California. The donor indicates that the baskets were from her parents' collection and were made by Pit River Indians between 1880 and 1900. Tribal representatives of the Redding Rancheria, California have identified these items as Pit River in cultural affiliation, are patrimonial in design, and would have typically been buried with the owner. Based on the consultation evidence, officials of the Horner Collection, Oregon State University reasonably believe the cultural items are unassociated funerary objects.

On December 5, 1933, Mrs. S.C. Dyer donated a porcupine quill headband to the Oregon State University Museum. The Horner Collection has no provenience for this item. Tribal representatives of the Redding Rancheria, California have identified this headband as Pit River in cultural affiliation and as a ceremonial item. This is an item that would typically have been buried with the owner. The donor was known to collect from graves or mounds. Based on the history of the collector and consultation evidence, officials of the Horner Collection, Oregon State University reasonably believe the cultural item to be an unassociated funerary object.

On June 8, 1973, the C.B Kennedy family and Ruth Kennedy, wife of Dr. N.L. Tartar, donated two baskets, a string of beads, and a sash to the Oregon State University Museum. The Horner collection does not have a provenience for these items. Tribal representatives of the Redding Rancheria, California have identified these items as Pit River in cultural affiliation and as items that would typically have been buried with the owner. Based on the consultation evidence, officials of the Horner Collection, Oregon State University reasonably believe the cultural items are unassociated funerary objects.

A small bag with unknown provenience and an unknown donor was inventoried in the Horner Collection. Tribal representatives of the Redding Rancheria, California have identified the bag as Pit River in cultural affiliation and as an item that typically would have been buried with the owner. The curator of the Portland Art Museum also identified the bag as Pit River in cultural affiliation. Based on consultation evidence, officials of the Horner Collection, Oregon State University reasonably believe the cultural item to be an unassociated funerary object.

Wintu traditional territory included what are now known as Trinity, Shasta, Siskiyou and Tehama Counties; from Sacramento River to high divide between Trinity and Scott Rivers to Black Butte and Mt. Shasta, north of Black Fox Mountain. Yana traditional territory includes the upper Sacramento River Valley and foothills due east; south to Rock Creek and encompassed the upper Deer Creek drainage through the Battle, Cow, and Montgomery Creek drainages. Traditional territory for the eleven bands of Achumawi or Pit River Indians in northeastern California was roughly from Mount Shasta and Lassen Peak to the Warner Range. Descendants of the Wintu, Achumawi, and Yana are members of the Pit River Tribe, California and Redding Rancheria, California.

Officials of the Horner Collection, Oregon State University have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the 17 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of Horner Collection, Oregon State University also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Pit River Tribe, California and Redding Rancheria, California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Sabah Randhawa, Executive Vice President and Provost, President's Office, Oregon State University, 600 Kerr Administration Building, Corvallis, OR 97331, telephone (541) 737–8260, before September 22, 2008. Repatriation of the unassociated funerary objects to the Redding Rancheria, California may proceed after that date if no additional claimants come forward.

The Horner Collection, Oregon State University is responsible for notifying the Alturas Indian Rancheria, California; Bear River Band of the Rohnerville Rancheria, California; Big Lagoon Rancheria, California; Big Valley Band of Pomo Indians of the Big Valley Rancheria, California; Blue Lake Rancheria, California; Bridgeport Paiute Indian Colony of California; Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California; Cahto Indian Tribe of the Laytonville Rancheria, California; Cedarville Rancheria, California; Cher-Ae Heights Indian Community of the Trinidad Rancheria, California; Cloverdale Rancheria of Pomo Indians of California; Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians of Oregon; Confederated Tribes of the Grand Ronde Community of Oregon; Confederated Tribes of the Siletz Reservation, Oregon; Cortina Indian Rancheria of Wintu Indians of California; Coyote Valley Band of Pomo Indians of California; Dry Creek Rancheria of Pomo Indians of California; Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California; Elk Valley Rancheria, California; Fort Bidwell Indian Community of the Fort Bidwell Reservation of California; Grindstone Indian Rancheria of Wintun-Wailaki Indians of California; Guidiville Rancheria of California; Hoopa Valley Tribe, California; Hopland Band of Pomo Indians of the Hopland Rancheria, California; Kashia Band of Pomo Indians

of Stewarts Point Rancheria, California; Klamath Indian Tribe of Oregon; Lytton Rancheria of California; Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria, California; Middletown Rancheria of Pomo Indians of California; Modoc Tribe of Oklahoma; Pinoleville Pomo Nation, California; Pit River Tribe, California; Potter Valley Tribe, California; Quartz Valley Indian Community of the Quartz Valley Reservation of California; Redding Rancheria, California; Redwood Valley Rancheria of Pomo Indians of California; Resighini Rancheria, California; Robinson Rancheria of Pomo Indians of California; Round Valley Indian Tribes of the Round Valley Reservation, California; Rumsey Indian Rancheria of Wintun Indians of California; Scotts Valley Band of Pomo Indians of California; Sherwood Valley Rancheria of Pomo Indians of California; Smith River Rancheria, California; Susanville Indian Rancheria, California; Upper Lake Band of Pomo Indians of Upper Lake Rancheria of California; Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, California; and Yurok Tribe of the Yurok Reservation, California that this notice has been published.

Dated: July 14, 2008

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–19312 Filed 8–20–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: Horner Collection, Oregon State University, Corvallis, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Horner Collection, Oregon State University, Corvallis, OR, that meets the definition of ''unassociated funerary objects'' or ''sacred objects'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

The 19 cultural items are 18 unassociated funerary objects and 1 sacred object. The 18 unassociated funerary objects are 3 wedges, 1 club or pestle, 7 pestles, 1 pestle fragment, 1 copper pendant, 1 ground steatite tubular pipe, 1 mano, 2 mauls, and 1 unknown lithic item. The one sacred object is a blue schist club in the shape of a paddle.

The Museum of Oregon Country, Oregon Agricultural College was renamed the John B. Horner Museum of the Oregon Country in 1936, and became commonly known as the Horner Museum. The Oregon Agricultural College was renamed the Oregon State College in 1937, and became Oregon State University in 1962. The Horner Museum closed in 1995. Currently, cultural items from the Horner Museum are referred to as the Horner Collection, which is owned by, and in the possession of, Oregon State University.

The Horner Collection, Oregon State University professional staff consulted with representatives of the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians of Oregon; Confederated Tribes of the Grand Ronde Community of Oregon; Confederated Tribes of the Siletz Reservation, Oregon; Coquille Tribe of Oregon; Karuk Tribe of California; Smith River Rancheria, California; and Yurok Tribe of the Yurok Reservation, California. The Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Chehalis Reservation, Washington; Cowlitz Indian Tribe, Washington; Hawai'i Island Burial Council; Hoh Indian Tribe of the Hoh Indian Reservation, Washington; Hui Malama I Na Kupuna O Hawai'i Nei; Jamestown S'Klallam Tribe of Washington; Kauai/Niihau Island Burial Council; Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington; Lummi Tribe of the Lummi Reservation, Washington; Makah Indian Tribe of the Makah Indian Reservation, Washington; Maui/Lanai Island Burial Council; Molokai Island Burial Council; O'ahu Burial Committee; Office of Hawaiian Affairs; Quartz Valley Indian Community of the Quartz Valley Reservation of California; Quileute Tribe of the Quileute Reservation, Washington; Quinault Tribe of the Quinault Reservation, Washington; Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington; Skokomish Indian Tribe of the Skokomish Reservation, Washington; Swinomish Indians of the Swinomish Reservation, Washington; and Tulalip Tribes of the Tulalip Reservation, Washington were informed of items in this claim, but did not participate in the consultations.

At an unknown date, a blue schist club in the shape of a paddle was removed from an unknown location in Illahee, Curry County, OR, by an unknown person. In 1940, the club was brought to the Horner Museum by Mrs. C.H. Pettinger. In 1965, the club was accessioned into the Horner Collection.

During consultation, a representative of the Confederated Tribes of the Siletz Reservation, Oregon, identified the paddle as a ceremonial paddle for stirring hot stones used to cook acorns in cooking baskets for feasts and that it is needed for ceremonies that continue to be practiced today. There are other known examples of stone paddles from this same area. Illahe is in the divide between Chasta Costa (Athabaskan) and Takelma territory along the Rogue River. The Illahe area is primarily considered to be Chasta Costa. The Chasta Costa people were brought to the Siletz reservation in 1856. *The Handbook of American Indians North of Mexico* Part I (ed. Fredrick Webb Hodge, 1912), states that the Chasta Costa were an Athabaskan group living mostly on the north bank of the Rogue River from its junction with the Illinois River upstream nearly to the mouth of the Applegate River and that the Chasta Costa were taken to the Siletz reservation in 1856. Museum records and tribal representatives agree that this object is culturally affiliated with the Confederated Tribes of the Siletz Reservation, Oregon and that the paddle is a sacred item needed for use in traditional ceremonies that continue to be practiced today.

At an unknown date, cultural items were removed from an unknown site near Pistol River, Curry County, OR. In 1970, Mrs. Dorothy Timeus donated the cultural items to the museum. According to Mrs. Timeus, the cultural objects were found in the sand dunes near the Pistol River. It is unknown if the cultural objects were removed by Mrs. Timeus. The Horner Collection, Oregon State University has no evidence the cultural items were ever buried with any individual. However, Mrs. Timeus is known to have collected human remains and cultural items from burials and mounds. Based on consultation and museum records, the Horner Collection, Oregon State University has identified these cultural items as unassociated funerary objects. The 11 unassociated funerary objects are 6 pestles, 1 pestle fragment, 1 mano, 2 mauls, and 1 unknown lithic.

A letter written by Mr. Harmon Timeus, Mrs. Timeus' son, states, ''I

have checked with several authorities concerning the Indian skulls and relics...they are all from the To-To-Tin tribe. There were many smaller groups of this tribe. The Chetl-essen-tans is the specific group which inhabited the land where the relics were found.'' The authorities cited in the letter are unknown. The tribe mentioned in the letter is most likely the Chet-less-ing-ton Band of Too-too-to-ney tribe, who were located at the eddy of Pistol River in the 1800s. The Chet-less-ing-ton were signatories to the Oregon Coast Treaty of 1855 and by 1857 the Chet-less-ing-ton were residing on the reservation of the Confederated Tribes of the Siletz Reservation, Oregon (Harris, 1858). The Chet-less-ing-ton are a subgroup of the Athabaskan/Tututni, which is one of the member tribes of the Confederated Tribes of the Siletz Reservation, Oregon.

At an unknown date, a club or pestle was removed from Wellen, Jackson County, OR, by an unknown person. In 1912, a pestle was removed from the mouth of the Applegate River, Josephine County, OR, by an unknown person. In 1934, the two cultural items were donated to the Horner Museum by J.G. Crawford. The Horner Collection, Oregon State University has no evidence the club/pestle or pestle was ever buried with any individual. However, J.G. Crawford is known to have collected human remains and cultural items from burials and mounds. Based on consultation and museum records, the Horner Collection, Oregon State University has identified these cultural items as unassociated funerary objects.

The traditional territory of the Shasta, Takelma, and Applegate River Athabaskans (Dakubetede) included Jackson and Josephine Counties, OR. In May 1857, all three groups were permanently moved to the Siletz Reservation.

At an unknown date, a black steatite tubular pipe was removed from an Indian grave on the Klamath River near Copco, Siskiyou County, CA, by an unknown person. In 1928, the pipe was donated to the Horner Museum by C.J. Lisle. Museum records clearly state this object was taken from a grave, but there is no indication that the human remains were exhumed. Based on museum records, Horner Collection, Oregon State University identifies this cultural item as an unassociated funerary object.

The Yreka, Fort Jones, Scott River, and Upper Klamath River areas were traditional territories for many of the people who were taken to the Siletz Reservation. Some Siletz tribal members still reside in those areas. The Shasta people of northern California and southern Oregon moved to Upper Farm and Shasta Farm on the Siletz Agency in May 1857 and Rogue River, Chasta, Scoton and Grave Creek treaty funds were expended in the development of those farms. A schoolhouse, agency hospital, mills, and other treaty stipulations were carried out by the Siletz agency because these tribes were residents on the Siletz Reservation.

At an unknown date, a copper pendant was removed from an unknown location possibly by J.B. Horner. J.B. Horner donated the pendant to the Horner Museum in 1933. A tribal representative of the Confederated Tribes of the Siletz Reservation, Oregon identified that copper pendants and bangles have ''been frequently found in burials from the Willamette Valley and all parts of the Oregon Coast, all of which is within the aboriginal territory of the Confederated Tribes of Siletz. A good portion of that area is also within the original boundaries of the Siletz Reservation, as established in 1855.'' During consultation, the copper pendant was identified as an object that appears to have been buried at one time and as an object that would have been buried with the owner. The Horner Collection, Oregon State University has no evidence the pendant was ever buried with any individual. However, based on consultation, the Horner Collection, Oregon State University has identified this cultural item as an unassociated funerary object.

At an unknown date, three wedges were removed from Seal Rock near Newport, Lincoln County, OR, by an unknown person. These cultural items were brought to the Horner Museum in 1933 by J.G. Crawford and accessioned into the Horner Collection in 1958. The Horner Collection, Oregon State University has no evidence the three wedges were ever buried with any individual. However, Mr. Crawford is known to have collected human remains and cultural items from burials and mounds. Based on consultation and museum records, the Horner Collection, Oregon State University has identified these cultural items as unassociated funerary objects.

The Alsean tribal village of Kitau, now known as Seal Rock, is within the boundaries of the Siletz Reservation established in 1855 and is the site of a large midden containing many burials from Kitau. The Alsea tribe's homeland was with the Siletz Reservation and they became members of the Confederated Tribes of the Siletz Reservation, Oregon.

Officials of the Horner Collection, Oregon State University have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the 18 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the Horner Collection, Oregon State University also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Confederated Tribes of the Siletz Reservation, Oregon.

Officials of the Horner Collection, Oregon State University have determined that, pursuant to 25 U.S.C. 3001 (3)(C), the one cultural item described above is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Horner Collection, Oregon State University also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the sacred object and the Confederated Tribes of the Siletz Reservation, Oregon.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the sacred object and/or unassociated funerary objects should contact Sabah Randhawa, Executive Vice President and Provost, President's Office, Oregon State University, 600 Kerr Administration Building, Corvallis, OR 97331, telephone (541) 737–8260, before September 22, 2008. Repatriation of the sacred object and unassociated funerary objects to the Confederated Tribes of the Siletz Reservation, Oregon may proceed after that date if no additional claimants come forward.

Horner Collection, Oregon State University is responsible for notifying the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Chehalis Reservation, Washington; Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians of Oregon; Confederated Tribes of the Grand Ronde Community of Oregon; Coquille Tribe of Oregon; Confederated Tribes of the Siletz Reservation, Oregon; Cowlitz Indian Tribe, Washington; Hawai'i Island Burial Council; Hoh Indian Tribe of the Hoh Indian Reservation, Washington; Hui Malama I Na Kupuna O Hawai'i Nei; Jamestown S'Klallam Tribe of Washington; Karuk Tribe of California; Kauai/Niihau Island Burial Council; Lower Elwha Tribal

Community of the Lower Elwha Reservation, Washington; Lower Umpqua and Siuslaw Indians of Oregon; Lummi Tribe of the Lummi Reservation, Washington; Makah Indian Tribe of the Makah Indian Reservation, Washington; Maui/Lanai Island Burial Council; Molokai Island Burial Council; O'ahu Burial Committee; Office of Hawaiian Affairs; Quileute Tribe of the Quileute Reservation, Washington; Quartz Valley Indian Community of the Quartz Valley Reservation of California; Quinault Tribe of the Quinault Reservation, Washington; Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington; Skokomish Indian Tribe of the Skokomish Reservation, Washington; Smith River Rancheria, California; Swinomish Indians of the Swinomish Reservation, Washington; Tulalip Tribes of the Tulalip Reservation, Washington; and Yurok Tribe of the Yurok Reservation, California that this notice has been published.

Dated: July 14, 2008

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–19330 Filed 8–20–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: Horner Collection, Oregon State University, Corvallis, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Horner Collection, Oregon State University, Corvallis, OR, that meets the definition of ''unassociated funerary objects'' and/or ''objects of cultural patrimony'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

The 63 cultural items are 9 gaming balls, 2 pestles, 1 shot glass, 7 menhirs (monoliths), 1 bone paddle, 28 projectile points, 1 drill, 1 drill fragment, 2 knives, 6 bean-shaped stones, 1 mortar, 1 net weight, 1 obsidian nodule, 1 mill stone, and 1 hammerstone.

The Museum of Oregon Country, Oregon Agricultural College was renamed the John B. Horner Museum of the Oregon Country in 1936, and became commonly known as the Horner Museum. The Oregon Agricultural College was renamed the Oregon State College in 1937, and became Oregon State University in 1962. The Horner Museum closed in 1995. Currently, cultural items from the Horner Museum are referred to as the Horner Collection, which is owned by, and in the possession of, Oregon State University.

Horner Collection, Oregon State University professional staff consulted with representatives of the Confederated Tribes of the Grand Ronde Community of Oregon and Confederated Tribes of the Siletz Reservation, Oregon.

In the 1920s, cultural items were found in a subterranean circle of vertical columns (a henge) near Salem, Marion County, OR, by an unknown person. Museum records have attributed the site as ''from the Phallic Temple near Salem.'' In 1981, the six menhirs were donated to the Horner Museum by the heirs of J.L. Hills. At an unknown date, a single menhir was found by an unknown person. Museum records state that it was probably found in Marion County, OR. In 1985, this menhir was donated to the Horner Museum by Phil Green. The seven menhirs are stone items that have a phallic form and is possible they represent part of the ''Phallic Temple.''

In 1933, six bean shaped stones found, at an unknown time by an unknown person, at the ''Phallic Temple'' near Salem, Marion County, OR, were brought to the Horner Museum by either Mr. Harralson or J.G. Crawford. These cultural items are closely related to menhirs.

Menhirs marked areas of special significance that continue to have on-going significance to the Confederated Tribes of the Grand Ronde Community of Oregon. The 13 cultural items are objects of cultural patrimony and could not be alienated by any one tribal member.

Salem, Marion County, OR, is in the traditional territory of the Confederated Tribes of the Grand Ronde Community of Oregon and was ceded by the Treaty with the Kalapuya made and concluded in Dayton, Oregon Territory on January 10, 1855. Joel Palmer, Superintendent of Indian Affairs, established a temporary camp on the south fork of the Yamhill River (Grand Ronde) in January 1856 and this is where the Umpquas, Kalapuyas, and Molallas resided. By 1857, an executive order established Grand Ronde as a permanent reservation. The Horner Collection, Oregon State University has no evidence the items were ever buried with any individual. However, Mr. Crawford and Mr. Hill were known to have collected human remains and cultural items from burials and mounds. Based on the history of the collectors, consultation evidence, and museum records, the Horner Collection, Oregon State University reasonably believes the cultural items are objects of cultural patrimony and unassociated funerary objects.

At an unknown date, cultural items were found in the Kalapuya mounds in Linn County, OR, by an unknown person. In 1933, the cultural items were brought to the Horner Museum by J.G. Crawford and G.W. Wright and were accessioned into the Horner Collection in 1958. The 15 cultural items are 9 gaming balls, 1 pestle, 1 mortar, 1 net weight, 1 obsidian nodule, 1 mill stone, and 1 hammerstone.

At an unknown date, one cultural item was found in Olings mounds on the Kalapuya River, Linn County, OR, by an unknown person. In 1981, the cultural item was donated to the Horner Musuem by the heirs of J.L. Hill. The cultural item is a bone paddle.

At an unknown date, one cultural item was found in the Davis mound in the Willamette Valley, OR, by an unknown person. In 1919, the cultural item was donated to the Horner Museum by Ward G. Sinclair. The one cultural item is a pestle.

At an unknown date, cultural items were found by an unknown person. Museum records are unclear if all or only part of these cultural items were found in the Kalapuya mounds, Linn County, OR. In 1954, the cultural items were donated to the Horner Collection by Dr. A.G. Prill. The 32 cultural items are 28 projectile points, 1 drill, 1 drill fragment, and 2 knives

The Willamette Valley and Linn County (which is a part of the Willamette Valley) is the traditional territory of the Confederated Tribes of the Grand Ronde Community and is part of the area ceded by the 1855 Kalapuya treaty. Museum records state these items came from mounds and Mr. Crawford, Mr. Hill, Mr. Sinclair, Mr. Wright, and Dr. Prill are known to have collected cultural items from burials and mounds. Based on the history of the collectors, consultation evidence, and museum records, the Horner Collection, Oregon State University reasonably believes the cultural items are unassociated funerary objects.

In 1916, a shot glass was ''found in an Indian grave at Westport,'' Clatsop County, OR, probably by Miss Frida Flood who gifted the cultural item to the Horner Collection in 1929. Museum records clearly state this object was taken from a grave, but there is no indication that the remains were exhumed. Officials of the Horner Collection, Oregon State University reasonably believe this item is an unassociated funerary object.

Westport is in Clatsop County, OR, which is in the traditional territory of the Confederated Tribes of the Grand Ronde Community of Oregon. The Clatsop, Nehalem, Tillamook, Nestucca, Neachesna (Salmon River Tillamook), and Siletz Band of Tillamook were all parties to the 1855 Coast Treaty. The treaty was never ratified and the northern Oregon coastal bands were not forced to remove to the Siletz Reservation as stipulated in the treaty. The Grand Ronde Indian Agent, in 1872, includes the Clatsop as one of the tribes living on the Grand Ronde Reservation.

Officials of the Horner Collection, Oregon State University have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the 63 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the Horner Collection, Oregon State University also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Confederated Tribes of the Grand Ronde Community of Oregon.

Officials of the Horner Collection, Oregon State University have determined that, pursuant to 25 U.S.C. 3001 (3)(D), 13 of the cultural items described above have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual. Officials of the Horner Collection, Oregon State University also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the objects of cultural patrimony and the Confederated Tribes of the Grand Ronde Community of Oregon.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the objects of cultural patrimony and/or unassociated funerary objects should contact Sabah Randhawa, Executive Vice President and Provost, President's Office, Oregon State University, 600 Kerr Administration Building, Corvallis, OR 97331, telephone (541) 737–8260, before September 22, 2008. Repatriation of the objects of cultural patrimony and unassociated funerary objects to the Confederated Tribes of the Grand Ronde Community of Oregon may proceed after that date if no additional claimants come forward.

Horner Collection, Oregon State University is responsible for notifying the Confederated Tribes of the Grand Ronde Community of Oregon and Confederated Tribes of the Siletz Reservation, Oregon that this notice has been published.

Dated: July 14, 2008

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–19332 Filed 8–20–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: McWane Science Center, Birmingham, AL

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the McWane Science Center, Birmingham, AL, that meet the definition of ''unassociated funerary objects'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

In the early 1900s, cultural items were removed from the Carden Bottoms site (3YE14) in Yell County, AR. Between 1979 and 1985, G.E. Pilquist, a collector from Dardanelle, AR, donated the cultural items to the Red Mountain Museum, Birmingham, AL. In 1994, the Red Mountain Museum merged with the Discovery Place under the name, Discovery 2000 Inc., and now operates as McWane Science Center. The cultural items are recorded as having been recovered from a grave. The five unassociated funerary objects are four stone beads and one blue glass bead.

According to oral evidence of the Quapaw Tribe of Indians, cultural items of personal adornment were placed with an individual at the time of death or as a part of the death rite or ceremony. Funerary objects associated with the human remains removed from the Carden Bottoms site have been determined to date to the early historic period. The human remains and associated funerary objects may be a late component of the Carden Bottoms complex, common along the Lower Arkansas River, including Yell County. The human remains and associated funerary objects that are also recorded as being removed from the Carden Bottoms site are described in an accompanying Notice of Inventory Completion. Oral history evidence presented by representatives of the Quapaw Tribe of Indians, Oklahoma indicates that the region has long been included in the traditional territory of the Quapaw. The Quapaw Tribe dominated that area when sustained European occupation of the lower Arkansas River began in the mid to late 1600s. In 1818, the Quapaw ceded the area south of the Arkansas River, including what is now Yell County, to the United States.

Officials of the McWane Science Center have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the five cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the McWane Science Center also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Quapaw Tribe of Indians, Oklahoma.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Jun Ebersole, Collections Manager, McWane Science Center, 200 19th St. N, Birmingham, AL 35203, telephone (205) 714–8347, before September 22, 2008. Repatriation of the unassociated funerary objects to the Quapaw Tribe of Indians, Oklahoma may proceed after that date if no additional claimants come forward.

The McWane Science Center is responsible for notifying the Quapaw

Tribe of Indians, Oklahoma that this notice has been published.

Dated: July 14, 2008

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–19323 Filed 8–20–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Arkansas Highway and Transportation Department, Little Rock, AR

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Arkansas Highway and Transportation Department, Little Rock, AR. The human remains and associated funerary objects were removed from Poinsett County, AR.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Arkansas Highway and Transportation Department professional staff with assistance from the University of Missouri in Columbia, MO, and in consultation with representatives of the Quapaw Tribe of Indians, Oklahoma.

In 1988, human remains representing a minimum of 15 individuals were removed from the Priestly site (3PO490) in Poinsett County, AR, by the Center for Archaeological Research, Southwest Missouri State University, Springfield, MO. The human remains were sent to the University of Missouri, Columbia for analysis and curation. The human remains were transferred to the Arkansas Highway and Transportation in June 2004. No known individuals were identified. The 46 associated funerary objects are 2 Lander points, 1 Gary point, 42 plain shell-tempered body sherds, and 1 plain shell-tempered sherd from the rim of a bowl.

Archeological evidence indicates the human remains are Native American and are considered to be from an Emergent Mississippian culture. Judging from the context and radio-carbon dates obtained from various features at the site, the main component at the site and the human remains are thought to date between A.D. 750 to 1100.

Oral history evidence presented by representatives of the Quapaw Tribe of Indians, Oklahoma indicates that the region has long been included in the traditional and hunting territory of the Quapaw. French colonial records from the 1700s also indicate that at that time, the Quapaw were the only Native American group present in the St. Frances River valley where the Priestly site is located. Based on geographical location, historical documents, and oral history, the human remains are most likely associated with the Quapaw Tribe of Indians, Oklahoma.

Officials of the Arkansas Highway and Transportation have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of at least 15 individuals of Native American ancestry. Officials of the Arkansas Highway and Transportation also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 46 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Arkansas Highway and Transportation have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Quapaw Tribe of Indians, Oklahoma.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Diana Wilks, Arkansas Highway and Transportation Department, P.O. Box 2261, Little Rock, AR 72203, telephone (501) 569–2038, before September 22, 2008. Repatriation of the human remains and associated funerary objects to the Quapaw Tribe of Indians, Oklahoma may proceed after that date if no additional claimants come forward.

Arkansas Highway and Transportation Department is responsible for notifying the Quapaw Tribe of Indians, Oklahoma that this notice has been published.

Dated: July 28, 2008

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–19314 Filed 8–20–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Horner Collection, Oregon State University, Corvallis, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the Horner Collection, Oregon State University, Corvallis, OR. The human remains were removed from an unknown location in Hawai'i.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Horner Collection, Oregon State University professional staff in consultation with representatives of the Office of Hawaiian Affairs, Hawai'i. The Alapa 'I Hanapi, Hawai'i Island Burial Council, Hui Malama I Na Kupuna O Hawai'i Nei, Kauai/Niihau Island Burial Council, Maui/Lanai Island Burial Council, Molokai Island Burial Council, O'ahu Burial Committee, and Van Horn Diamond 'Ohana were notified, but did not participate in consultations concerning the human remains.

At an unknown time by an unknown donor, human remains representing a minimum of one individual were accessioned into the Horner Collection. This skull came into the Horner Collection at an unknown time, but is accounted for in an inventory report of the Oregon State University's Osteology Collection, located in the Anthropology Department, in 1976. Notations taken at the time identify the skull as ''Hawaii.'' No additional information on provenience is available. No known individual was identified. No associated funerary objects are present.

Osteologist professionals of the Anthropology Department at Oregon State University have determined that the skull is possibly of Native Hawaiian ancestry.

Officials of the Horner Collection, Oregon State University have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains

described above represent the physical remains of one individual of Native Hawaiian ancestry. Officials of the Horner Collection, Oregon State University have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native Hawaiian human remains and the Office of Hawaiian Affairs.

Representatives of any other Indian tribe or Native Hawaiian Organization that believes itself to be culturally affiliated with the human remains should contact Sabah Randhawa, Executive Vice President and Provost, President's Office, Oregon State University, 600 Kerr Administration Building, Corvallis, OR 97331, telephone (541) 737–8260, before September 22, 2008. Repatriation of the human remains to the Office of Hawaiian Affairs may proceed after that date if no additional claimants come forward.

Horner Collection, Oregon State University is responsible for notifying the Alapa 'I Hanapi, Hawai'i Island Burial Council, Hui Malama I Na Kupuna O Hawai'i Nei, Kauai/Niihau Island Burial Council, Maui/Lanai Island Burial Council, Molokai Island Burial Council, O'ahu Burial Committee, Office of Hawaiian Affairs, and Van Horn Diamond 'Ohana that this notice has been published.

Dated: July 14, 2008

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–19310 Filed 8–20–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: McWane Science Center, Birmingham, AL

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the McWane Science Center, Birmingham, AL. The human remains and associated funerary objects were removed from Yell County, AR.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the McWane Science Center's professional staff in consultation with representatives of the Quapaw Tribe of Indians, Oklahoma.

In the early 1900s, human remain representing the minimum of one individual were removed from the Carden Bottoms site (3YE14) in Yell County, AR. Sometime between 1979 and 1985, G.E. Pilquist, a collector from Dardanelle, AR, donated the human remains to the Red Mountain Museum, Birmingham, AL. In 1994, the Red Mountain Museum merged with the Discovery Place under the name Discovery 2000 Inc., and now operates as McWane Science Center. No known individual was identified. The five associated funerary objects are three stone beads, one small copper bracelet, and one metal cone.

Museum records state that the human remains were recovered from a grave. Diagnostic artifacts indicate that the human remains were probably buried after European contact. Physical examination reveals the skeletal remains to be those of a child, and burial context associates the human remains with Native American populations. Archeological evidence indicates a continuity of the site from A.D. 1350 into the early historic period. The human remains and associated funerary objects may be a late component of the Carden Bottoms complex, common along the Lower Arkansas River, including Yell County. The Quapaw Tribe dominated that area when sustained European occupation of the lower Arkansas River began in the mid to late 1600s. In 1818, the Quapaw ceded the area south of the Arkansas River, including what is now Yell County, to the United States. Based on the geographic evidence and the date attributed to the human remains, the human remains are most likely culturally affiliated to the Quapaw Tribe of Indians, Oklahoma. In addition, the Quapaw Tribe of Oklahoma has previously repatriated human remains from the Carden Bottoms site (3YE14). Unassociated funerary objects removed from the Carden Bottoms site are described in an accompanying Notice of Intent to Repatriate Cultural Items.

Officials of McWane Science Center have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of McWane Science Center also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the five objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Lastly, officials of McWane Science Center have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Quapaw Tribe of Indians, Oklahoma.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Jun Ebersole, Collections Manager, McWane Science Center, 200 19th St. N, Birmingham, AL 35203, telephone (205) 714–8347, before September 22, 2008. Repatriation of the human remains and associated funerary objects to the Quapaw Tribe of Indians, Oklahoma may proceed after that date if no additional claimants come forward.

The McWane Science Center is responsible for notifying the Quapaw Tribe of Indians, Oklahoma that this notice has been published.

Dated: July 14, 2008

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–19320 Filed 8–20–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Museum of Anthropology, Washington State University, Pullman, WA; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Museum of Anthropology, Washington State University, Pullman, WA. The human remains and associated funerary objects were removed from Grays Harbor County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Museum of Anthropology, Washington State University professional staff in consultation with representatives of the Confederated Tribes of the Chehalis Reservation, Washington.

This notice is an addition to the minimum number of individuals removed from the Minard site (45–GH–15) in Grays Harbor County, WA, which were previously described in a Notice of Inventory Completion published in the **Federal Register** of May 17, 2007 (FR Doc. E7–9455, pages 27845–27846). In January of 2008, Dr. Lourdes DeLeon, a physical anthropologist at Central Washington University, prepared a description of a number of sets of human remains known as the ''Former Teaching Collection at Washington State University.'' During the course of this work she identified the remains of two individuals who, based on the color of the bone, were believed to have been buried in a shell midden. Examination of photographs taken during the burial excavations done at the Minard site indicated that these were human remains formerly determined to be missing from the Minard collection.

In the **Federal Register** notice of May 17, 2007, paragraph 4 is corrected by substituting the following paragraphs:

In 1969 and 1970, human remains representing a minimum of 11 individuals were removed from the Minard site (45–GH–15) in Grays Harbor County, WA, by Richard Daugherty, an employee, and Tom E. Roll, a graduate student, of Washington State University. The excavations were conducted under research funds allocated by the Washington State Legislature. No known individuals were identified. The 82 associated funerary objects are 2 nipple topped mauls, 1 ground slate knife, 1 ground stone club, 1 necklace of rolled copped and dentalium section beads, 1 straight adze with a whale bone handle and metal blade, 1 knife or small adze-chisel with a bone handle and metal blade, 1 metal chisel, 1 metal awl, 1 lot of metal fragments from wood working tools, 5 lots of nails, 2 lots of glass beads, 2 lots of tin can fragments, 5 lots of unidentified metal fragments, 2 spoons, 3 lots of wood fragments, 14 thimbles on a string, 1 lot of unidentified plant material, and 38 lots of dishes and dish fragments.

In the **Federal Register** notice of May 17, 2007, paragraph 6 is corrected by substituting the following paragraph:

Officials of the Museum of Anthropology, Washington State University have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 11 individuals of Native American ancestry. Officials of the Museum of Anthropology, Washington State University also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 82 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Museum of Anthropology, Washington State University have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Confederated Tribes of the Chehalis Reservation, Washington.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary items should contact Mary Collins, Director of the Museum of Anthropology, Washington State University, P.O. Box 62291, Pullman, WA 99164–4910, telephone (509) 335–4314, before September 22, 2008. Repatriation of the human remains and associated funerary objects to the Confederated Tribes of the Chehalis Reservation, Washington may proceed after that date if no additional claimants come forward.

The Museum of Anthropology, Washington State University is responsible for notifying the Confederated Tribes of the Chehalis Reservation, Washington that this notice has been published.

Dated: July 28, 2008

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–19308 Filed 8–20–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of Agriculture, San Juan National Forest, Durango, CO, and University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the control of the U.S. Department of Agriculture, San Juan National Forest, Durango, CO, and in the possession of the University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO. The human remains were removed from Dolores County, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the Notice of Inventory Completion published by the University of Denver Department of Anthropology and Museum of Anthropology in the **Federal Register** of October 9, 2001, (FR Doc. 01–25140; pages 51472–51474). This notice corrects the controller of the human remains, per 43 CFR 10.2 (a)(3)(ii), and the cultural affiliation of the human remains, per 43 CFR 10.14 (c), of one individual (catalog numbers DU6015 and DU 6066). After publication, a review of the records associated with the human remains indicated that the human remains had been removed from lands administered by the U.S. Department of Agriculture, San Juan National Forest, Durango, CO. Therefore, the San Juan National Forest has the control of the human remains for the purposes of NAGPRA. An overall evaluation of the totality of the circumstances and evidence pertaining to the human remains by the officials of the U.S. Department of Agriculture, San Juan National Forest indicate that no cultural affiliation can be determined by the preponderance of the evidence. Therefore, the human remains have been determined to be culturally unidentifiable.

A companion notice published in the **Federal Register** by the University of Denver Department of Anthropology and Museum of Anthropology also corrects the October 9, 2001 notice by deleting the references in paragraph 11, page 51473, to the one individual (catalog numbers DU6015 and DU 6066) that were collected at Dove Creek, Dolores County, CO, from lands administered by the U.S. Department of Agriculture, San Juan National Forest. In 1943, the human remains were found in the office of Lee A. Brown, an employee of the U.S. Department of Agriculture, Forest Service, who had been transferred from the Dolores Ranger District to Washington, D.C, by Fred R. Johnsono. At the time, Dr. E.B. Renaud of the University of Denver, Department of Anthropology was asked to examine the human remains, which were physically transferred to the University of Denver by Mr. Johnson. No known individual was identified. No associated funerary objects were present.

While the examination of the human remains (DU 6015 and DU 6066) by Dr. E.B. Renaud established that the human remains were of Native American ancestry, Dr. Renaud's examination did not provide any information regarding the cultural ancestry. The officials of the U.S. Department of Agriculture, Forest Service have determined that the human remains are culturally unidentifiable human remains based on the lack of evidence regarding the specific provenience from which the human remains were removed, the absence of associated funerary objects, the lack of evidence that provides a date for the original burial of the human remains, and the lack of evidence regarding the cultural ancestry of the human remains.

Officials of the U.S. Department of Agriculture, Forest Service have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the U.S. Department of Agriculture, Forest Service also have determined that, pursuant to 25 U.S.C. 3001 (2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian Tribe.

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains should contact Julie Coleman, Heritage Program Manager, San Juan National Forest, San Juan Public Lands Center, 15 Burnett Court, Durango, CO 81301, telephone (970) 385–1250, before September 22, 2008.

The San Juan National Forest is responsible for notifying the Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California; Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Ohkay Owingeh, New Mexico (formerly Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo Of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Skull Valley Band of Goshute Indians of Utah; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; Ysleta del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: July 14, 2008

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–19319 Filed 8–20–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Meeting for the Denali National Park and Preserve Aircraft Overflights Advisory Council Within the Alaska Region

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting for the Denali National Park and Preserve Aircraft Overflights Advisory Council within the Alaska Region.

SUMMARY: The National Park Service (NPS) announces a meeting of the Denali National Park and Preserve Aircraft Overflights Advisory Council. The purpose of this meeting is to discuss mitigation of impacts from aircraft overflights at Denali National Park and Preserve. This meeting is open to the public and will have time allocated for public testimony. The public is welcomed to present written or oral comments. The meeting will be recorded and a summary will be available upon request from the Superintendent for public inspection approximately six weeks after each meeting. The Aircraft Overflights Advisory Council is authorized to operate in accordance with the provisions of the Federal Advisory Committee Act.

DATES: The Denali National Park and Preserve Aircraft Overflights Advisory Council meeting will be held on Sunday, September 7th from 1 p.m. to 5 p.m. and continue on Monday, September 8th from 10 a.m. to 5 p.m., Alaska Standard Time. The meeting may end early if all business is completed.

Location: Murie Science and Learning Center Dining Hall, mile 1.5 of the Denali Park Road, Denali National Park and Preserve, Alaska 99755. Telephone: (907) 683–9532.

FOR FURTHER INFORMATION CONTACT: Miriam Valentine, Denali Planning. E-mail: *Miriam_Valentine@nps.gov*. Telephone: (907) 733–9102 at Denali National Park, Talkeetna Ranger Station, PO Box 588, Talkeetna, AK 99676. For accessibility requirements please call Miriam Valentine (907) 733–9102.

SUPPLEMENTARY INFORMATION: Meeting location and dates may need to be changed based on weather or local circumstances. If the meeting dates and location are changed, notice of the new meeting will be announced on local radio stations and published in local newspapers.

The agenda for the meeting will include the following, subject to minor adjustments:

1. Call to Order
2. Roll Call and Confirmation of Quorum
3. Chair's Welcome and Introductions
4. Review and Approve Agenda
5. Member Reports
6. Agency and Public Comments
7. Superintendent and NPS Staff Reports
8. Agency and Public Comments
9. Other New Business
10. Agency and Public Comments
11. Set Time and Place of Next Advisory Council Meeting
12. Adjournment

Dated: July 30, 2008.

Victor Knox,

Acting Regional Director, Alaska Region, National Park Service.

[FR Doc. E8–19433 Filed 8–20–08; 8:45 am]

BILLING CODE 4310–PF–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Meetings for the National Park Service (NPS) Subsistence Resource Commission (SRC) Program Within the Alaska Region

AGENCY: National Park Service, Interior.

ACTION: Notice of meetings for the National Park Service (NPS) Subsistence Resource Commission (SRC) program within the Alaska Region.

SUMMARY: The NPS announces the SRC meeting schedules for the following areas: Aniakchak National Monument, Cape Krusenstern National Monument, Kobuk Valley National Park, Lake Clark National Park, and Wrangell-St. Elias National Park. The purpose of each meeting is to develop and continue work on NPS subsistence hunting program recommendations and other related subsistence management issues. Each meeting is open to the public and will have time allocated for public testimony. The public is welcome to present written or oral comments to the SRC. Each meeting will be recorded and meeting minutes will be available upon request from each Superintendent for public inspection approximately six weeks after each meeting. The NPS SRC program is authorized under Title VIII, Section 808 of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, to operate in accordance with the provisions of the Federal Advisory Committee Act.

DATES: The Aniakchak National Monument SRC meeting will be held on Monday, October 6, 2008, from 9 a.m. to 12 p.m., at the Katmai National Park and Preserve headquarters conference room in King Salmon, AK.

FOR FURTHER INFORMATION CONTACT: Mary McBurney, Subsistence Manager, telephone: (907) 235–7891, or Ralph Moore, Superintendent, telephone: (907) 246–2120, at Aniakchak National Park and Preserve, P.O. Box 7, King Salmon, AK 99613.

DATES: The Cape Krusenstern National Monument SRC and the Kobuk Valley National Park SRC meetings will be held on Thursday, October 9, 2008 and Friday, October 10, 2008 from 9 a.m. to 5 p.m., at the U.S. Fish and Wildlife Service Office in Kotzebue, AK.

FOR FURTHER INFORMATION CONTACT: Ken Adkisson, Subsistence Manager, telephone (907) 443–2522, or Willie Goodwin, Subsistence Manager, and George Helfrich, Superintendent, telephone: (907) 442–3890, at Western Arctic Parklands, P.O. Box 1029, Kotzebue, AK 99752.

DATES: The Lake Clark National Park SRC meeting will be held on September 24, 2008, from 1 p.m. to 5 p.m. at the Lake Clark National Park and Preserve Visitor Center in Port Alsworth, AK.

FOR FURTHER INFORMATION CONTACT: Mary McBurney, Subsistence Manager, telephone: (907) 235–7891, or Joel Hard, Superintendent, and Michelle Ravenmoon, Subsistence Coordinator, telephone: (907) 781–2218, at Lake Clark National Park and Preserve, 1 Park Place, Port Alsworth, AK 99653.

DATES: The Wrangell-St. Elias National Park SRC meeting will be held on Wednesday, October 29, 2008 and Thursday, October 30, 2008, from 9 a.m. to 5 p.m. at the Yakutat-Alaska Native Brotherhood Hall in Yakutat, AK.

FOR FURTHER INFORMATION CONTACT: Barbara Cellarius, Subsistence Manager, telephone: (907) 822–7236, or Meg Jensen, Superintendent, telephone: (907) 822–5234, at Wrangell-St. Elias National Park and Preserve, P.O. Box 439, Copper Center, AK 99573.

SUPPLEMENTARY INFORMATION: SRC meeting locations and dates may need to be changed based on weather or local circumstances. If meeting dates and locations are changed notice of each meeting will be published in local newspapers and announced on local radio stations prior to the meeting dates. The meetings may end early if all business is completed.

The agendas for each meeting include the following:

1. Call to Order (SRC Chair)
2. SRC Roll Call and Confirmation of Quorum
3. SRC Chair and Superintendent's Welcome and Introductions
4. Review and Approve Agenda
5. Status of SRC Membership
6. SRC Member Reports
7. Superintendent and NPS Staff Reports
8. Federal Subsistence Board Update (Review Proposals, Board Actions)
9. State of Alaska Board Actions Update
10. New Business
11. Agency and Public Comments
12. SRC Work Session
13. Set Time and Place of Next SRC Meeting

Adjournment

Victor Knox,

Deputy Regional Director.

[FR Doc. E8–19437 Filed 8–20–08; 8:45 am]

BILLING CODE 4312–HE–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Odessa Subarea Special Study; Adams, Franklin, Grant, Lincoln and Walla Walla Counties, WA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Bureau of Reclamation (Reclamation) proposes to prepare an Environmental Impact Statement (EIS) for the Odessa Subarea Special Study. The Washington Department of Ecology (Ecology) is a joint lead with Reclamation in the preparation of this Environmental Impact Statement which will also be used to comply with requirements of the Washington State Environmental Policy Act (SEPA).

The purpose of Reclamation's Odessa Subarea Special Study is to evaluate alternatives that would deliver project water from the Columbia Basin Project (CBP) to lands currently using groundwater for irrigation in the Odessa Ground Water Management Subarea. The Study is needed to fulfill the obligation Reclamation made in a Memorandum of Agreement between the State of Washington (State) and the Project irrigation districts in December 2004, which included cooperating on a study to explore opportunities for delivery of Columbia Basin Project water to existing groundwater-irrigated lands within the Odessa Subarea.

Action is needed to avoid significant economic loss, in the near term, to the region's agricultural sector because of resource conditions associated with continued decline of the aquifers in the Odessa Subarea. Groundwater in the Odessa Subarea is currently being depleted to such an extent that water must be pumped from great depths. Pumping depths are 750 feet in some areas, and well depths are as great as 2,100–2,400 feet. Well drilling costs and pumping water from this depth have resulted in expensive power costs and water quality concerns such as high water temperatures and high sodium concentrations.

The ability of farmers to irrigate their crops is at risk. Domestic, commercial, municipal, and industrial uses and water quality are also affected. Those irrigating with wells of lesser depth live with uncertainty about future well production.

Washington State University conducted a regional economic impact

study assessing the effects of lost potato production and processing in Adams, Franklin, Grant, and Lincoln counties from continued aquifer decline. Assuming that all potato production and processing is lost from the region, the analysis estimated the regional economic impact would be a loss of about $630 million dollars annually in regional sales, a loss of 3,600 jobs, and a loss of $211 million in regional income (Bhattacharjee and Holland 2005).

DATES: Scoping meetings will be held on September 10, 2008 and Sept 11, 2008, from 7 to 9 p.m., at the locations indicated under the **ADDRESSES** section. Written comments will be accepted through September 19, 2008, for inclusion in the scoping summary document. Requests for sign language interpretation for the hearing impaired or other special assistance needs should be submitted to Ellen Berggren as indicated under the **FOR FUTHER INFORMATION CONTACT** section by August 27, 2008.

ADDRESSES: Meetings will be held at:

- Town of Coulee Dam Town Hall, 300 Lincoln Avenue, Coulee Dam, WA 99116 (September 10, 2008);
- The Advanced Technologies Education Center (ATEC), Big Bend Community College, 7611 Bolling Street, NE., Moses Lake, WA 98837 (September 11, 2008).

The meeting facilities are physically accessible to people with disabilities.

Comments and requests to be added to the mailing list may be submitted to Bureau of Reclamation, Pacific Northwest Regional Office, Attention: Ellen Berggren, Activity Manager, 1150 N. Curtis Rd., Suite 100, Boise, ID 83706. Comments may also be submitted electronically to *StudyManager@pn.usbr.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Ellen Berggren, Activity Manager, Telephone (208) 378–5090. TTY users in Washington may dial the following numbers to obtain a toll free TTY relay: 800–833–6384(V); for the hearing impaired 800–833–6388(T); for the deaf.

Information on this project can also be found at: *http://www.usbr.gov/pn/programs/ucao_misc/odessa/index.html.*

SUPPLEMENTARY INFORMATION: The Columbia Basin Project is a multipurpose water development project in the central part of the State of Washington (State). The Grand Coulee Dam Project was authorized for construction by the Act of August 30, 1935, and reauthorized and renamed in the Columbia Basin Project Act of March 10, 1943. Congress authorized the CBP to irrigate a total of 1,029,000 acres; about 671,000 acres are currently irrigated.

Section 9(a) of the Reclamation Project Act of 1939 gave authority to the Secretary of the Interior (Secretary) to approve a finding of feasibility and thereby authorize construction of a project upon submitting a report to the President and the Congress. The Secretary approved a plan of development for the Columbia Basin Project, known as House Document No. 172 in 1945. House Document No. 172 anticipated that development of the Columbia Basin Project would occur in phases over a 70-year period. Reclamation is authorized to implement additional development phases as long as the Secretary finds it to be economically justified and financially feasible. The Odessa Subarea Special Study is conducted under the authority of the Columbia Basin Project Act of 1943, as amended, and the Reclamation Act of 1939.

In response to the public's concern about the declining aquifer and associated economic and other effects, Congress has funded Reclamation to investigate this problem. The State of Washington has partnered with Reclamation by providing funding and collaborating on various technical studies.

The State, Reclamation, and irrigation districts signed the Columbia River Initiative Memorandum of Understanding (CRI MOU) in December 2004, to promote a cooperative process for implementing activities to improve Columbia River water management and water management within the Columbia Basin Project. The Odessa Subarea Special Study implements Section 15 of the CRI MOU, which states in part that, ''The parties will cooperate to explore opportunities for delivery of water to additional existing agricultural lands within the Odessa Subarea.'' In February 2006, the State legislature passed the Columbia River Water Resource Management Act (HB 2860) that directs Ecology to aggressively pursue development of water benefiting both instream and out-of-stream uses through storage, conservation, and voluntary regional water management agreements. Among the activities identified in the legislation, Ecology is directed to focus on ''development of alternatives to ground water for agricultural users in the Odessa subarea aquifer.'' Ecology is participating in the Odessa Subarea Special Study to provide support for state and local agency permit decisions that will likely be necessary to implement a water delivery project.

Reclamation is developing alternatives to replace the current and increasingly unreliable groundwater supplies used for irrigation with a surface supply as part of continued phased development of the Columbia Basin Project. Reclamation can only deliver water to lands authorized to receive Columbia Basin Project water. An estimated 170,000 acres within the Odessa Subarea are now being irrigated with groundwater with an estimated 140,000 of these acres eligible to receive Project surface water. Reclamation is considering alternatives that would provide a replacement surface water supply for up to 140,000 groundwater-irrigated acres within the Study area. Alternatives include two main components.

- *Water conveyance;* this component consists of infrastructure such as canals, pumping plants and laterals to deliver surface water to groundwater-irrigated lands. These could include building a new East High canal system and reregulating reservoir in Black Rock Coulee north of Interstate 90 and/or expanding the capacity of the existing East Low Canal system and building a 2.3 mile extension.
- *Water supply;* this component consists of storage facilities that could store the replacement surface water supply for later use in the Odessa Subarea. These involve modifying operations at Banks Lake and/or constructing a new reservoir in Rocky Coulee.

Alternatives would involve various combinations and configurations of these water conveyance and water supply components.

Public Involvement

Reclamation will conduct public scoping meetings to solicit comments on the alternatives developed to address the concerns in the Odessa Subarea and to identify potential issues and impacts associated with those alternatives. Reclamation will summarize comments received during the scoping meetings and from letters of comment received during the scoping period, identified under the **DATES** section, into a scoping summary document that will be made available to those who have provided comments. It will also be available to others upon request.

If you wish to comment, you may mail us your comments as indicated under the **ADDRESSES** section. Our practice is to make comments, including names, home addresses, home phone numbers, and e-mail addresses of respondents, available for public

review. Individual respondents may request that we withhold their names and/or home addresses, etc., but if you wish us to consider withholding this information you must state this prominently at the beginning of your comments. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

J. William McDonald,

Regional Director, Pacific Northwest Region.

[FR Doc. E8–19376 Filed 8–20–08; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–457 and 731–TA–1153 (Preliminary)]

Certain Tow-Behind Lawn Groomers and Parts Thereof From China Determinations

On the basis of the record[1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(a) and 1673d(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China of certain tow-behind lawn groomers and parts thereof (''TBLG''), provided for in statistical reporting numbers 8432.40.0000, 8432.80.0000, 8432.90.0030, 8432.90.0080, 8479.89.9897, 8479.90.9496, and 9603.50.0000 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV) and alleged to be subsidized by the Government of China.

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under sections 703(b) and 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under section 705(a) and 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On June 24, 2008, a petition was filed with the Commission and Commerce by Agri–Fab, Inc., Sullivan, IL, alleging that an industry in the United States is materially injured by reason of subsidized imports of TBLGs from China and LTFV sales of TBLG imports from China. Accordingly, effective June 24, 2008, the Commission instituted countervailing duty investigation No. 701–TA–457 (Preliminary) and antidumping investigation No. 731–TA–1153 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 1, 2008 (72 FR 37494). The conference was held in Washington, DC, on July 15, 2008, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on August 8, 2008. The views of the Commission are contained in USITC Publication 4028 (August 2008), entitled *Certain Tow-Behind Lawn Groomers and Parts Thereof from China Investigation Nos. 701–TA–457 and 731–TA–1153 (Preliminary).*

By order of the Commission.

Issued: August 18, 2008.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E8–19400 Filed 8–20–08; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on August 13, 2008, a proposed Consent Decree (the ''Decree'') in *United States* v. *Allied Waste Services of Massachusetts, LLC,* Civil Action No. 08–11382, was lodged with the United States District Court for the District of New Jersey.

In a complaint, filed simultaneously with the Decree, the United States alleges that Allied Waste Services of Massachusetts, LLC (''Allied Waste'') violated the Clean Air Act, 42 U.S.C. 7401 *et seq.*, at four of its waste-hauling depots in western Massachusetts by allowing some of its diesel waste-hauling trucks to idle in excess of five minutes, as prescribed by 30 CMR 7.11(b), a regulation included in the Massachusetts State Implementation Plan.

Pursuant to the Decree, Allied will implement a number of compliance measures, including: Requiring a supervisor to walk-through the four depots where violations were found (''subject facilities'') twice a day to identify and rectify illegal idling; the implementation of a driver training program that highlights Allied Waste's anti-idling policy; the inclusion of the anti-idling policy as part of the subject facilities' daily debriefing checklist to be reviewed with each driver of a waste-hauling truck at the end of their route; the posting of ''No Idling'' signs at the subject facilities; and the certification by Allied Waste that all trucks equipped with automatic engine shut-offs are working and set to turnoff the engine at the expiration of five minutes of idling. If Allied Waste fails to conduct the aforementioned compliance measures, or is in future violation of 30 CMR 7.11(b), it will be subject to stipulated penalties under the terms of the Decree.

Allied Waste will pay a $195,000 civil monetary penalty to the United States pursuant to the Decree.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Decree. Comments should be addressed to the

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

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, D.C. 20044–7611, and should refer to *United States* v. *Allied Waste Services of Massachusetts, LLC,* D.J. Ref. 90–5–2–1–09305.

The Decree may be examined at the Office of the United States Attorney, Michael J. Sullivan, District of Massachusetts, John Joseph Moakley Courthouse, 1 Courthouse Way Boston, Massachusetts 02210, and the U.S. Environmental Protection Agency, Region I, One Congress Street, Boston, Massachusetts 02114–2023. During the public comment period, the Decree may also be examined on the following Department of Justice website, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax 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 $7.75 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Ronald Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E8–19341 Filed 8–20–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,679]

Hydraulic Technologies, Inc., Currently Known as HTI Hydraulic Technologies, LLC, Galion, OH; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on February 22, 2008, applicable to workers of Hydraulic Technologies, Inc., Galion, Ohio. The notice was published in the **Federal Register** on March 7, 2008 (73 FR 12466).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of hydraulic cylinders.

New information shows that in September 2007 Ligon Industries purchased the assets of Hydraulic Technologies, Inc. and is currently known as HTI Hydraulic Technologies, LLC.

Accordingly, the Department is amending this certification to show that Hydraulic Technologies, Inc. is currently known as HTI Hydraulic Technologies, LLC.

The intent of the Department's certification is to include all workers of Hydraulic Technologies, Inc., currently known as HTI Hydraulic Technologies, LLC who were adversely affected by increased imports hydraulic cylinders.

The amended notice applicable to TA–W–62,679 is hereby issued as follows:

All workers of Hydraulic Technologies, Inc., currently known as HTI Hydraulic Technologies, LLC, Galion, Ohio, who became totally or partially separated from employment on or after December 27, 2006, through February 22, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 13th day of August, 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–19407 Filed 8–20–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,227]

Plastech Engineered Products, Inc., Fowlerville Division, Currently Known as JCIM, LLC, Fowlerville, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on November 16, 2007, applicable to workers of Plastech Engineered Products, Inc., Fowlerville Division, Fowlerville, Michigan. The notice was published in the **Federal Register** on December 10, 2007 (72 FR 69710).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of injection molded automotive plastic parts.

New information shows that as the result of a change in ownership on July 1, 2008, Plastech Engineered Products, Inc., Fowlerville Division, Fowlerville, Michigan, is currently known as JCIM, LLC.

Accordingly, the Department is amending this certification to include workers of the subject firm whose Unemployment Insurance (UI) wages are reported under the successor firm, JCIM, LLC.

The amended notice applicable to TA–W–62,227 is hereby issued as follows:

All workers of Plastech Engineered Products, Inc., Fowlerville Division, currently known as JCIM, LLC, Fowlerville, Michigan, who became totally or partially separated from employment on or after September 17, 2006, through November 16, 2009, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 14th day of August 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–19406 Filed 8–20–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for

workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of August 4 through August 8, 2008.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–63,784; Stimson Lumber Company, Colville, WA: July 22, 2007.

TA–W–63,726A; Quebecor World USA, Inc., AD Magic Department, Merced, CA: July 21, 2007.

TA–W–63,688; Royal Home Fashions, A Subsidiary of Croscill, Inc., Plant #4, Henderson, NC: September 1, 2008.

TA–W–63,679; Stanley Furniture Company, Lexington Division, Lexington, NC: July 11, 2007.

TA–W–63,674; Lane Furniture Industries, Upholstery Division, Tupelo, MS: July 7, 2007.

TA–W–63,651; DaySpring Cards, Inc., Siloam Springs, AR: July 7, 2007.

TA–W–63,277; Timbuk2, San Francisco, CA: April 28, 2007.

TA–W–63,759; S. Shamash and Sons, New York, NY: July 21, 2007.

TA–W–63,704; Parmelee Industries, Inc. DBA U.S. Safety, Windsor Division, Windsor, MO: July 11, 2007.

TA–W–63,630; Permacel St. Louis, Inc., St. Louis, MO: June 23, 2007.

TA–W–63,619; Comor, Inc., On-Site Leased Workers of M-Ploy Temporary Services, Inc., Cochranton, PA: June 30, 2008.

TA–W–63,783; Kellsport Industries, Inc., Fall River, MA: July 30, 2007.

TA–W–63,750; Hi-Jon, Inc., San Francisco, CA: July 18, 2007.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–63,739; TRW Automotive, Body Control Systems North America, Winona, MN: July 22, 2007.

TA–W–63,726; Quebecor World USA, Inc., Merced Div., Cornerstone Staffing, Merced, CA: July 22, 2007.

TA–W–63,647; Entorian Technologies L.P., A Subsidiary of Entorian Technologies, Inc., Southland Micro Systems, Irvine, CA: July 2, 2007.

TA–W–63,537; Littelfuse, Inc., Office Support Worker Group, Des Plaines, IL: June 12, 2007.

TA–W–63,553; Maxim Integrated Products, Inc., End of Line Group, Sunnyvale, CA: June 13, 2007.

TA–W–63,552; Maxim Integrated Products, Inc., X3 FAB, San Jose, CA: June 13, 2007.

TA–W–63,762; Westin Automotive Products, Inc., St. James, MN: July 28, 2007.

TA–W–63,753; Elbeco, Inc., Transcontinental Acquisition Group Div., Los Angeles, CA: July 25, 2007.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA)

and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–63,799; HBPO North America, Inc., Aerotek, Kelly Services, Fenton, MO: August 1, 2007.

TA–W–63,740; All-Wood Components, Inc., Union Gap, WA: July 23, 2007.

TA–W–63,727; Select Industries Corp., Dayton, OH: July 16, 2007.

TA–W–63,663; Chrysler, LLC, Warren Stamping Plant, Warren, MI: July 9, 2007.

TA–W–63,658; Electronic Interface Inc. Co., DBA Applied Engineering, San Jose, CA: June 30, 2007.

TA–W–63,628; Frontier Yarns, LLC, Plant #82, A Subsidiary of Frontier Spinning Mills and Russell Corp., Lafayette, AL: June 27, 2007.

TA–W–63,628A; Frontier Yarns, LLC, Corporate Office #81, Wetumpka, AL: June 27, 2007.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

None.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of Section 246 has not been met. The firm does not have a significant number of workers 50 years of age or older.

None.

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

None.

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

None.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–63,743; Vishay General Semiconductors, Westbury, NY.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–63,517; Tredegar Performance Films, Inc., Marlin, PA.

TA–W–63,501; Lab Security Systems Corp, Bristol, CT.

TA–W–63,454; General Motors Corporation, Bedford Powertrain Plant, Bedford, IN.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–63,734; Compucom Systems, Inc., Pfizer Metro Operations, Morris Plaines, NJ.

TA–W–63,702; Intermec Service Center, A Subsidiary of Intermec Technologies Corp., Cedar Rapids, IA.

TA–W–63,685; Accenture, Reno, NV.

TA–W–63,667; Alcatel-Lucent Technologies, Order Administration, Hunt Valley, MD.

TA–W–63,666; Kelly Hosiery, Inc., Fort Payne, AL.

TA–W–63,636; Rutland Tool and Supply Company, A Subsidiary of Lawson Products, Inc., Warehouse Department, Whittier, CA.

The investigation revealed that criteria of Section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

None.

I hereby certify that the aforementioned determinations were issued during the period of August 4 through August 8, 2008. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: August 14, 2008.

Erin Fitzgerald,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E8–19405 Filed 8–20–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than September 2, 2008.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than September 2, 2008.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 14th day of August 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 8/4/08 and 8/8/08]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
63793	General Motors Shreveport Assembly Plant (State).	Shreveport, LA	08/04/08	08/01/08
63794	Norwalk Furniture Corporation (Comp)	Norwalk, OH	08/04/08	07/23/08
63795	Hasco America, Inc. (Wkrs)	Arden, NC	08/04/08	08/01/08
63796	Brady People ID (State)	Burlington, MA	08/04/08	07/28/08
63797	Avaya (State)	Basking Ridge, NJ	08/04/08	08/01/08
63798	Intelicoat Technologies, LLC (IUECWA)	So. Hadley, MA	08/04/08	06/13/08
63799	HBPO North America, Inc. (Comp)	Fenton, MO	08/04/08	08/01/08
63800	Columbia Falls Aluminum Company, LLC (Comp).	Columbia Falls, MT	08/04/08	08/01/08
63801	Dakkota Integrated Systems, LLC (Comp)	Kirkwood, MO	08/04/08	08/01/08
63802	AFA Products D/B/A Continental AFA Dispensing Company (Rep).	Forest City, NC	08/04/08	08/01/08
63803	Manufacturers Industrial Group Wires (Wkrs)	Chattanooga, TN	08/04/08	08/01/08
63804	Lanier Clothes (Comp)	Tupelo, MS	08/05/08	08/04/08
63805	International Paper Company—Pensacola Mill (USW).	Cantonment, FL	08/05/08	07/31/08
63806	Core Molding Technologies (State)	Gaffney, SC	08/05/08	08/04/08
63807	RFMD—QA (Comp)	Greensboro, NC	08/05/08	07/31/08
63808	Soft Socks, Inc. (Comp)	Burlington, NC	08/05/08	08/01/08
63809	Panasonic Motor Company (Comp)	Berea, KY	08/05/08	08/01/08
63810	Specialty Shearing and Dyeing Inc. (Comp)	Greenville, SC	08/05/08	08/04/08
63811	H. B. Fuller Company (USW)	Paducah, KY	08/05/08	08/04/08
63812	Progressive Molded Products, Inc. (UAW)	St. Joseph, MO	08/05/08	07/14/08
63813	Experian (Wkrs)	Costa Mesa, CA	08/05/08	07/21/08
63814	TI Industries, Inc. (Comp)	Lexington, NC	08/05/08	08/04/08
63815	Krack Corporation (Ingersoll-Rand) (Wkrs)	Addison, IL	08/05/08	07/28/08
63816	CPU2, LLC (Wkrs)	Arden, NC	08/05/08	07/29/08
63817	JHP Transport, LLC (Comp)	Myerstown, PA	08/05/08	07/30/08
63818	Delphi—Lockport (UAW)	Lockport, NY	08/06/08	08/04/08
63819	Jakel, Inc. (Wkrs)	Murray, KY	08/06/08	08/04/08
63820	Blue Water Automotive Systems, Inc. (Wkrs)	Caro, MI	08/06/08	08/04/08
63821	MSSC, LLC (State)	Marion, IL	08/06/08	06/03/08
63822	ACN Communications (Wkrs)	Concord, NC	08/06/08	08/05/08
63823	Eva Airways Corporation (Wkrs)	El Segundo, CA	08/06/08	07/22/08
63824	Modern Plastics Corporation (Wkrs)	Benton Harbor, MI	08/06/08	07/25/08
63825	Accuride International, Inc. (Comp)	Santa Fe Springs, CA	08/06/08	08/05/08
63826	Belcom Forest Products, Inc. (Comp)	Shelton, WA	08/06/08	07/23/08
63827	Motorola, Inc. (State)	Schaumburg, IL	08/06/08	08/04/08
63828	Lear Corporation (UAW)	Liberty, MO	08/06/08	07/14/08
63829	Carlisle Publishing Services (Comp)	Dubuque, IA	08/06/08	08/04/08
63830	Robert Bosch Tool Corporation (Comp)	Lincolnton, NC	08/06/08	08/05/08
63831	OTC International Ltd. (Wkrs)	Long Island City, NY	08/06/08	07/22/08
63832	Care Stream Health Xray (State)	Windsor, CO	08/07/08	08/06/08
63833	CMA Actuation Products (Comp)	Philipsburg, PA	08/07/08	08/06/08
63834	Norwalk Furniture Corporation/Hickory Hill Furniture (Comp).	Fulton, MS	08/07/08	07/25/08
63835	Megtec Systems, Inc. (State)	Vero Beach, FL	08/08/08	08/07/08
63836	Weyerhaeuser Company I—Level (UBCJA)	Eugene, OR	08/08/08	07/20/08
63837	Dolly, Inc. (Comp)	Tipp City, OH	08/08/08	08/05/08
63838	International Rectifier (Wkrs)	El Segundo, CA	08/08/08	07/29/08
63839	Blue Water Automotive Systems, Inc. (Rep)	Howell, MI	08/08/08	08/07/08
63840	Intermec Technologies Corporation (Comp)	Everett, WA	08/08/08	07/30/08

[FR Doc. E8–19404 Filed 8–20–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,892]

Barnes Aerospace, Ceramics Division, Windsor, CT; Notice of Negative Determination on Reconsideration

On July 11, 2008, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice was published in the **Federal Register** on July 21, 2008 (73 FR 42368).

The initial investigation resulted in a negative determination based on the finding that imports of multi-layer ceramic green sheet did not contribute importantly to worker separations at the subject firm and no shift of production to a foreign source occurred.

In the request for reconsideration the petitioner alleged that business at the subject firm declined because the subject firm's major customer is importing or will be importing like or directly competitive products. In particular, the petitioner stated that the customer is changing its purchases from a ceramic based substrate to a plastic based substrate.

On reconsideration the Department of Labor surveyed this declining customer regarding its purchases of like or directly competitive products with multi-layer ceramic green sheet during 2006, 2007, and January through February 2008 over the corresponding 2007 period. The survey revealed that the customer did not import like or directly competitive products with multi-layer ceramic green sheet during the relevant period.

The petitioner also stated that there was a shift in production of multi-layer ceramic green sheet to Taiwan.

The fact that the subject firm's customers are shifting their production abroad is not relevant to this investigation. According to section (a)(2)(B) of the Trade Act, in order to be eligible for TAA on the basis of a shift in production abroad, the shift in production must be implemented by the subject firm or its subdivision.

In this case, the subject firm did not import multi-layer ceramic green sheet nor was there a shift in production from subject firm abroad during the relevant period.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Barnes Aerospace, Ceramics Division, Windsor, Connecticut.

Signed at Washington, DC this 14th day of August, 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–19408 Filed 8–20–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Request for Certification of Compliance—Rural Industrialization Loan and Grant Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration is issuing this notice to announce the receipt of a ''Certification of Non-Relocation and Market and Capacity Information Report'' (Form 4279–2) for the following:

Applicant/Location: Titanic Tennessee, LLC/Pigeon Forge, Tennessee.

Principal Product/Purpose: The loan, guarantee, or grant application is for a new business venture to build and equip a Titanic museum/theme attraction. The NAICS industry code for this enterprise is: 712110 Museums.

DATES: All interested parties may submit comments in writing no later than September 4, 2008. Copies of adverse comments received will be forwarded to the applicant noted above.

ADDRESSES: Address all comments concerning this notice to Anthony D. Dais, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., Room S–4231, Washington, DC 20210; or e-mail *Dais.Anthony@dol.gov;* or transmit via fax (202) 693–3015 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Anthony D. Dais, at telephone number (202) 693–2784 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 188 of the Consolidated Farm and Rural Development Act of 1972, as established under 29 CFR Part 75, authorizes the United States Department of Agriculture to make or guarantee loans or grants to finance industrial and business activities in rural areas. The Secretary of Labor must review the application for financial assistance for the purpose of certifying to the Secretary of Agriculture that the assistance is not calculated, or likely, to result in: (a) A transfer of any employment or business activity from one area to another by the loan applicant's business operation; or (b) an increase in the production of goods, materials, services, or facilities in an area where there is not sufficient demand to employ the efficient capacity of existing competitive enterprises unless the financial assistance will not have an adverse impact on existing competitive enterprises in the area. The Employment and Training Administration within the Department of Labor is responsible for the review and certification process. Comments should address the two bases for certification and, if possible, provide data to assist in the analysis of these issues.

Signed at Washington, DC, this 14th of August, 2008.

Gay M. Gilbert,

Administrator, Office of Workforce Investment, Employment and Training Administration.

[FR Doc. E8–19402 Filed 8–20–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,710]

Citgo Lube and Wax Facility, Lake Charles, LA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 18, 2008 in response to a petition filed by a state workforce official on behalf of workers of Citgo Lube and Wax Facility, Lake Charles, Louisiana.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated, since further investigation would serve no purpose.

Signed at Washington, DC, this 13th day of August, 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–19409 Filed 8–20–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,833]

CMA Actuation Products, Philipsburg, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 7, 2008, in response to a petition filed by a company official on behalf of workers of CMA Actuation Products, Philipsburg, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 14th day of August, 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–19403 Filed 8–20–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,735]

HTI Hydraulic Technologies, LLC; Galion, OH; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 24, 2008 in response to a petition filed on behalf of workers of HTI Hydraulic Technologies, LLC, Galion, Ohio.

The petitioning group of workers is covered by an active certification (TA–W–62,679 as amended) which expires on February 22, 2010. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 15th day of August 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–19410 Filed 8–20–08; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On July 14, 2008, the National Science Foundation published a notice in the **Federal Register** of a Waste Management permit application received. A permit was issued on August 15, 2008 to: Mark Flager, Voyages of Discovery, Permit No. 2009 WM–002.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. E8–19342 Filed 8–20–08; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–247 and 50–286]

License Nos. DPR–26 and DPR–64; Entergy Nuclear Operations, Inc.; Entergy Nuclear Indian Point 2, LLC; Entergy Nuclear Indian Point 3, LLC; Notice of Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission (NRC or Commission) has issued a Director's Decision with regard to a petition dated June 25, 2007, filed by Mr. Sherwood Martinelli on behalf of Friends United for Sustainable Energy (FUSE), hereinafter referred to as the ''Petitioner.'' The petition was supplemented on December 21, 2007, with a transcript of a meeting between the NRC and the Petitioner. The petition concerns the operation of the Indian Point Nuclear Generating Unit Nos. 2 and 3 (Indian Point) owned by Entergy Nuclear Indian Point 2, LLC and Entergy Nuclear Indian Point 3, LLC, respectively, and operated by Entergy Nuclear Operations, Inc. (Entergy).

The petition requested immediate suspension of the operating licenses for Indian Point Unit Nos. 2 and 3 until the licensee resolves the issues described in the petition to full compliance with all local, State, and Federal laws.

As the basis for the June 25, 2007 request, the Petitioner raised concerns stemming from the spent fuel pool (SFP) leakage discovered at Indian Point in September of 2005. Mr. Martinelli considers such operation to be potentially unsafe and to be in violation of Federal regulations. In the petition, the Petitioner cited a number of references to possible consequences from radionuclide leakage from the SFP that the Petitioner believes prohibit safe operation of the facility.

The petition of June 25, 2007, raises concerns originating from the SFP leakage at Indian Point which was reported by Entergy to the NRC in September of 2005. The Petitioner stated that since Entergy has been unable to locate the source of the SFP leakage, they are unable to repair the leak. In turn, the Petitioner argued that the effect on the environment is increasing and the structural integrity of the SFP will worsen and contribute to the decline of plant stability and integrity.

On December 21, 2007, the Petitioner and the licensee met with the staff's Petition Review Board. The meeting gave the Petitioner and the licensee an opportunity to provide additional information and to clarify issues cited in the petition.

The NRC sent a copy of the Proposed Director's Decision to the Petitioner and to Entergy for comment on May 30, 2008. The staff did not receive any comments on the Proposed Director's Decision.

The Director of the Office of Nuclear Reactor Regulation denied the request to suspend the Indian Point Generating Unit Nos. 2 and 3 operating licenses. The reasons for this decision are explained in the Director's Decision pursuant to Title 10 of Code of Federal Regulations (10 CFR) Section 2.206 [DD–08–02], the complete text of which is available in Agencywide Documents Access and Management System (ADAMS) Accession No. ML082060642 for inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and from the ADAMS Public Library component on the NRC's Web site, *http://www.nrc.gov/reading-rm.html* (the Public Electronic Reading Room).

The NRC denied the petition based on conclusions reached by Entergy investigations and NRC inspection efforts which determined that public health and safety have not been, nor are likely to be, adversely affected. Additionally, the dose consequence to the public attributable to current onsite conditions associated with groundwater contamination is negligible with respect to conservatively established NRC regulatory limits.

A copy of the Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206 of the Commission's regulations. As provided for by this regulation, the Director's Decision will constitute the final action of the Commission 25 days after the date of the decision, unless the Commission, on its own motion, institutes a review of the director's decision in that time.

Dated at Rockville, Maryland, this 14th day of August 2008.

For the Nuclear Regulatory Commission.

Eric J. Leeds,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. E8–19374 Filed 8–20–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–400]

Carolina Power and Light Company; Notice of Availability of the Final Supplement 33 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Regarding the License Renewal of Shearon Harris Nuclear Power Plant, Unit 1

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC, Commission) has published a final plant-specific supplement to the ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants (GEIS),'' NUREG–1437, regarding the renewal of operating license NPF–063 for an additional 20 years of operation for the Shearon Harris Nuclear Power Plant, Unit 1 (HNP). HNP is located in Wake County, North Carolina. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources.

As discussed in Section 9.3 of the final Supplement 33, based on: (1) The analysis and findings in the GEIS; (2) the Environmental Report submitted by Carolina Power and Light Company; (3) consultation with federal, state, and local agencies; (4) the NRC staff's own independent review; and (5) the NRC staff's consideration of public comments, the recommendation of the staff is that the Commission determine that the adverse environmental impacts of license renewal for HNP are not so great that preserving the option of license renewal for energy-planning decision makers would be unreasonable.

The final Supplement 33 to the GEIS is publicly available at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, or from the NRC's Agencywide Documents Access and Management System (ADAMS). The ADAMS Public Electronic Reading Room is accessible at *http://adamswebsearch.nrc.gov/dologin.htm*. The Accession Number for the final Supplement 33 to the GEIS is ML082250290. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail at *pdr@nrc.gov*. In addition, the West Regional Library, located at 4000 Louis Stephens Dr., Cary, NC 27519 as well as the Eva H. Perry Library, located at 2100 Shepherd's Vineyard Dr., Apex, NC 27502, have agreed to make the final Supplement 33 to the GEIS available for public inspection.

FOR FURTHER INFORMATION CONTACT: Mr. Samuel Hernandez, Projects Branch 1, Division of License Renewal, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Mail Stop O–11F1, Washington, DC, 20555–0001. Mr. Hernandez may be contacted by telephone at 1–800–368–5642, extension 4049 or via e-mail at *samuel.hernandez@nrc.gov*.

Dated at Rockville, Maryland, this 13th day of August, 2008.

For the Nuclear Regulatory Commission.

Bo Pham,

Acting Branch Chief, Projects Branch 1, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. E8–19377 Filed 8–20–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–011]

Southern Nuclear Operating Company; Notice of Availability of the Final Environmental Impact Statement (EIS) for an Early Site Permit (ESP) Application at the Vogtle Electric Generating Plant Site

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has published NUREG–1872, ''Final Environmental Impact Statement for an Early Site Permit (ESP) at the Vogtle Electric Generating Plant Site.'' The site is located on the southwest side of the Savannah River in eastern Burke County, Georgia. A notice of availability of the draft EIS was published in the **Federal Register** on September 14, 2007 (72 FR 52586).

The purpose of this notice is to inform the public that NUREG–1872, ''Final Environmental Impact Statement (EIS) for an Early Site Permit (ESP) at the Vogtle Electric Generating Plant Site'', Volumes 1 and 2 (including an addendum to Appendix F of Volume 2), is available for public inspection in the NRC Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike (First Floor) Rockville, Maryland 20852, or from the Publicly Available Records (PARS) component of NRC's Agencywide Documents Access and Management System (ADAMS), and will also be placed directly on the NRC website at *http://www.nrc.gov*. ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* (The Public Electronic Reading Room). Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the PRD reference staff by telephone at 1–800–397–4209 or 1–301–415–4737, or online at *http://www.nrc.gov/reading-rm/contact-pdr.html*. In addition, the following public library in the vicinity of the Vogtle ESP Site has agreed to make the FEIS available for public inspection:
Burke County Library,
130 Highway 24 South,
Waynesboro, GA 30830.

FOR FURTHER INFORMATION CONTACT: Mark Notich, Environmental Projects Branch 1, Division of Site and Environmental Reviews, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Mr. Notich may be contacted by telephone at 301–415–3053, or by e-mail at *mark.notich@nrc.gov*.

Dated at Rockville, Maryland, this 13th day of August 2008.

For the Nuclear Regulatory Commission.

Nilesh Chokshi,

Deputy Director, Division of Site and Environmental Reviews, Office of New Reactors.

[FR Doc. E8–19371 Filed 8–20–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8943; ASLBP No. 08–867–02–OLA–BD01]

Crow Butte Resources, Inc.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and the Commission's regulations, *see* 10 CFR 2.104, 2.300, 2.303, 2.309, 2.311, 2.318, and 2.321, notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over the following proceeding:

Crow Butte Resources, Inc. (In Situ Leach Uranium Recovery Facility)

This proceeding involves a license amendment application from Crow Butte Resources, Inc. seeking a 10-year renewal of its Source Materials License for the in situ leach uranium recovery facility located in Crawford, Nebraska. In response to a May 27, 2008 Notice of Opportunity for Hearing (73 FR 30426), petitions to intervene and requests for hearing have been submitted by (1) Elizabeth Lorina and Mario Gonzales representing the Oglala Sioux Tribe, (2)

Shane Robinson and David Frankel representing multiple individuals and multiple organizations, and (3) Thomas J. Ballanco representing the Oglala Delegation of the Great Sioux Nation Treaty Council.

The Board is comprised of the following administrative judges:

Michael M. Gibson, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

Dr. Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

Brian K. Hajek, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

Additionally, during the contention admissibility phase of this proceeding, Administrative Judge Alan S. Rosenthal shall function as the Board's Special Assistant.

All correspondence, documents, and other materials shall be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 2007 (72 FR 49139).

Issued at Rockville, Maryland, this 14th day of August, 2008.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. E8–19383 Filed 8–20–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–022–COL & 52–023–COL]

Progress Energy Carolinas, Inc.; ASLBP No. 08–868–04–COL–BD01; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and the Commission's regulations, *see* 10 CFR 2.104, 2.300, 2.303, 2.309, 2.311, 2.318, and 2.321, notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over the following proceeding:

Progress Energy Carolinas, Inc.

(Shearon Harris Nuclear Power Plant, Units 2 and 3)

This proceeding concerns a Petition to Intervene and Request for Hearing submitted by the North Carolina Waste Awareness and Reduction Network, and a request to participate in any hearing submitted by the North Carolina Utilities Commission and the South Carolina Office of Regulatory Staff, in response to a June 4, 2008 Notice of Hearing and Opportunity To Petition for Leave To Intervene on a Combined License Application for the Shearon Harris Nuclear Power Plant, Units 2 and 3, to be located in Wake County, North Carolina (73 FR 31,899). A supplemental corrected notice was also published in the **Federal Register** at 73 FR 33,119 (June 11, 2008).

The Board is comprised of the following administrative judges:

Dr. Paul B. Abramson, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001;

Dr. Michael F. Kennedy, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001;

Dr. William E. Kastenberg, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed in accordance with the NRC E–Filing rule, which the NRC promulgated in August 2007 (72 FR 49,139).

Issued at Rockville, Maryland, this 14th day of August 2008.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. E8–19380 Filed 8–20–08; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 30b1–5, SEC File No. 270–520, OMB Control No. 3235–0577.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the U.S. Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

The title for the collection of information is ''Rule 30b1–5 (17 CFR 270.30b1–5) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), Quarterly Filing of Schedule of Portfolio Holdings of Registered Management Investment Companies.''

Rule 30b1–5 under the Investment Company Act of 1940 requires registered management investment companies, other than small business investment companies registered on Form N–5 (17 CFR 239.24 and 274.5) to file a quarterly report via the Commission's EDGAR system on Form N–Q (17 CFR 249.332 and 274.130), not more than sixty calendar days after the close of each first and third fiscal quarter, containing their complete portfolio holdings.

The Commission estimates that there are 2,820 management investment companies and series that are governed by the rule. For purposes of this analysis, the burden associated with the requirements of Rule 30b1–5 has been included in the collection of information requirements of Form N–Q, rather than the rule.

The collection of information under Rule 30b1–5 is mandatory. The information provided under Rule 30b1–5 is not kept confidential. The Commission 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.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Lewis W. Walker, Acting Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: August 13, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–19355 Filed 8–20–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58375; File No. 10–182]

In the Matter of the Application of BATS Exchange, Inc. for Registration as a National Securities Exchange; Findings, Opinion, and Order of the Commission

August 18, 2008.

I. Introduction

On November 8, 2007, BATS Exchange, Inc. (''BATS Exchange'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission'') a Form 1 application (''Form 1'') under the Securities Exchange Act of 1934 (''Act''), seeking registration as a national securities exchange pursuant to Section 6 of the Act.[1] On February 13, 2008, BATS Exchange submitted Amendment No. 1 to its Form 1. Notice of the application, as amended, was published for comment in the **Federal Register** on February 20, 2008.[2] The Commission received one comment letter regarding the BATS Exchange Form 1.[3] On June 18, 2008, BATS Exchange filed Amendment No. 2 to its Form 1.[4]

II. Statutory Standards

Under Sections 6(b) and 19(a) of the Act,[5] the Commission shall by order grant a registration as a national securities exchange if it finds that the exchange is so organized and has the capacity to carry out the purposes of the Act and can comply, and can enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange.

As discussed in greater detail below, the Commission finds that BATS Exchange's application for exchange registration meets the requirements of the Act and the rules and regulations thereunder. Further, the Commission finds that the proposed rules of BATS Exchange are consistent with Section 6 of the Act in that, among other things, they are designed to: (1) Assure fair representation of an exchange's members in the selection of its directors and administration of its affairs and provide that, among other things, one or more directors shall be representative of investors and not be associated with the exchange, or with a broker or dealer; (2) prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanisms of a free and open market and a national market system; and (3) protect investors and the public interest. The Commission also believes that the rules of BATS Exchange are consistent with Section 11A of the Act.[6] Finally, the Commission finds that the proposed rules of BATS Exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[7]

III. Discussion

A. Corporate Structure

BATS Exchange has applied to the Commission to register as a national securities exchange. BATS Holdings, a Delaware corporation, will wholly own BATS Exchange and BATS Trading. Currently, BATS Trading, a registered broker-dealer, operates the BATS ECN. Before operation of BATS Exchange as a national securities exchange, BATS Trading will transfer most of its assets to BATS Exchange. BATS Trading will continue as a broker-dealer with the sole function of providing outbound order routing services to BATS Exchange.[8]

1. Self-Regulatory Function of BATS Exchange; Relationship Between BATS Holdings, Inc. and BATS Exchange; Jurisdiction Over BATS Holdings, Inc.

Although BATS Holdings will not itself carry out regulatory functions, its activities with respect to the operation of BATS Exchange must be consistent with, and not interfere with, the Exchange's self-regulatory obligations. The proposed BATS Holdings corporate documents include certain provisions that are designed to maintain the independence of the Exchange's self-regulatory function from BATS Holdings, enable the Exchange to operate in a manner that complies with the federal securities laws, including the objectives of Sections 6(b) and 19(g) of the Act, and facilitate the ability of the Exchange and the Commission to fulfill their regulatory and oversight obligations under the Act.[9]

For example, BATS Holdings submits to the Commission's jurisdiction with respect to activities relating to BATS Exchange,[10] and agrees to provide the Commission and BATS Exchange with access to its books and records that are related to the operation or administration of BATS Exchange.[11] In addition, to the extent they are related to the operation or administration of BATS Exchange, the books, records, premises, officers, directors, agents, and employees of BATS Holdings shall be deemed the books, records, premises, officers, directors, agents, and employees of BATS Exchange for purposes of, and subject to oversight pursuant to, the Act.[12] BATS Holdings

[1] 15 U.S.C. 78f.

[2] *See* Securities Exchange Act Release No. 57322 (February 13, 2008), 73 FR 9370 (''Notice'').

[3] The commenter expressed support for the BATS Exchange Form 1. *See* letter from Brian McPartlin dated February 14, 2008.

[4] In Amendment No. 2, BATS Exchange modified its application by: (1) Updating its response to the Form 1 Exhibits to reflect, among other things, certain personnel changes, the existence of a new affiliate, BATS Trading Limited, audited financials for BATS Trading, Inc. (''BATS Trading''), and how BATS Exchange intends to fulfill its regulatory obligations; (2) adding a provision to the BATS Exchange Amended and Restated By-Laws that allows the stockholder of BATS Exchange to appoint the initial Member Representative Directors to the BATS Exchange Board, and amending the definition of ''Executive Representative'' of a member of BATS Exchange; (3) updating certain provisions of the Investors Rights Agreement; and (4) amending the BATS Holdings Amended and Restated Certificate of Incorporation to reduce the number of authorized shares of stock of BATS Holdings, Inc. (''BATS Holdings''). BATS Exchange also made certain modifications to its proposed rules to: (1) Change the start of its pre-opening session from 9:00 a.m. to 8:00 a.m.; (2) remove the ability of a person to submit one membership application with the Financial Industry Regulatory Authority, Inc. (''FINRA''), when applying for membership in both FINRA and BATS Exchange; (3) clarify that the requirement for eligibility for BATS Exchange membership of membership in another SRO applies for continued membership; (4) clarify that the 90-day waive-in period will begin on the date that BATS Exchange's application for registration as a national securities exchange is approved by the Commission; (5) amend the BATS Only Order type to provide that a non-displayed order would get a new timestamp when it becomes displayed; (6) add continuing education requirements for Authorized Traders that are substantially similar to those of FINRA; (7) specify certain BATS Exchange rules and recommended fine amounts for minor rule violations; (8) delete a provision requiring non-clearing members to implement certain procedures of FINRA's Code of Practice; (9) amend its rule relating to failures to deliver/receive to conform to Regulation SHO; and (10) adding a rule to codify the ability of BATS Exchange to enter into an agreement with another self-regulatory organization (''SRO'') to provide regulatory services to BATS Exchange. The changes proposed in Amendment No. 2 either are not material or are otherwise responsive to the concerns of the Commission.

[5] 15 U.S.C. 78f(b) and 78s(a).

[6] 15 U.S.C. 78k–1.

[7] 15 U.S.C. 78f(b)(8).

[8] *See* BATS Exchange Rule 2.11. *See also infra* note 151 and accompanying text.

[9] *See* BATS Holdings Amended and Restated By-Laws Article XII and Article XIV, Sections 14.01, 14.02, 14.03, 14.04, 14.05, and 14.06.

[10] *See* BATS Holdings Amended and Restated By-Laws Article XIV, Section 14.05.

[11] *See* BATS Holdings Amended and Restated By-Laws Article XIV, Section 14.03.

[12] *Id.*

also agrees to keep confidential non-public information relating to the self-regulatory function [13] of BATS Exchange and not to use such information for any non-regulatory purpose.[14] In addition, the board of directors of BATS Holdings, as well as its officers, employees, and agents, are required to give due regard to the preservation of the independence of the Exchange's self-regulatory function.[15] Further, BATS Holdings By-Laws require that any changes to the BATS Holdings Certificate of Incorporation and By-Laws be submitted to the Board of Directors of the Exchange (''Exchange Board''), and, if such amendment is required to be filed with the Commission pursuant to Section 19(b) of the Act, such change shall not be effective until filed with, or filed with and approved by, the Commission.[16] The Commission finds that these provisions are consistent with the Act, and that they will assist the Exchange in fulfilling its self-regulatory obligations and in administering and complying with the requirements of the Act.

The Commission also believes that under Section 20(a) of the Act [17] any person with a controlling interest in BATS Exchange would be jointly and severally liable with and to the same extent that BATS Exchange is liable under any provision of the Act, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action. In addition, Section 20(e) of the Act [18] creates aiding and abetting liability for any person who knowingly provides substantial assistance to another person in violation of any provision of the Act or rule thereunder. Further, Section 21C of the Act [19] authorizes the Commission to enter a cease-and-desist order against any person who has been ''a cause of'' a violation of any provision of the Act through an act or omission that the person knew or should have known would contribute to the violation. These provisions are applicable to BATS Holdings' dealings with BATS Exchange.

2. Ownership and Voting Limitations; Changes in Control of BATS Exchange

The BATS Holdings proposed Amended and Restated Certificate of Incorporation includes restrictions on the ability to own and vote shares of capital stock of BATS Holdings.[20] These limitations are designed to prevent any shareholder from exercising undue control over the operation of BATS Exchange and to assure that the Exchange and the Commission are able to carry out their regulatory obligations under the Act.

Generally, no person, either alone or together with its related persons,[21] may beneficially own more than forty percent of any class of capital stock of BATS Holdings.[22] The BATS Holdings proposed Amended and Restated Certificate of Incorporation prohibits BATS Exchange members, either alone or together with their related persons, from beneficially owning more than twenty percent of shares of any class of capital stock of BATS Holdings.[23] If any stockholder violates these ownership limits, BATS Holdings will redeem the shares in excess of the applicable ownership limit for their fair market value.[24] In addition, no person, alone or together with its related persons, may vote or cause the voting of more than twenty percent of the voting power of the then issued and outstanding capital stock of BATS Holdings.[25] If any stockholder purports to vote, or cause the voting of, shares that would violate this voting limit, BATS Holdings will not honor such vote in excess of the voting limit.[26]

The BATS Holdings Board may waive the forty percent ownership limitation applicable to non-BATS Exchange member stockholders and the twenty percent voting limitation, pursuant to a resolution duly adopted by the Board of Directors, if it makes certain findings. Any such waiver would not be effective until approved by the Commission pursuant to Section 19 of the Act.[27] However, as long as BATS Holdings directly or indirectly controls BATS Exchange, the BATS Holdings Board cannot waive the voting and ownership limits above twenty percent for BATS Exchange members and their related persons.[28]

Members that trade on an exchange traditionally have ownership interests in such exchange. As the Commission has noted in the past, however, a member's interest in an exchange could become so large as to cast doubt on whether the exchange can fairly and objectively exercise its self-regulatory responsibilities with respect to that member.[29] A member that is a controlling shareholder of an exchange might be tempted to exercise that controlling influence by directing the exchange to refrain from, or the exchange may hesitate to, diligently monitor and surveil the member's conduct or diligently enforce its rules and the federal securities laws with respect to conduct by the member that violates such provisions.

In addition, as proposed, BATS Exchange will be a wholly-owned subsidiary of BATS Holdings. The BATS Exchange Amended and Restated By-Laws identifies this ownership structure.[30] Any changes to the BATS Exchange Amended and Restated By-Laws, including any change in the provision that identifies BATS Holdings as the sole owner, must be filed with and approved by the Commission pursuant to Section 19 of the Act.[31] Further, pursuant to the BATS Exchange Amended and Restated By-Laws, BATS Holdings may not transfer or assign, in whole or in part, its ownership interest in BATS Exchange.[32]

[13] This requirement to keep confidential non-public information relating to the self-regulatory function shall not limit the Commission's ability to access and examine such information or limit the ability of directors, officers, or employees of BATS Holdings to disclose such information to the Commission. *See* BATS Holdings Amended and Restated By-Laws Article XIV, Section 14.02.

[14] *See* BATS Holdings Amended and Restated By-Laws Article XIV, Section 14.02.

[15] *See* BATS Holdings Amended and Restated By-Laws Article XIV, Section 14.01.

[16] *See* BATS Holdings Amended and Restated Certificate of Incorporation TWELFTH and BATS Holdings Amended and Restated By-Laws Article XII.

[17] 15 U.S.C. 78t(a).

[18] 15 U.S.C. 78t(e).

[19] 15 U.S.C. 78u–3.

[20] These provisions are generally consistent with ownership and voting limits approved by the Commission for other SROs. *See e.g.*, Securities Exchange Act Release Nos. 53963 (June 8, 2006), 71 FR 34660 (June 15, 2006) (SR–NSX–2006–03) (''NSX Demutualization Order''); 51149 (February 8, 2005), 70 FR 7531 (February 14, 2005) (SR–CHX–2004–26) (''CHX Demutualization Order''); and 49098 (January 16, 2004), 69 FR 3974 (January 27, 2004) (SR–Phlx–2003–73) (''Phlx Demutualization Order'').

[21] *See* BATS Holdings Amended and Restated Certificate of Incorporation FIFTH (a)(ii).

[22] *See* BATS Holdings Amended and Restated Certificate of Incorporation FIFTH (b)(i)(A).

[23] *See* BATS Holdings Amended and Restated Certificate of Incorporation FIFTH (b)(i)(B).

[24] *See* BATS Holdings Amended and Restated Certificate of Incorporation FIFTH (e).

[25] *See* BATS Holdings Amended and Restated Certificate of Incorporation FIFTH (b)(i)(C).

[26] *See* BATS Holdings Amended and Restated Certificate of Incorporation FIFTH (d).

[27] *See* BATS Holdings Amended and Restated Certificate of Incorporation FIFTH (b)(ii)(B).

[28] These provisions are generally consistent with waiver of ownership and voting limits approved by the Commission for other SROs. *See e.g.*, NSX Demutualization Order, *supra* note 20; CHX Demutualization Order, *supra* note 20; and Securities Exchange Act Release No. 49718 (May 17, 2004), 69 FR 29611 (May 24, 2004) (SR–PCX–2004–08).

[29] *See, e.g.*, Securities Exchange Act Release Nos. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10–131) (''Nasdaq Exchange Registration Order'') and 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–2005–77) (''NYSE/Archipelago Merger Approval Order'').

[30] *See* BATS Exchange Amended and Restated By-Laws Article I(cc).

[31] *See* 15 U.S.C. 78s.

[32] *See* BATS Exchange Amended and Restated By-Laws Article IV, Section 7.

The Commission believes that these provisions are consistent with the Act. These requirements should minimize the potential that a person could improperly interfere with or restrict the ability of the Commission or the Exchange to effectively carry out their regulatory oversight responsibilities under the Act.

3. BATS Exchange

BATS Exchange has applied to the Commission to register as a national securities exchange. As part of its exchange application, the Exchange has filed the BATS Exchange Certificate of Incorporation and the proposed Amended and Restated By-Laws of BATS Exchange. In these documents, among other things, BATS Exchange establishes the composition of the Exchange Board and the BATS Exchange committees.

a. The BATS Exchange Board of Directors

The Exchange Board will be the governing body of BATS Exchange and possess all of the powers necessary for the management of the business and affairs of the Exchange and the execution of its responsibilities as an SRO. Under the BATS Exchange Amended and Restated By-Laws:

- The Exchange Board will be composed of ten directors; [33]
- One director will be the Chief Executive Officer of BATS Exchange; [34]
- The number of Non-Industry Directors,[35] including at least one Independent Director,[36] will equal or exceed the sum of the number of Industry Directors [37] and Member Representative Directors; [38] and
- At least twenty percent of the directors on the Exchange Board will be Member Representative Directors.[39]

BATS Holdings will appoint the initial Exchange Board, including the Member Representative Directors, which shall serve until the first annual meeting of stockholders.[40] The first annual meeting of the stockholders will be held prior to BATS Exchange commencing operations as a national securities exchange.[41] At the first annual meeting of stockholders, a new Exchange Board will be elected pursuant to the BATS Exchange Amended and Restated By-Laws. Therefore, prior to commencing operations as a national securities exchange, BATS Exchange Members will have the opportunity to participate in the selection of Member Representative Directors, and the Exchange Board will be in compliance with the compositional requirements contained in the BATS Exchange Amended and Restated By-Laws.[42]

BATS Holdings will appoint the initial Nominating Committee [43] and Member Nominating Committee,[44] consistent with each committee's compositional requirements,[45] to nominate candidates for election to the Exchange Board. Each of the Nominating Committee and Member Nominating Committee, after completion of its respective duties for nominating directors for election to the Board for that year, shall nominate candidates to serve on the succeeding year's Nominating Committee or Member Nominating Committee, as applicable. Additional candidates for the Member Nominating Committee may be nominated and elected by BATS Exchange Members pursuant to a petition process.[46]

The Nominating Committee will nominate candidates for each director position other than the Member Representative Directors, and BATS Holdings, as the sole shareholder, will elect those directors. The Member Nominating Committee will nominate candidates for each Member Representative Director position on the Exchange Board.[47] Additional candidates may be nominated for the Member Representative Director positions by BATS Exchange Members pursuant to a petition process.[48] If no candidates are nominated pursuant to a petition process, then the initial nominees of the Member Nominating Committee will be nominated as Member Representative Directors by the Nominating Committee. If a petition process produces additional candidates, then the candidates nominated pursuant to a petition process, together with those nominated by the Member Nominating Committee, will be presented to BATS Exchange Members for election to determine the final nomination of Member Representative Directors.[49] The candidates who receive the most votes will be nominated as Member Representative Directors by the Nominating Committee.[50] BATS Holdings, as the sole shareholder, will elect those candidates nominated by the Nominating Committee as Member Representative Directors.[51]

[33] *See* BATS Exchange Amended and Restated By-Laws Article III, Section 2(a).

[34] *See* BATS Exchange Amended and Restated By-Laws Article III, Section 2(b).

[35] ''Non-Industry Director'' means a Director who is an Independent Director or any other individual who would not be an Industry Director. *See* BATS Exchange Amended and Restated By-Laws Article I(v).

[36] ''Independent Director'' means a ''Director who has no material relationship with the [Exchange], or any Exchange Member or any affiliate of any such Exchange Member; *provided,* however, that an individual who otherwise qualifies as an Independent Director shall not be disqualified from serving in such capacity solely because such Director is a Director of the [Exchange] or its stockholder.'' *See* BATS Exchange Amended and Restated By-Laws Article I(m).

[37] Generally, an ''Industry Director'' is, among other things, a Director that is or has been within the past three years an officer, director, employee, or owner of a broker-dealer. In addition, persons who have a consulting or employment relationship with the Exchange and its affiliates, are considered ''Industry.'' *See* BATS Exchange Amended and Restated By-Laws Article I(o).

[38] *See* BATS Exchange Amended and Restated By-Laws Article III, Section 2(b)(i).

[39] *See* BATS Exchange Amended and Restated By-Laws Article III, Section 2(b)(ii). ''Member Representative Director'' means a ''Director who has been elected by stockholders after having been nominated by the Member Nominating Committee or by an Exchange Member pursuant to these By-Laws and confirmed as the nominee of Exchange Members after majority vote of Exchange Members, if applicable. A Member Representative Director must be an officer, director, employee, or agent of an Exchange member that is not a Stockholder Exchange Member.'' *See* BATS Exchange Amended and Restated By-Laws Article I(s). *See also* BATS Exchange Amended and Restated By-Laws Article III, Section 4(b).

[40] *See* BATS Exchange Amended and Restated By-Laws Article I(s) and Article III, Section 4(g); *see also* Amendment No. 2.

[41] *See* BATS Exchange Amended and Restated By-Laws Article IV, Section 1(b).

[42] *See* BATS Exchange Amended and Restated By-Laws Article III, Section 2.

[43] *See* BATS Exchange Amended and Restated By-Laws Article VI, Section 2. The Nominating Committee will be comprised of at least three directors, and the number of Non-Industry members on the Nominating Committee must equal or exceed the number of Industry members.

[44] *See* BATS Exchange Amended and Restated By-Laws Article VI, Section 3. The Member Nominating Committee will be comprised of at least three directors, and each member of the Member Nominating Committee shall be a Member Representative member.

[45] *See* BATS Exchange Amended and Restated By-Laws Article VI, Section 1.

[46] *See* BATS Exchange Amended and Restated By-Laws Article VI, Section 1.

[47] The Member Nominating Committee will solicit comments from BATS Exchange Members for the purpose of approving and submitting names of candidates for election to the position of Member Representative Director. *See* BATS Exchange Amended and Restated By-Laws Article III, Section 4(b).

[48] *See* BATS Exchange Amended and Restated By-Laws Article III, Section 4(c). The petition must be signed by Executive Representatives of ten percent or more of the Exchange members. No Exchange member, together with its affiliates, may account for more than fifty percent of the signatures endorsing a particular candidate. *Id.*

[49] *See* BATS Exchange Amended and Restated By-Laws Article III, Section 4(e) and (f). Each BATS Exchange Member shall have the right to cast one vote for each available Member Representative Director nomination, provided that any such vote must be cast for a person on the List of Candidates and that no BATS Exchange Member, together with its affiliates, may account for more than twenty percent of the votes cast for a candidate. *Id.*

[50] *See* BATS Exchange Amended and Restated By-Laws Article III, Section 4(f).

[51] *Id.*

The Commission believes that the requirement in the BATS Exchange Amended and Restated By-Laws that twenty percent of the directors be Member Representative Directors and the means by which they are chosen by members provides for the fair representation of members in the selection of directors and the administration of BATS Exchange consistent with the requirement in Section 6(b)(3) of the Act.[52] As the Commission has previously noted, this requirement helps to ensure that members have a voice in the use of self-regulatory authority, and that an exchange is administered in a way that is equitable to all those who trade on its market or through its facilities.[53]

The Commission has previously stated its belief that the inclusion of public, non-industry representatives on exchange oversight bodies is critical to an exchange's ability to protect the public interest.[54] Further, public, non-industry representatives help to ensure that no single group of market participants has the ability to systematically disadvantage other market participants through the exchange governance process. The Commission believes that public directors can provide unique, unbiased perspectives, which should enhance the ability of the Exchange Board to address issues in a non-discriminatory fashion and foster the integrity of BATS Exchange.[55] The Commission believes that the Exchange Board satisfies the requirements in Section 6(b)(3) of the Act,[56] which requires that one or more directors be representative of issuers and investors and not be associated with a member of the exchange, or with a broker or dealer.[57]

b. BATS Exchange Committees

In the BATS Exchange Amended and Restated By-Laws, BATS Exchange has proposed to establish several committees. Specifically, BATS Exchange has proposed to establish the following committees that would be appointed by the Chairman of the Exchange Board, with the approval of the Exchange Board: A Compensation Committee;[58] Audit Committee;[59] Regulatory Oversight Committee;[60] Appeals Committee;[61] Executive Committee;[62] and Finance Committee.[63] In addition, BATS Exchange has proposed to establish a Nominating Committee[64] and a Member Nominating Committee, which would be elected on an annual basis by vote of stockholders.[65] For the reasons discussed above, the Commission believes that BATS Exchange's proposed committees should enable BATS Exchange to carry out its responsibilities under the Act and are consistent with the Act.

B. Regulation of BATS Exchange

As a prerequisite for the Commission's approval of an exchange's application for registration, an exchange must be organized and have the capacity to carry out the purposes of the Act.[66] Specifically, an exchange must be able to enforce compliance by its members, and persons associated with its members, with the federal securities laws and the rules of the exchange.[67]

1. Membership

Membership on BATS Exchange will be open to any registered broker or dealer that is a member of another registered national securities exchange or association, or any natural person associated with such a registered broker or dealer.[68] To remain eligible for membership in BATS Exchange, a BATS Exchange member must be a member of another SRO at all times.[69]

For a temporary 90-day period after approval of BATS Exchange's application, an applicant that is an active member of another SRO and is a current or former subscriber to the BATS ECN will be able to apply through an expedited process to become a BATS Exchange member, and to register with BATS Exchange all of its associated persons whose registrations are active at the time BATS Exchange is approved as a national securities exchange, by submitting a waive-in application form, including membership agreements.[70] BATS Exchange may request additional documentation in addition to the waive-in application form in order to determine that a waive-in applicant meets BATS Exchange's qualification standards.[71] All of the firm's associated persons who are registered in categories recognized by BATS Exchange rules would become registered persons of a BATS Exchange member firm.[72]

All other applicants (and after the 90-day period has ended, those that could have waived in through the expedited process) may apply for membership in BATS Exchange by submitting a full membership application to BATS Exchange.[73] Applications for association with an Exchange Member shall be submitted to the Exchange on Form U–4 and such other forms as BATS Exchange may prescribe.

BATS Exchange will receive and review all applications for membership in the Exchange. If the Exchange is satisfied that the applicant is qualified for membership, the Exchange will promptly notify the applicant, in writing, of such determination, and the applicant shall be a member of the

[52] 15 U.S.C. 78f(b)(3).

[53] *See* Nasdaq Exchange Registration Order and NYSE/Archipelago Merger Approval Order, *supra* note 29.

[54] *See, e.g.*, Regulation of Exchanges and Alternative Trading Systems, Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998) (''Regulation ATS Release'').

[55] *See* Nasdaq Exchange Registration Order and NYSE/Archipelago Merger Approval Order, *supra* note 29.

[56] 15 U.S.C. 78f(b)(3).

[57] The number of Non-Industry Directors on the Exchange Board must equal or exceed the sum of the Industry and Member Representative Directors, and the Exchange Board must include at least one Independent Director. *See* BATS Exchange Amended and Restated By-Laws Article III, Section 2(b)(i).

[58] *See* BATS Exchange Amended and Restated By-Laws Article V, Section 6(a). The Compensation Committee will be comprised of at least three people, and each voting member of the Compensation Committee shall be a Non-Industry Director. *Id.*

[59] *See* BATS Exchange Amended and Restated By-Laws Article V, Section 6(b). The Audit Committee will be comprised of at least three people, and a majority of the Audit Committee members shall be Non-Industry Directors and a Non-Industry Director shall serve as Chairman of the Audit Committee. *Id.*

[60] *See* BATS Exchange Amended and Restated By-Laws Article V, Section 6(c). The Regulatory Oversight Committee will be comprised of at least three people, and each member of the Regulatory Oversight Committee shall be a Non-Industry Director. *Id.*

[61] *See* BATS Exchange Amended and Restated By-Laws Article V, Section 6(d). The Appeals Committee shall consist of one Independent Director, one Industry Director, and one Member Representative Director. *Id.*

[62] *See* BATS Exchange Amended and Restated By-Laws Article V, Section 6(e). The number of Non-Industry Directors on the Executive Committee shall equal or exceed the number of Industry Directors. The percentage of Independent Directors on the Executive Committee shall be at least as great as the percentage of Independent Directors on the whole Exchange Board, and the percentage of Member Representative Directors on the Executive Committee shall be at least as great as the percentage of Member Representative Directors on the whole Exchange Board. *Id.*

[63] *See* BATS Exchange Amended and Restated By-Laws Article V, Section 6(f).

[64] *See* BATS Exchange Amended and Restated By-Laws Article VI, Section 2, and *supra* note 43.

[65] *See* BATS Exchange Amended and Restated By-Laws Article VI, Section 1, and *supra* note 44. Additional candidates for the Member Nominating Committee may be nominated and elected by BATS Exchange members pursuant to a petition process. *See supra* note 48 and accompanying text.

[66] *See* Section 6(b)(1) of the Act, 15 U.S.C. 78f(b)(1).

[67] *Id. See also* Section 19(g) of the Act, 15 U.S.C. 78s(g).

[68] *See* BATS Exchange Rules 2.3 and 2.5(a)(4) and Amendment No. 2.

[69] *Id.*

[70] *See* BATS Exchange Rule 2.4.

[71] *Id.*

[72] *Id.*

[73] *See* BATS Exchange Rule 2.6 and Amendment No. 2.

Exchange.[74] If the Exchange is not satisfied that the applicant is qualified for membership, the Exchange shall promptly notify the applicant of the grounds for denial.[75] Once an applicant is a member of the Exchange, it must continue to possess all the qualifications set forth in the BATS Exchange rules. When the Exchange has reason to believe that an Exchange member or associated person of a member fails to meet such qualifications, the Exchange may suspend or revoke such person's membership or association.[76]

Appeal of a staff denial, suspension, or termination of membership will be heard by the Appeals Committee.[77] Decisions of the Appeals Committee will be made in writing and will be sent to the parties to the proceeding. The decisions of the Appeals Committee will be subject to review by the Exchange Board, on its own motion, or upon written request by the aggrieved party or by the Chief Regulatory Officer (''CRO''). The Exchange Board will have sole discretion to grant or deny the request. The Exchange Board will conduct the review of the Appeals Committee's decision. The Exchange Board may affirm, reverse, or modify the Appeals Committee's decision. The Exchange Board's decision is final.[78]

The Commission finds that the BATS Exchange's membership rules are consistent with Section 6 of the Act,[79] specifically Section 6(b)(2) of the Act,[80] which requires that a national securities exchange have rules that provide that any registered broker or dealer or natural person associated with such broker or dealer may become a member and any person may become associated with an exchange member. The Commission notes that pursuant to Section 6(c) of the Act, an exchange must deny membership to any person, other than a natural person, that is not a registered broker or dealer, any natural person that is not, or is not associated with, a registered broker or dealer, and registered broker-dealers that do not satisfy certain standards, such as financial responsibility or operational capacity. As a registered exchange, BATS Exchange must independently determine if an applicant satisfies the standards set forth in the Act, regardless of whether an applicant is a member of another SRO.[81]

2. Regulatory Independence

BATS Exchange has proposed several measures to help ensure the independence of its regulatory function from its market operations and other commercial interests. The regulatory operations of BATS Exchange will be supervised by the CRO and monitored by the Regulatory Oversight Committee. The Regulatory Oversight Committee will consist of three members, each of whom must be a Non-Industry Director.[82] The Regulatory Oversight Committee will be responsible for monitoring the adequacy and effectiveness of the Exchange's regulatory program, assessing the Exchange's regulatory performance, and assisting the Exchange Board in reviewing the Exchange's regulatory plan and the overall effectiveness of the Exchange's regulatory functions.[83] The Regulatory Oversight Committee also will meet with the CRO in executive session at regularly scheduled meetings and at any time upon request of the CRO or any member of the Regulatory Oversight Committee.[84]

BATS Exchange proposes that its CRO have general supervision of the regulatory operations of the Exchange, including overseeing surveillance, examination, and enforcement functions.[85] The CRO also will administer any regulatory services agreement with another SRO to which BATS Exchange is a party.[86] The CRO will be an Executive Vice President or Senior Vice President that reports directly to the Chief Executive Officer.[87] The CRO also may serve as BATS Exchange's General Counsel.[88] In addition, any revenues received by BATS Exchange from fees derived from its regulatory function or regulatory penalties will not be used for non-regulatory purposes.[89]

The Commission is concerned about the potential for unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interests that could exist if an exchange were to otherwise become affiliated with one of its members, as well as the potential for unfair competitive advantage that the affiliated member could have by virtue of informational or operational advantages, or the ability to receive preferential treatment.[90] BATS Exchange Rule 2.10 provides that without the prior approval of the Commission, BATS Exchange or any entity with which it is affiliated shall not, directly or indirectly, acquire or maintain an ownership interest in a BATS Exchange member, and a BATS Exchange member shall not be or become an affiliate of BATS Exchange, or an affiliate of any affiliate of the Exchange.[91] BATS Exchange also has proposed for Commission approval BATS Exchange Rule 2.11, which provides that BATS Trading, a registered broker-dealer, will provide an Outbound Router function as a facility of the Exchange pursuant to certain conditions and limitations.[92] BATS Trading is an affiliate of BATS Exchange and will become a member of BATS Exchange. This affiliation would not be consistent with proposed Rule 2.10 absent prior Commission approval. As part of the approval today of BATS Exchange's application for registration as a national securities exchange, the Commission is approving BATS Exchange Rule 2.11.

The Commission believes that the Exchange's proposal is consistent with the Act, particularly with Section 6(b)(1), which requires an exchange to be so organized and have the capacity to carry out the purposes of the Act.[93] Although the Commission continues to be concerned about potential unfair competition and conflict of interest between an exchange's self-regulatory obligations and its commercial interests when an exchange is affiliated with one of its members, the Commission believes that it is consistent with the Act to permit BATS Trading to become an affiliate of BATS Exchange for the limited Outbound Router function, in light of the protections afforded by the conditions and limitations imposed in BATS Exchange's rules.[94]

[74] *See* BATS Exchange Rule 2.6(c).

[75] *See* BATS Exchange Rule 2.6(d).

[76] *See* BATS Exchange Rule 2.7; *see also* BATS Exchange Rules Chapters VII and VIII.

[77] *See* BATS Exchange Rule 10.3; *see also* BATS Exchange Amended and Restated By-Laws Article V, Section 6(d).

[78] *See* BATS Exchange Rule 10.5(b). Membership decisions are subject to review by the Commission. *See* BATS Exchange Rule 10.7.

[79] 15 U.S.C. 78f.

[80] 5 U.S.C. 78f(b)(2).

[81] *See* Nasdaq Exchange Registration Order, *supra* note 29.

[82] *See* BATS Exchange Amended and Restated By-Laws Articles I(v) and V, Section 6(c).

[83] *See* BATS Exchange Amended and Restated By-Laws Article V, Section 6(c).

[84] *See* BATS Exchange Amended and Restated By-Laws Article VII, Section 9.

[85] *Id.*

[86] *Id.*

[87] *Id.*

[88] *Id. See* Nasdaq Exchange Registration Order, *supra* note 29.

[89] *See* BATS Exchange Amended and Restated By-Laws Article X, Section 4.

[90] *See, e.g.*, Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006).

[91] *See* BATS Exchange Rule 2.10.

[92] *See infra* Section III.E.

[93] *See* 15 U.S.C. 78f(b)(1).

[94] *See infra* Section III.E. The Commission has approved similar arrangements for other SROs. *See, e.g.*, Securities Exchange Act Release Nos. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR–NASDAQ–2007–004) (''NOM Approval Order'') and 54391 (August 31, 2006), 71 FR 52836

3. Regulatory Contract

Although BATS Exchange will be an SRO with all of the attendant regulatory obligations under the Act, it has entered into a regulatory contract with FINRA (''Regulatory Contract''), under which FINRA will perform certain regulatory functions on BATS Exchange's behalf.[95] Specifically, BATS Exchange represents that FINRA will assist Exchange staff on registration issues on an as-needed basis, investigate potential violations of BATS Exchange's rules or federal securities laws related to activity on the Exchange, conduct examinations related to market conduct on the Exchange by Members, assist the Exchange with disciplinary proceedings pursuant to BATS Exchange's Rules, including issuing charges and conducting hearings, and provide dispute resolution services to BATS Exchange Members on behalf of the Exchange, including operation of the Exchange's arbitration program. BATS Exchange represents that FINRA also will provide the Exchange with access to FINRA's WebCRD system, and will assist with programming BATS-specific functionality relating to such system.[96] Notwithstanding the Regulatory Contract, BATS Exchange will retain ultimate legal responsibility for the regulation of its members and its market.

The Commission believes that it is consistent with the Act to allow BATS Exchange to contract with FINRA to perform examination, enforcement, and disciplinary functions.[97] These functions are fundamental elements to a regulatory program, and constitute core self-regulatory functions. It is essential to the public interest and the protection of investors that these functions are carried out in an exemplary manner, and the Commission believes that FINRA has the expertise and experience to perform these functions on behalf of BATS Exchange.[98]

At the same time, BATS Exchange, unless relieved by the Commission of its responsibility,[99] bears the responsibility for self-regulatory conduct and primary liability for self-regulatory failures, not the SRO retained to perform regulatory functions on the Exchange's behalf. In performing these regulatory functions, however, FINRA may nonetheless bear liability for causing or aiding and abetting the failure of BATS Exchange to perform its regulatory functions.[100] Accordingly, although FINRA will not act on its own behalf under its SRO responsibilities in carrying out these regulatory services for BATS Exchange, FINRA may have secondary liability if, for example, the Commission finds that the contracted functions are being performed so inadequately as to cause a violation of the federal securities laws by BATS Exchange.[101]

Although BATS Exchange has entered into the Regulatory Contact, the provisions in the Regulatory Contract that will specify the particular BATS Exchange and Commission rules for which FINRA will provide certain regulatory functions have not been finalized. Accordingly, the Commission is conditioning the operation of BATS Exchange on the execution of the Regulatory Contract and finalization of the provisions in the Regulatory Contract that will specify the BATS Exchange and Commission rules for which FINRA will provide regulatory functions.[102]

4. 17d–2 Agreement

Section 19(g)(1) of the Act[103] requires every SRO to examine its members and persons associated with its members and to enforce compliance with the federal securities laws and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d) of the Act.[104] Section 17(d) was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication with respect to members of more than one SRO (''common members'').[105] Rule 17d–2 of the Act permits SROs to propose joint plans allocating regulatory responsibilities concerning common members.[106] These agreements, which must be filed with and approved by the Commission, generally cover such regulatory functions as personnel registration, branch office examinations, and sales practices. Commission approval of a 17d–2 plan relieves the specified SRO of those regulatory responsibilities allocated by the plan to another SRO.[107] Many existing SROs have entered in to such agreements.[108]

BATS Exchange has represented to the Commission that BATS Exchange and FINRA intend to file a 17d–2 agreement with the Commission covering common members of BATS Exchange and FINRA. This agreement would allocate to FINRA regulatory responsibility, with respect to common members, for the following:

- FINRA will examine common members of BATS Exchange and FINRA for compliance with federal securities laws, rules and regulations, and rules of BATS Exchange that have been certified by BATS Exchange as identical or substantially similar to FINRA rules.
- FINRA will investigate common members of BATS Exchange and FINRA for violations of federal securities laws, rules or regulations, or BATS Exchange rules that has been certified by BATS Exchange as identical or substantially identical to a FINRA rule.
- FINRA will enforce compliance by common members with federal securities laws, rules and regulations, and rules of BATS Exchange that have been certified by BATS Exchange as

(September 7, 2006) (SR–NSX–2006–08) (''NSX Blade Approval Order'').

[95] *See* BATS Exchange Rule 13.7; *see also* Amendment No. 2. Pursuant to the applicable provisions of the Freedom of Information Act, 5 U.S.C. 552, and Commission regulations thereunder, 17 CFR 200.83, BATS Exchange has requested confidential treatment for the Regulatory Contract.

[96] *See* Amendment No. 2.

[97] *See, e.g.*, Regulation ATS Release, *supra* note 54. *See also* Securities Exchange Act Release 50122 (July 29, 2004), 69 FR 47962 (August 6, 2004) (SR–Amex–2004–32) (order approving rule that allowed Amex to contract with another SRO for regulatory services) (''Amex Regulatory Services Approval Order''); NOM Approval Order, *supra* note 94; and Nasdaq Exchange Registration Order, *supra* note 29.

[98] *See* Amex Regulatory Services Approval Order, *supra* note 97; NOM Approval Order, *supra* note 94; and Nasdaq Exchange Registration Order, *supra* note 29. The Commission notes that the Regulatory Contract is not before the Commission and, therefore, the Commission is not acting on it.

[99] *See* Section 17(d)(1) of the Act and Rule 17d–2 thereunder, 15 U.S.C. 78q(d)(1) and 17 CFR 240.17d–2. *See also infra* notes 103–110 and accompanying text.

[100] For example, if failings by FINRA have the effect of leaving BATS Exchange in violation of any aspect of BATS Exchange's self-regulatory obligations, BATS Exchange would bear direct liability for the violation, while FINRA may bear liability for causing or aiding and abetting the violation. *See* Nasdaq Exchange Registration Order, *supra* note 29 and Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000) (File No. 10–127) (order approving the International Securities Exchange LLC's application for registration as a national securities exchange).

[101] *Id.*

[102] Alternatively, BATS Exchange could demonstrate that it has the ability to fulfill its regulatory obligations.

[103] 15 U.S.C. 78s(g)(1).

[104] 15 U.S.C. 78q(d).

[105] *See* Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976) (''Rule 17d–2 Adopting Release'').

[106] 17 CFR 240.17d–2.

[107] *See* Rule 17d–2 Adopting Release, *supra* note 105.

[108] *See, e.g.*, Securities Exchange Act Release Nos. 13326 (March 3, 1977), 42 FR 13878 (March 14, 1977) (NYSE/Amex); 13536 (May 12, 1977), 42 FR 26264 (May 23, 1977) (NYSE/BSE); 14152 (November 9, 1977), 42 FR 59339 (November 16, 1977) (NYSE/CSE); 13535 (May 12, 1977), 42 FR 26269 (May 23, 1977) (NYSE/CHX); 13531 (May 12, 1977), 42 FR 26273 (May 23, 1977) (NYSE/PSE); 14093 (October 25, 1977), 42 FR 57199 (November 1, 1977) (NYSE/Phlx); 15191 (September 26, 1978), 43 FR 46093 (October 5, 1978) (NASD/BSE, CSE, CHX and PSE); 16858 (May 30, 1980), 45 FR 37927 (June 5, 1980) (NASD/BSE, CSE, CHX and PSE); 42815 (May 23, 2000), 65 FR 34762 (May 31, 2000) (NASD/ISE); and 54136 (July 12, 2006), 71 FR 40759 (July 18, 2006) (NASD/Nasdaq).

identical or substantially similar to FINRA rules.

Because BATS Exchange anticipates entering into this 17d–2 agreement, it has not made provision to fulfill the regulatory obligations that would be undertaken by FINRA under this agreement with respect to common members of BATS Exchange and FINRA.[109] Accordingly, the Commission is conditioning the operation of BATS Exchange on approval by the Commission of a 17d–2 agreement between BATS Exchange and FINRA that allocates the above specified matters to FINRA.[110]

5. Discipline and Oversight of Members

As noted above, a prerequisite for the Commission approval of an exchange's application for registration, an exchange must be organized and have the capacity to carry out the purposes of the Act. Specifically, an exchange must be able to enforce compliance by its members and persons associated with its members with federal securities laws and the rules of the exchange.[111] As noted above, pursuant to the Regulatory Contract, FINRA will perform many of the initial disciplinary processes on behalf of BATS Exchange.[112] For example, FINRA will investigate potential securities laws violations, issue complaints, and conduct hearings pursuant to BATS Exchange rules. Appeals from disciplinary decisions will be heard by the Appeals Committee[113] and the Appeals Committee's decision shall be final. In addition, the Exchange Board may on its own initiative order review of a disciplinary decision.[114]

The BATS Amended and Restated By-Laws and BATS Exchange rules provide that the Exchange has disciplinary jurisdiction over its members so that it can enforce its members' compliance with its rules and the federal securities laws.[115] The Exchange's rules also permit it to sanction members for violations of its rules and violations of the federal securities laws by, among other things, expelling or suspending members, limiting members' activities, functions, or operations, fining or censuring members, or suspending or barring a person from being associated with a member, or any other fitting sanction.[116] BATS Exchange's rules also provide for the imposition of fines for certain minor rule violations in lieu of commencing disciplinary proceedings.[117] Accordingly, as a condition to the operation of BATS Exchange, a Minor Rule Violation Plan (''MRVP'') filed by BATS Exchange under Act Rule 19d–1(c)(2) must be declared effective by the Commission.[118]

The Commission finds that the BATS Exchange's Amended and Restated By-Laws and rules concerning its disciplinary and oversight programs are consistent with the requirements of Sections 6(b)(6) and 6(b)(7)[119] of the Act in that they provide fair procedures for the disciplining of members and persons associated with members. The Commission further finds that the rules of BATS Exchange provide it with the ability to comply, and with the authority to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of BATS Exchange.[120]

C. BATS Exchange Trading System

1. Trading Rules

BATS Exchange will operate a fully automated electronic order book. Exchange members and entities that enter into sponsorship arrangements with Exchange members will have access to the BATS Exchange system (collectively, ''Users'').[121] Users will be able to electronically submit market and various types of limit orders to the Exchange from remote locations. All orders submitted to BATS Exchange will be displayed unless designated otherwise by the BATS Exchange member submitting the order. Displayed orders will be displayed on an anonymous basis at a specified price. Non-displayed orders will not be displayed but will be ranked in the BATS Exchange system at a specified price.[122] The BATS Exchange system will continuously and automatically match orders pursuant to price/time priority, except that displayed orders will have priority over non-displayed orders at the same price.[123]

The BATS Exchange system is designed to comply with Rule 611 of Regulation NMS[124] by requiring that, for any execution to occur on the Exchange during regular trading hours, the price must be equal to, or better than, any ''protected quotation'' within the meaning of Regulation NMS (''Protected Quotation''), unless an exception to Rule 611 of Regulation NMS applies.[125] BATS Exchange will direct any orders or portion of orders that cannot be executed in their entirety to away markets for execution through BATS Trading, unless the terms of the orders direct the Exchange not to route such orders away.[126]

BATS Exchange intends to operate as an automated trading center in compliance with Rule 600(b)(4) of Regulation NMS.[127] BATS Exchange will display automated quotations at all times except in the event that a systems malfunction renders the system incapable of displaying automated quotations.[128] The Exchange has designed its rules relating to orders, modifiers, and order execution to comply with the requirements of Regulation NMS, including an immediate-or-cancel functionality.[129] These proposed rules include accepting orders marked as intermarket sweep orders, which will allow orders so designated to be automatically matched and executed without reference to Protected Quotations at other trading centers,[130] and routing orders marked as intermarket sweep orders by a User to a specific trading center for execution.[131] In addition, BATS Exchange rules address locked and crossed markets,[132] as required by Rule 610(d) of Regulation NMS.[133] The Commission believes that BATS Exchange's rules are consistent with the Act, in particular with the requirements of Rule 610(d) and Rule 611 of Regulation NMS.

As stated above, BATS Exchange intends to operate as an automated

[109] The Commission notes that regulation that is to be covered by the 17d–2 agreement for common members will be carried out by FINRA under the Regulatory Contract for BATS Exchange members that are not also members of FINRA.

[110] Alternatively, BATS Exchange could demonstrate that it has the ability to fulfill its regulatory obligations.

[111] *See* 15 U.S.C. 78f(b)(1).

[112] *See supra* note 97 and accompanying text.

[113] *See* BATS Exchange Rule 8.10(b).

[114] *See* BATS Exchange Rule 8.10(c).

[115] *See generally* BATS Exchange Amended and Restated By-Laws Article X and BATS Exchange Rules Chapters II and VIII.

[116] *See* BATS Exchange Rules 2.2 and 8.1(a).

[117] *See* BATS Exchange Rule 8.15 and Amendment No. 2.

[118] 17 CFR 240.19d–1(c)(2).

[119] 15 U.S.C. 78f(b)(6) and (b)(7).

[120] *See* Section 6(b)(1) of the Act, 15 U.S.C. 78f(b)(1).

[121] To obtain authorized access to the BATS Exchange System, each User must enter in to a User Agreement with the Exchange. *See* BATS Exchange Rule 11.3(a).

[122] BATS Exchange rules do not provide for specialists or market makers.

[123] *See* BATS Exchange Rule 11.8.

[124] 17 CFR 242.611.

[125] *See* BATS Exchange Rule 11.9.

[126] *See* BATS Exchange Rule 11.9(a)(2).

[127] 17 CFR 242.600(b)(4).

[128] *See* BATS Exchange Rule 11.9(c); *see also* 17 CFR 242.600(b)(3).

[129] *See* BATS Exchange Rules 11.5 and 11.9; *see also* 17 CFR 242.600(b)(3).

[130] *See* BATS Exchange Rule 11.5(d)(1).

[131] *See* BATS Exchange Rule 11.5(d)(2).

[132] *See* BATS Exchange Rule 11.16.

[133] 17 CFR 242.610(d).

trading center and have its best bid and best offer be a Protected Quotation.[134] To meet their regulatory responsibilities under Rule 611(a) of Regulation NMS, market participants must have sufficient notice of new Protected Quotations, as well as all necessary information (such as final technical specifications).[135] Therefore, the Commission believes that it would be a reasonable policy and procedure under Rule 611(a) for industry participants to begin treating BATS Exchange's best bid and best offer as a Protected Quotation within 90 days after the date of this order, or such later date as BATS Exchange begins operation as a national securities exchange.

2. Section 11 of the Act

Section 11(a)(1) of the Act [136] prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises discretion (collectively, ''covered accounts'') unless an exception applies. Rule 11a2–2(T) [137] under the Act, known as the ''effect versus execute'' rule, provides exchange members with an exemption from the Section 11(a)(1) prohibition. Rule 11a2–2(T) permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute the transactions on the exchange. To comply with Rule 11a2–2(T)'s conditions, a member: (i) Must transmit the order from off the exchange floor; (ii) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution; [138] (iii) may not be affiliated with the executing member; and (iv) with respect to an account over which the member has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the Rule.

In a letter to the Commission,[139] BATS Exchange requested that the Commission concur with BATS Exchange's conclusion that BATS Exchange members that enter orders into the BATS Exchange system satisfy the requirements of Rule 11a2–2(T). For reasons set forth below, the Commission believes that BATS Exchange members entering orders into the BATS Exchange system would satisfy the conditions of the Rule.

The Rule's first condition is that orders for covered accounts be transmitted from off the exchange floor. The BATS Exchange system receives orders electronically through remote terminals or computer-to-computer interfaces. In the context of other automated trading systems, the Commission has found that the off-floor transmission requirement is met if a covered account order is transmitted from a remote location directly to an exchange's floor by electronic means.[140] Since the BATS Exchange system receives orders electronically through remote terminals or computer-to-computer interfaces, the Commission believes that the BATS Exchange system satisfies the off-floor transmission requirement.

Second, the rule requires that the member not participate in the execution of its order. BATS Exchange represented that at no time following the submission of an order is a member able to acquire control or influence over the result or timing of an order's execution.[141] According to BATS Exchange, the execution of a member's order is determined solely by what orders, bids, or offers are present in the system at the time the member submits the order. Accordingly, the Commission believes that a BATS Exchange member would not participate in the execution of an order submitted into the BATS Exchange system.

Third, Rule 11a2–2(T) requires that the order be executed by an exchange member who is unaffiliated with the member initiating the order. The Commission has stated that this requirement is satisfied when automated exchange facilities, such as the BATS Exchange system, are used, as long as the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange.[142] BATS Exchange has represented that the design of the BATS Exchange system ensures that no member has any special or unique trading advantage in the handling of its orders after transmitting its orders to BATS Exchange.[143] Based on BATS Exchange's representation, the Commission believes that the BATS Exchange system satisfies this requirement.

Fourth, in the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person thereof may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to Section 11(a) of the Act and Rule 11a2–2(T).[144] BATS Exchange

[134] 17 CFR 242.600(b)(58).

[135] *See* Securities Exchange Act Release No. 53829 (May 18, 2006), 71 FR 30038, 30041 (May 24, 2006).

[136] 15 U.S.C. 78k(a)(1).

[137] 17 CFR 240.11a2–2(T).

[138] The member may, however, participate in clearing and settling the transaction.

[139] *See* letter to David Shillman, Associate Director, Division of Trading and Markets, Commission, from J. Craig Long, Foley & Lardner LLP, dated June 24, 2008 (''BATS Exchange 11(a) Letter'').

[140] *See, e.g.*, Nasdaq Exchange Registration Order, *supra* note 29; and Securities Exchange Act Release Nos. 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (order approving the Boston Options Exchange as an options trading facility of the Boston Stock Exchange); 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (order approving Archipelago Exchange (''ArcaEx'') as electronic trading facility of the Pacific Exchange (''PCX'') (''ArcaEx Order'')); 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (regarding NYSE's Off-Hours Trading Facility); 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979) (regarding the American Stock Exchange (''Amex'') Post Execution Reporting System, the Amex Switching System, the Intermarket Trading System, the Multiple Dealer Trading Facility of the Cincinnati Stock Exchange, the PCX Communications and Execution System, and the Philadelphia Stock Exchange's (''Phlx'') Automated Communications and Execution System (''1979 Release'')); and 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978) (regarding the NYSE's Designated Order Turnaround System (''1978 Release'')).

[141] *See* BATS Exchange 11(a) Letter, *supra* note 139. The member may cancel or modify the order, or modify the instructions for executing the order, but only from off the Exchange floor. *Id.* The Commission has stated that the non-participation requirement is satisfied under such circumstances so long as such modifications or cancellations are also transmitted from off the floor. *See* Securities Exchange Act Release No. 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978) (stating that the ''non-participation requirement does not prevent initiating members from canceling or modifying orders (or the instructions pursuant to which the initiating member wishes orders to be executed) after the orders have been transmitted to the executing member, provided that any such instructions are also transmitted from off the floor'').

[142] In considering the operation of automated execution systems operated by an exchange, the Commission noted that while there is no independent executing exchange member, the execution of an order is automatic once it has been transmitted into the systems. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2–2(T). See 1979 Release, *supra* note 140.

[143] *See* BATS Exchange 11(a) Letter, *supra* note 139.

[144] 17 CFR 240.11a2–2(T)(a)(2)(iv). In addition, Rule 11a2–2(T)(d) requires a member or associated person authorized by written contract to retain compensation, in connection with effecting transactions for covered accounts over which such member or associated person thereof exercises

Continued

represented that BATS Exchange members trading for covered accounts over which they exercise investment discretion must comply with this condition in order to rely on the rule's exemption.[145]

D. Section 11A of the Act

Section 11A of the Act and the rules thereunder form the basis of our national market system and impose requirements on exchanges to implement its objectives. Specifically, national securities exchanges are required, under Rule 601 of Regulation NMS,[146] to file transaction reporting plans regarding transactions in listed equity and Nasdaq securities that are executed on their facilities. Currently registered exchanges satisfy this requirement by participating in the Consolidated Transaction Association Plan (''CTA Plan'') for listed equities and the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (''Nasdaq UTP Plan'') for Nasdaq securities.[147] Before BATS Exchange can begin operating as an exchange, it must join these plans as a participant.

National securities exchanges are required, under Rule 602 of Regulation NMS,[148] to collect bids, offers, quotation sizes and aggregate quotation sizes from those members who are responsible broker or dealers. National securities exchanges must then make this information available to vendors at all times when the exchange is open for trading. The current exchanges satisfy this requirement by participating in the Consolidated Quotation System Plan (''CQ Plan'') for listed equity securities and the Nasdaq UTP Plan for Nasdaq securities. Before BATS Exchange can begin operating as an exchange it also must join the CQ Plan as a participant, in addition to the CTA Plan and the Nasdaq UTP Plan.

Finally, national securities exchanges must make available certain order execution information pursuant to Rule 605 of Regulation NMS.[149] Current exchanges have standardized the required disclosure mechanisms by participating in the Order Execution Quality Disclosure Plan.[150] BATS Exchange must join this plan before it begins operations as an exchange.

E. Order Routing

As noted above in Section III.A., BATS Exchange proposes to offer routing services to its Users through its affiliated broker-dealer, BATS Trading. BATS Trading will provide ''outbound'' routing of orders from the Exchange to other trading centers (such function of BATS Trading is referred to as the ''Outbound Router''), and BATS Trading will engage in no other activities unless approved by the Commission.[151] The Outbound Router function of BATS Trading will operate as a facility (as defined in Section 3(a)(2) of the Act) of the Exchange. As such, the Outbound Router function of BATS Trading is subject to the Exchange's and the Commission's continuing oversight. In particular, and without limitation, under the Act, the Exchange is responsible for filing with the Commission proposed rule changes and fees relating to the BATS Trading Outbound Router function and BATS Trading Outbound Router function will be subject to exchange non-discrimination requirements.[152]

BATS Trading will be a member of FINRA, an SRO unaffiliated with BATS Exchange or any of its affiliates, that is its designated examining authority.[153] Also, BATS Exchange will establish and maintain procedures and internal controls reasonably designed to restrict the flow of confidential and proprietary information between BATS Exchange and its facilities, and any other entity, including any affiliate of BATS Trading, and, if BATS Trading or any of its affiliates engages in any other business activities other than the Outbound Router function, between the segment of BATS Trading or its affiliate that provides the other business activities and the Outbound Router function.[154] In addition, the books, records, premises, officers, directors, agents, and employees of BATS Trading, as a facility of the Exchange, will be deemed to be those of the Exchange for purposes of and subject to oversight pursuant to the Act.[155] Further, Users are not required to use the Outbound Router function of BATS Trading to route orders,[156] and a User is free to route its orders to other market centers through alternative means.[157]

In light of the protections discussed above, the Commission believes that BATS Exchange rules and procedures regarding use of BATS Trading to route orders to away markets are consistent with the Act.[158]

F. Listing Requirements/Unlisted Trading Privileges

BATS Exchange initially does not intend to list any securities. Accordingly, BATS Exchange has not proposed rules that would allow it to list any securities at this time.[159] Instead, BATS Exchange has proposed to trade securities pursuant to unlisted trading privileges, consistent with Section 12(f) of the Act and Rule 12f–5 thereunder. Rule 12f–5 requires an exchange that extends unlisted trading privileges to securities to have in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends unlisted trading privileges.[160] BATS Exchange's proposed rules require that any security traded on the BATS Exchange be registered under the Act and listed on the New York Stock Exchange LLC, NYSE Arca, the American Stock Exchange LLC, or The NASDAQ Stock Market LLC. BATS Exchange's proposed

investment discretion, to furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation retained by the member in connection with effecting transactions for the account during the period covered by the statement. *See* 17 CFR 240.11a2–2(T)(d). *See also* 1978 Release, *supra* note 140 (stating ''[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests'').

[145] *See* BATS Exchange 11(a) Letter, *supra* note 139.

[146] 17 CFR 242.601.

[147] These plans also satisfy the requirement in Rule 603 that national securities exchanges and national securities associations act jointly pursuant to an effective national market system plan to disseminate consolidated information, including a national best bid and offer, and quotations for and transactions in NMS stocks. *See* 17 CFR 242.603. *See also* Nasdaq Exchange Registration Order, *supra* note 29.

[148] 17 CFR 242.602.

[149] 17 CFR 242.605.

[150] *See* Securities Exchange Act Release No. 44177 (April 12, 2001), 66 FR 19814 (April 17, 2001).

[151] *See* BATS Exchange Rule 2.11(a)(4).

[152] *See* BATS Exchange Rule 2.11(a)(1).

[153] *See* BATS Exchange Rule 2.11(a)(2).

[154] *See* BATS Exchange Rule 2.11(a)(5).

[155] *See* BATS Exchange Rule 2.11(b).

[156] A User that does not wish to use the Outbound Router function of BATS Trading could submit an Immediate-or-Cancel Order or another order type that is not eligible for order routing pursuant to BATS Exchange rules, such as a BATS Only Order. *See* BATS Exchange Rule 11.5.

[157] *See* BATS Exchange Rule 2.11(a)(3).

[158] The Commission has approved similar arrangements for other SROs. *See, e.g.,* NOM Approval Order and NSX Blade Approval Order, *supra* note 94.

[159] BATS Exchange has incorporated listing standards for certain derivative securities products in its rules. However, BATS Exchange's rules will prohibit BATS Exchange from listing any derivative security product pursuant to these listing standards until BATS Exchange submits a proposed rule change to the Commission to amend its listing standards to comply with Rule 10A–3 under the Act and incorporate qualitative listing criteria. *See* BATS Exchange Rule 14.1(a).

[160] 17 CFR 240.12f–5. *See also* Securities Exchange Act Release No. 35737 (April 21, 1995), 60 FR 20891 (April 28, 1995) (adopting Rule 12f–5).

rules provide for transactions in the class or type of security to which the exchange intends to extend unlisted trading privileges.[161] In addition, pursuant to its rules, BATS Exchange will cease trading any equity security admitted to unlisted trading privileges that is no longer listed on one of these exchanges. The Commission finds that these rules are consistent with the Act.[162]

IV. Exemption from Section 19(b) of the Act With Regard to FINRA Rules Incorporated by Reference

BATS Exchange proposes to incorporate by reference certain FINRA rules as Exchange rules. Thus, for certain Exchange rules, Exchange members will comply with an Exchange rule by complying with the FINRA rule referenced.[163] In connection with its proposal to incorporate FINRA rules by reference, BATS Exchange requested, pursuant to Rule 240.0–12,[164] an exemption under Section 36 of the Act from the rule filing requirements of Section 19(b) of the Act for changes to those BATS Exchange rules that are effected solely by virtue of a change to a cross-referenced FINRA rule.[165] BATS Exchange proposes to incorporate by reference categories of rules (rather than individual rules within a category) that are not trading rules. BATS Exchange agrees to provide written notice to its members whenever a proposed rule change to a FINRA rule that is incorporated by reference is proposed.[166]

Using its authority under Section 36 of the Act,[167] the Commission previously exempted certain SROs from the requirement to file proposed rule changes under Section 19(b) of the Act.[168] Each such exempt SRO agreed to be governed by the incorporated rules, as amended from time to time, but is not required to file a separate proposed rule change with the Commission each time the SRO whose rules are incorporated by reference seeks to modify its rules.

In addition, each such exempt SRO incorporated by reference only regulatory rules (*i.e.*, margin, suitability, arbitration), not trading rules, and incorporated by reference whole categories of rules (*i.e.*, did not ''cherry-pick'' certain individual rules within a category). Each such exempt SRO had reasonable procedures in place to provide written notice to its members each time a change is proposed to the incorporated rules of another SRO in order to provide its members with notice of a proposed rule change that affects their interests, so that they would have an opportunity to comment on it.

The Commission is granting BATS Exchange's request for exemption, pursuant to Section 36 of the Act, from the rule filing requirements of Section 19(b) of the Act with respect to the rules that BATS Exchange proposes to incorporate by reference. This exemption is conditioned upon BATS Exchange providing written notice to its members whenever FINRA proposes to change a rule that BATS Exchange has incorporated by reference. The Commission believes that this exemption is appropriate in the public interest and consistent with the protection of investors because it will promote more efficient use of Commission and SRO resources by avoiding duplicative rule filings based on simultaneous changes to identical rules sought by more than one SRO. Consequently, the Commission grants BATS Exchange's exemption request.

V. Conclusion

It is ordered that the application of BATS Exchange for registration as a national securities exchange be, and hereby is, granted.

It is further ordered that operation of BATS Exchange is conditioned on the satisfaction of the requirements below:

A. *Participation in National Market System Plans.* BATS Exchange must join the CTA Plan, the CQ Plan, the Nasdaq UTP Plan, and the Order Execution Quality Disclosure Plan.

B. *Intermarket Surveillance Group.* BATS Exchange must join the Intermarket Surveillance Group.

C. *Minor Rule Violation Plan.* A MRVP filed by BATS Exchange under Rule 19d–1(c)(2) must be declared effective by the Commission.[169]

D. *17d–2 Agreement.* An agreement pursuant to Rule 17d–2 [170] between FINRA and BATS Exchange that allocates to FINRA regulatory responsibility for those matters specified above [171] must be approved by the Commission, or BATS Exchange must demonstrate that it independently has the ability to fulfill all of its regulatory obligations.

E. *Regulatory Contract.* The Regulatory Contract between BATS Exchange and FINRA containing those matters specified above [172] must be executed and the provisions in the Regulatory Contract that will specify the BATS Exchange and Commission rules for which FINRA will provide certain of the regulatory functions under the Regulatory Contract must be finalized, or BATS Exchange must demonstrate that it independently has the ability to fulfill all of its regulatory obligations.

F. *Examination by the Commission.* BATS Exchange must have, and represent in a letter to the staff in the Commission's Office of Compliance Inspections and Examinations that it has, adequate procedures and programs in place to effectively regulate BATS Exchange.

It is further ordered, pursuant to Section 36 of the Act,[173] that BATS Exchange shall be exempt from the rule filing requirements of Section 19(b) of the Act [174] with respect to the FINRA rules BATS Exchange proposes to incorporate by reference into BATS Exchange's rules, subject to the conditions specified in this Order.

By the Commission (Chairman Cox and Commissioners Casey, Aguilar, and Paredes); Commissioner Walter not participating.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–19388 Filed 8–20–08; 8:45 am]

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[161] *Id.* BATS Exchange's rules currently do not provide for the trading of options, security futures, or other similar instruments.

[162] BATS Exchange has represented to the Commission that it intends to phase-in the trading of securities currently trading on the BATS ECN to BATS Exchange, and that it will provide appropriate advance notice to its members of the phase-in schedule. The Commission believes that this approach is appropriate and should help maintain an orderly transition to the BATS Exchange.

[163] BATS Exchange proposed to incorporate by reference the 12000 and 13000 Series of FINRA's NASD Manual, the NASD Code of Arbitration Procedure for Customer and Industry Disputes. *See* BATS Exchange Rule 9.1.

[164] *See* 17 CFR 240.0–12.

[165] *See* letter to Nancy Morris, Secretary, Commission, from J. Craig Long, Foley & Lardner, dated June 24, 2008.

[166] BATS Exchange will provide such notice via a posting on the same Web site location where BATS Exchange will post its own rule filings pursuant to Commission Rule 19b–4(*l*). The posting will include a link to the location on the FINRA Web site where the proposed rule change is posted. *See id.*

[167] 15 U.S.C. 78mm.

[168] *See, e.g.*, Securities Exchange Act Release No. 49260 (February 17, 2004), 69 FR 8500 (February 24, 2004) and Nasdaq Exchange Registration Order, *supra* note 29.

[169] 17 CFR 240.19d–1(c)(2).

[170] 17 CFR 240.17d–2.

[171] *See supra* notes 103 to 110 and accompanying text.

[172] *See supra* notes 95 to 102 and accompanying text.

[173] 15 U.S.C. 78mm.

[174] 15 U.S.C. 78s(b).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Atomic Burrito, Inc., Earthcare Co., Global Concepts, Ltd., New York Bagel Enterprises, Inc., Precept Business Services, Inc., Reorganized Sale OKWD, Inc., Villageworld.com, Inc. (n/k/a Biometrics 2000 Corp.), and Wireless Webconnect!, Inc.; Order of Suspension of Trading

August 19, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Atomic Burrito, Inc. because it has not filed any periodic reports since the period ended September 30, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Earthcare Co. because it has not filed any periodic reports since the period ended September 30, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Global Concepts, Ltd. because it has not filed any periodic reports since the period ended June 30, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of New York Bagel Enterprises, Inc. because it has not filed any periodic reports since the period ended September 29, 1999.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Precept Business Services, Inc. because it has not filed any periodic reports since the period ended March 31, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Reorganized Sale OKWD, Inc. because it has not filed any periodic reports since the period ended December 31, 2003.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Villageworld.com, Inc. (n/k/a Biometrics 2000 Corp.) because it has not filed any periodic reports since the period ended September 30, 2004.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Wireless Webconnect!, Inc. because it has not filed any periodic reports since the period ended March 31, 2002.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in Atomic Burrito, Inc., Earthcare Co., Global Concepts, Ltd., New York Bagel Enterprises, Inc., Precept Business Services, Inc., Reorganized Sale OKWD, Inc., Villageworld.com Inc. (n/k/a Biometrics 2000 Corp.) and Wireless Webconnect!, Inc. is suspended for the period from 9:30 a.m. EDT on August 19, 2008, through 11:59 p.m. EDT on September 2, 2008.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E8–19494 Filed 8–19–08; 11:15 am]

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SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Ocean Resources, Inc., Officeland, Inc., Online Gaming Systems Ltd. (n/k/a: Advanced Resources Group Ltd.), Open EC Technologies, Inc., and OVM International Holding Corp.; Order of Suspension of Trading

August 19, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Ocean Resources, Inc. because it has not filed any periodic reports since the period ended December 31, 2004.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Officeland, Inc. because it has not filed any periodic reports since the period ended August 31, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Online Gaming Systems Ltd. (n/k/a Advanced Resources Group Ltd.) because it has not filed any periodic reports since the period ended December 31, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Open EC Technologies, Inc. because it has not filed any periodic reports since the period ended May 31, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of OVM International Holding Corp. because it has not filed any periodic reports since the period ended September 30, 2002.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on August 19, 2008, through 11:59 p.m. EDT on September 2, 2008.

By the Commission.

Florence E. Harmon,

Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58364; File No. SR–Amex–2008–65]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the American Stock Exchange LLC To Allow Issuers Voluntarily Delisting ETFs and Structured Products To Submit to the Exchange a Letter From an Authorized Officer of the Issuer Rather Than a Board Resolution

August 14, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 7, 2008, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 18 to allow issuers voluntarily delisting ETFs and

[1] 15 U.S.C. 78s(b)(l).

[2] 17 CFR 240.19b–4.

structured products to submit to the Exchange a letter from an authorized officer of the issuer rather than a certified copy of a board resolution.

The text of the proposed rule change is available on the Amex's Web site at *http://www.amex.com,* the Office of the Secretary, the Amex and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the voluntary delisting procedures set forth in Exchange Rule 18 for issuers of securities listed pursuant to Sections 104 (Bonds and Debentures), 106 (Currency and Index Warrants) or 107 (Other Securities) of the Amex Company Guide and Exchange Rules 1000-AEMI and 1001 *et seq.* (Portfolio Depositary Receipts), 1000A-AEMI and 1001A *et seq.* (Index Fund Shares), 1000B *et seq.* (Managed Fund Shares), 1200-AEMI and 1201 *et seq.* (Trading of Trust Issued Receipts), 1200A-AEMI and 1201A *et seq.* (Commodity-Based Trust Shares), 1400 *et seq.* (Trading of Paired Trust Shares), 1500-AEMI and 1501 *et seq.* (Trading of Partnership Units), or 1600 *et seq.* (Trading of Trust Units). Exchange Rule 18 requires companies voluntarily withdrawing securities from listing to provide to the Exchange a certified copy of the resolution of the board of directors of the issuer authorizing such action. The Exchange proposes to amend Rule 18 to provide that, in the case of a voluntary delisting where the listing of the securities is being transferred to another national securities exchange, the issuer will be required to provide, in lieu of a certified copy of a board resolution, a letter signed by an authorized executive officer setting forth the reasons for the proposed listing withdrawal and the basis for the officer's authority to take such action.

Pursuant to a merger agreement dated January 17, 2008 among the Exchange, the Amex Membership Corporation, NYSE Euronext and certain other entities, a successor to the Exchange will become an indirect, wholly-owned subsidiary of NYSE Euronext (the ''Acquisition''). As part of its strategic business planning for the post-merger group, NYSE Euronext intends to cease listing and trading exchange-traded funds and structured products (including, for example, index-linked securities such as index-linked notes) on the Amex shortly after the completion of the acquisition and plans to encourage issuers to move the listing of those securities from the Amex to its subsidiary, NYSE Arca, Inc. (''NYSE Arca'') and the New York Stock Exchange LLC (specifically, the NYSE Bonds platform).

As the change of listing venue contemplated by this business plan will require the delisting of the securities from the Exchange, and there is no basis under Exchange rules for a delisting initiated by the Exchange itself under these circumstances, the issuers will have to withdraw their securities from listing voluntarily pursuant to Exchange Rule 18 and SEC Rule 12d2–2.[3] Because the change of listing venue will be effectuated at the request of NYSE Euronext as owner of the Exchange, and obtaining a certified copy of the board resolutions as required by Rule 18 may be burdensome for the issuers involved, the Exchange believes that it is appropriate to provide an alternative to this requirement for the securities that, pursuant to the NYSE Euronext business plan, will no longer be listed on the Amex (or the Amex's successor).[4]

In lieu of the board resolution, the issuer will be required to provide a letter signed by an authorized executive officer setting forth the reasons for the proposed withdrawal and the basis for the officer's authority to take such action. Requiring a letter from an authorized executive officer that includes the reasons for the proposed withdrawal and the basis for the officer's authority to take such action will ensure that the issuer properly made the delisting decision and complied with its constitutive documents and applicable laws in effect in its jurisdiction, consistent with investor protection and the public interest.[5] The proposed rule specifies that the letter will only be accepted for purposes of withdrawal of listing where the listing of the securities is being transferred to another national securities exchange.

The Exchange believes that changing the rule to allow this exception to the requirements of Exchange Rule 18 for these classes of securities is appropriate for a number of reasons. First, only issuers that are planning to transfer their listing to another national securities exchange will be able to provide the letter from an authorized executive officer; in the event an issuer decides no longer to be listed on an exchange, Rule 18 will still require board resolutions to effect the delisting. Secondly, separate board approval of a change of listing venue is not required of many of the issuers covered by the proposed rule. To the extent board approval is otherwise required by, for example, the governing documents of an eligible listed issuer or the law of the jurisdiction in which the issuer is incorporated, the proposed rule change would change only the form in which the Exchange must be notified of the decision to delist, not the legal requirements for approval that apply to the particular issuer.[6]

Finally, the Exchange believes the proposed change is justified because the withdrawal from listing of the applicable types of issuers would be occurring at the Exchange's request to further a business objective of the Exchange's parent company. Following the effectuation of this business plan, these types of securities will no longer be listed on the Amex, and it is therefore appropriate for Exchange to facilitate the withdrawal process, with the conditions proposed.

The Exchange also proposes to make other minor clarifying changes to Section 1010, and to delete from Section 1010 the re-statement of Exchange Rule 18 and Rule 12d2–2 under the Act.

[3] Following a withdrawal of listing, an issuer may then list on any national securities exchange if it meets the listing standards of that exchange or may remain unlisted.

[4] Some of these issuers are not required, by their constitutive documents or the laws of their jurisdictions of incorporation, to get board approval for withdrawal of listing and therefore only Rule 18 would require separate board action. For other issuers, the proposed option of providing a letter would allow them to make the listing change on a more timely and economical basis, while still having to comply with the requirements of their constitutive documents and the laws of their jurisdictions of incorporation.

[5] The basis for the officer's authority may be, for example, relevant provisions in the issuer's constitutive documents or board resolutions setting out the delegation of authority to the executive officer.

[6] Notwithstanding this proposal, issuers will have to comply with Rule 12d2–2(c) and any other applicable provisions under the Act to withdraw their securities from listing on the Exchange.

Implementation

This rule filing is being made to implement a NYSE Euronext business plan for the Amex after the completion of the Acquisition and the rule text will specify that the rule will become operative as of the date of the closing of the Acquisition and that in the event that the Acquisition has not been effected on or before December 31, 2008, the rule will not take effect. In the event that the rule change does not take effect, the Exchange will rescind the approved rule text by a separate filing with the Commission.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act in general and furthers the objectives of Section 6(b)(5) [7] in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange notes that requiring a letter from an authorized executive officer instead of a certified copy of the resolutions adopted by the issuer's board of directors is consistent with the requirements of Rule 12d2–2 [8] under the Act and notes that the proposal is similar to the voluntary withdrawal procedures for dually-listed issuers on NYSE Arca, Inc.[9] and index-linked notes on NYSE.[10] Replacing the board certification requirement with a letter from an authorized executive officer may ease the burden on issuers of securities who wish to transfer the listing to another national securities exchange. Further, the Exchange notes that the requirement of a letter from an authorized executive officer would ensure the issuer properly made the delisting decision and complied with applicable laws in effect in its jurisdiction, consistent with investor protection and the public interest, and would not supersede the requirements of the issuer's governing documents or its jurisdiction of incorporation.

The Exchange notes that the proposed alternative procedure for withdrawal of listing would apply only to securities that would be listed and traded on another national securities exchange following the withdrawal of listing. Since the securities would list and trade on another national securities exchange, transparent last sale information will continue to be disseminated on the securities on an uninterrupted basis. It would also ensure that the other protections for trading a security on a national securities exchange remain, such as the periodic reporting obligations under the Act.

Finally, the Exchange believes that the restatements of Rule 18 in Company Guide Section 1010 and of Rule 12d2–2 under the Act are no longer necessary and deletion of these restatements is consistent with the requirements of the Act. When the Company Guide was published separately from the rest of the Amex Rules, the restatements of provisions not found in the Company Guide was helpful to readers. Now that all of the Amex and Commission rules are equally available, and immediately updated when changed, on the Internet, these restatements are not only not necessary, but may create confusion in the event that such rules are changed.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not receive any written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which Amex consents, the Commission will:

(A) by order approve such proposed rule change; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR-Amex–2008–65 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2008–65. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–Amex–2008–65 and should be submitted on or before September 11, 2008.

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 240.12d2–2.

[9] NYSE Arca Equities Rule 5.4(b). *See* Securities Exchange Act Release No. 54672 (October 30, 2006), 71 FR 65021 (November 6, 2006) (SR–NYSEArca–2006–47).

[10] Section 806.02 of the NYSE's Listed Company Manual. *See* Securities Exchange Act Release No. 57041 (December 26, 2007), 73 FR 216 (January 2, 2008) (SR–NYSE–2007–99).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–19354 Filed 8–20–08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58362; File No. SR–CHX–2008–13]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Participant Fees and Credits

August 14, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 13, 2008, the Chicago Stock Exchange, Inc. (the ''CHX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the CHX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend its Schedule of Participant Fees and Assessments (the ''Fee Schedule'') to provide for trade processing fee credits to CHX–registered Institutional Brokers. The text of this proposed rule change is available on the Exchange's Web site at *http://www.chx.com/rules/proposed_rules.htm* and in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Through this filing, the Exchange would amend its Fee Schedule to provide for a credit to institutional brokers relating to trade processing fees charged by the Exchange to its participants. Trade processing fees are fees charged by the Exchange for transactions that are executed and reported to the tape (but not reported to clearing) by an institutional broker in an away market (*i.e.*, not the Exchange), but which are reported to clearing by the Exchange's systems. The use of the Exchange's systems to report trades to clearing, instead of the facility on which the trade was executed, is done at the request of the institutional broker's customer to simplify the customer's ability to access clearing data from a unified source. All clearing transactions reported in this manner appear in the Exchange's Regional Trade Interface Operations (''RIO'') file along with the customer's trades executed on the CHX.

The Exchange proposes to provide to the originating broker a trade processing fee credit equal to 3% per side of the trade processing fees received by the Exchange. The Exchange further proposes to provide to the broker of credit a trade processing fee credit equal to 6% of the trade processing fees received by the Exchange for the portion(s) of the transaction handled by the broker of credit. An ''originating broker'' is defined as the institutional broker that executes a trade on an away market. A ''broker of credit'' is defined as the institutional broker that acts as the broker for the ultimate Exchange clearing participant. Prior to this filing, trade processing fee credits were not paid by the Exchange. This proposed fee schedule change would take effect upon filing.

2. Statutory Basis

The Exchange believes that the rule changes proposed in this submission are consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b). The proposed rule change is consistent with Section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members. Moreover, the proposed trade processing fee credits will allow the Exchange to share trade processing fees with institutional brokers, similar to the way it currently shares transaction fees for CHX executions with institutional brokers. Prior to this filing, trade processing fees were not shared with institutional brokers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee or other charge imposed by the Exchange and therefore has become effective pursuant to Section 19(b)(3)(A) of the Act[3] and subparagraph (f)(2) of Rule 19b–4 thereunder.[4] At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CHX–2008–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CHX–2008–13. This file

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–CHX–2008–13 and should be submitted on or before September 11, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–19353 Filed 8–20–08; 8:45 am]

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[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58357; File No. SR–NASDAQ–2008–068]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change as Modified by Amendment No. 1 To Modify Rule 4770 To Enhance Trading in the NASDAQ Crossing Network

August 13, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 11, 2008, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq has designated this proposal as non-controversial and provided the Commission with the notice required by Exchange Act Rule 19b–4(f)(6)(iii). This rule proposal, which is effective upon filing with the Commission, shall become operative on September 1, 2008. On August 13, 2008, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is filing a rule proposal to modify Rule 4770 to enhance trading in the NASDAQ Crossing Network. Nasdaq proposes to implement the proposed rule change on September 1, 2008.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.[4]

* * * * *

4770. Nasdaq Crossing Network

(a) Definitions. For the purposes of this rule the term:

(1) ''Nasdaq Reference Price Cross'' shall mean the process for executing orders at a predetermined reference price at a randomly selected point in time during a *five-second* [one minute] trading window beginning at 10:45 a.m., 12:45 p.m. and 2:45 p.m. Eastern Time during the regular hours session and at 4:30 p.m. during the after hours session.

(2) No Change.

(3) No Change.

(b) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[3] The Commission considers the 60-day abrogation period to have commenced on August 13, 2008, the date the Exchange filed Amendment No. 1.

[4] Changes are marked to the rule text that appears in the electronic Nasdaq Manual found at *http://nasdaqomx.cchwallstreet.com.*

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is filing a rule proposal to modify Rule 4770 to enhance trading in the NASDAQ Crossing Network. The Commission approved the Nasdaq Crossing Network on July 5, 2006.[5] The Nasdaq Crossing Network provides an execution option to market participants trading in Nasdaq and other exchange-listed securities that facilitates the execution of trades quickly and anonymously.

In order to minimize the opportunity for manipulation, Nasdaq executes the cross through an automated and random matching mechanism at a randomly selected time during the predetermined one-minute cross-trading window. Nasdaq introduced the randomization period in order to prevent market participants from entering or cancelling orders in the Nasdaq Crossing Network in an attempt to improperly influence the execution price of a cross. The randomization period was thought to protect both market participants and public investors from potential manipulation.

In response to input from our members and other market participants, Nasdaq proposes to modify the 60-second ''randomization period'' of [sic] that precedes the execution of all crosses within the Nasdaq Crossing Network. Based upon changing market conditions, Nasdaq has now determined that the full benefits of the randomization period can be realized through a shorter randomization period of five seconds rather than 60 seconds.

The speed of order routing and execution in the marketplace has increased substantially since the launch of the Nasdaq Crossing Network. As a result, a random period of five seconds is sufficient to create significant risk of a delayed execution outside the control of a market participant. In other words, there is little incremental benefit of a random period longer than five seconds.

[5] *See* Securities Exchange Act Release No. 54248 (July 31, 2006) (SR–NASDAQ–2006–019). Prior to the effective date of Nasdaq's operation as an exchange for Nasdaq-listed securities, the rule governing the Nasdaq Crossing Network had been approved as an NASD rule (NASD Rule 4716). Securities Exchange Act Release No. 54101 (July 5, 2006), 71 FR 39382 (July 12, 2006) (SR–NASD–2005–140).

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934,[6] in general and with Section 6(b)(5) of the Act,[7] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this title matters not related to the purposes of this title or the administration of the exchange. The proposal satisfies this requirement in that it is designed to increase order interaction and the likelihood of execution in the Nasdaq Crossing Network while maintaining investor protection associated with a random delay to decrease the potential for manipulation.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the proposal is designed to enhance competition by making Nasdaq's trading mechanism more effective and competitive.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

Nasdaq has asked the Commission to waive the operative delay to permit the proposed rule change to become operative on September 1, 2008. The Commission has determined that allowing the filing to become operative on September 1, 2008, is consistent with the protection of investors and the public interest.[10] Nasdaq has represented that it intends to re-launch the Nasdaq Crossing Network on September 1, 2008. As part of the re-launch, Nasdaq has stated that it will educate members regarding the liquidity, transparency and execution quality available through the Nasdaq Crossing Network. Nasdaq intends to also reduce prices to encourage participants to participate in the Crossing Network and thereby create a deeper source of liquidity.[11] The Commission believes that allowing Nasdaq to introduce the reduced randomization period as part of its September 1, 2008 re-launch will assist market participants that utilize the Nasdaq Crossing Network in understanding how the system operates with the reduced randomization period in place.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2008–068 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2008–068. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549–1090 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2008–068 and should be submitted on or before September 11, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–19351 Filed 8–20–08; 8:45 am]

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[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

[10] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] The Commission notes that any proposed change in fees must be filed with the Commission pursuant to Rule 19b–4. *See* 17 CFR 240.19b–4.

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58363; File No. SR–NYSE–2008–52]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by New York Stock Exchange LLC To Modify the Method by Which It Allocates and Reallocates Securities to Specialist Units and To Establish an Allocation System Based on a Single Objective Measure To Determine a Specialist Unit's Eligibility To Participate in the Allocation Process

August 14, 2008.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on August 11, 2008, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On August 13, 2008, NYSE filed Amendment No. 1 to the proposed rule change.[4] The Commission is publishing this notice, as amended, to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish an allocation system based on a single objective measure to determine a specialist unit's eligibility to participate in the allocation process.

The text of the proposed rule change is available at *http://www.nyse.com*, the NYSE, and the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Rule 103A (Specialist Stock Reallocation and Member Education and Performance) and 103B (Specialist Stock Allocation) to create an Allocation Policy that is more closely reflective of the Exchange's increased electronic trading environment. The proposed changes to the Allocation Policy would establish a quantifiable measure that adds more objectivity to the specialist unit selection process and provides issuers with more choice in the selection of its specialist unit. The Exchange further proposes to allow the issuer to select the specialist units it chooses to interview directly. The Exchange therefore seeks to eliminate the Allocation Committee as the overseer of the allocation process, the Allocation Panel from which the Allocation Committee members are selected, as well as eliminate allocation decision criteria that are in part based on subjective measures of specialist performance included in the current process by discontinuing the use of the Specialist Performance Evaluation Questionnaire (''SPEQ'').

In doing so, the Exchange seeks to replace the SPEQ with an objective measure designed to set a minimum standard to determine a specialist unit's eligibility to participate in the new allocation process of a security.

With the amendment of NYSE Rule 103A, the Exchange also proposes to eliminate the Market Performance Committee (''MPC'') as the entity that is responsible for reallocating securities as well as eliminate performance improvement actions in light of the proposed Allocation Policy. NYSE Regulation, Inc. (''NYSER''), will replace the MPC as the entity responsible for developing procedures and standards for qualification and performance of members active on the Floor of the Exchange. Current sections of NYSE Rule 103A that address specialist security reallocation are amended and incorporated into NYSE Rule 103B.

I. Current Allocation Process

A. NYSE Rule 103A

NYSE Rule 103A currently addresses the MPC's duties and responsibilities with specialist security reassignments, performance improvement actions and member education.

The MPC is the entity responsible for developing systems and procedures, including the determination of specific kinds of data to be reviewed and the establishment of standards to measure specialist performance and market quality. The MPC reviews the performance of specialist units on a periodic basis to determine if performance improvement measures are required to improve or sustain market quality.

The MPC is authorized to review and approve security assignments and reassignments, assignments in special security situations and organizational changes of specialist units.

In situations where the MPC determines that a specialist unit's performance has fallen below the standards established by the Exchange,[5] the MPC may initiate a performance improvement action to improve a specialist unit's performance. This performance improvement action informs the specialist unit, in writing, that performance improvement is required, identifies the particular areas of weak performance and proposes measurable goals for the specialist unit to achieve. The MPC appoints a Performance Improvement Monitoring Team (''Monitoring Team'') to monitor the progress of the specialist unit. At the conclusion of the Performance Improvement Action, the MPC receives a report detailing the specialist unit's performance. If the specialist unit did not adequately satisfy the goals enumerated in the Performance Improvement Action, the Monitoring Team may recommend that a particular security or securities be considered for reallocation. If the MPC concurs with the recommendation of the Monitoring Team, it shall initiate a reallocation proceeding to determine which of the specialist unit's securities should be reallocated.

NYSE Rule 103A further vests the MPC with the authority to develop procedures and standards for qualification and performance of members active on the Floor of the Exchange. The day to day administration of these responsibilities is carried out by the Market

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Amendment No. 1 removes several references to NYSE Rule 750A in the purposed section and Exhibit 1 of the filing and corrects a mislabeled heading in Exhibit 1 of the filing.

[5] NYSE Rule 103A, Supplementary Material .01 states that a Performance Improvement Action shall be initiated if a specialist unit does not meet the standard of acceptable performance for the following criteria: (1) The SPEQ; (2) Use of Order Reports/Administrative Responses; and (3) Timely Openings.

Surveillance Division (''MKS'') of NYSER.[6]

B. NYSE Rule 103B

NYSE Rule 103B sets forth the current allocation policy and process. The intent of the Allocation Policy is: (1) To ensure that securities are allocated in an equitable and fair manner and that all specialist units have a fair opportunity for allocations based on established criteria and procedures; (2) to provide an incentive for ongoing enhancement of performance by specialist units; (3) to provide the best possible match between specialist unit and security; and (4) to contribute to the strength of the specialist system.[7] The Allocation Policy applies to original listings and reallocations of already listed companies.

Currently, the duties and responsibilities of the Allocation Committee which currently oversees the allocation of a security to the specialist units are set forth in NYSE Rule 103B, Section II. The Committee is comprised of nine members consisting of six institutional members who are Floor brokers, two allied members and one representative of an institutional investor organization and is selected from an Allocation Panel. These market professionals use their business judgment and the criteria specified in NYSE Rule 103B to identify specialist units most suitable to interview with an issuer. The Allocation Committee's role in making allocation decisions is based primarily on the expert professional judgment of its members. While the Allocation Committee is supplied with information that relates to specialist performance, including the objective performance measures outlined above, there is still a reliance on the subjective judgment of the committee members in interpreting and applying this data in making allocation decisions.

Once a company has been approved to list on the Exchange, specialist units are invited to submit applications to become the assigned specialist of the listing company. This application describes how the specialist unit will allocate resources to accommodate this new issue, what new resources, if any, are needed to service the security and the identity of the individual specialist proposed to trade the security. These applications seeking allocation of securities are reviewed by the Allocation Committee.[8] Pursuant to NYSE Rule 103B, the Allocation Committee makes the selection of a specialist unit, either directly for allocation of a listing company, or creates a pool of specialist units to be interviewed by a listing company based on the following criteria: (i) The SPEQ,[9] (ii) objective performance measures,[10] (iii) listing company input, (iv) allocations received, (v) capital deficiency, disciplinary history and justifiable complaints, and (vi) foreign listing considerations. The objective measures are reported to the Allocation Committee on a ''pass/fail'' basis.

A listing company has two options in choosing its specialist unit. Under the first option, it may choose to have the Allocation Committee select the specialist unit to make a market in the listing company's security. Under the second option, the listing company may request that the Allocation Committee provide the listing company with a group of specialist units that the Committee deems appropriate to trade the listing company's security. A listing company may supply a letter to the Allocation Committee indicating that a particular specialist unit has been instrumental in its decision to list on the Exchange and if the specialist unit is otherwise eligible to receive listings, the Allocation Committee will include the specialist unit identified by the listing company in the group. Following an interview process, the listing company will then select its specialist unit from the group provided by the Allocation Committee. While the Allocation Committee must use the criteria specified in NYSE Rule 103B in reaching a decision under either option, it does so through the filter of its own judgment as to which specialist unit (first option) or units (second option) may be appropriate matches for the listing company.

II. Proposed Allocation Process

Securities are allocated to a qualified specialist unit when: (1) A security is to be initially listed on the Exchange; and (2) a security previously assigned to a specialist member organization must be re-assigned pursuant to this rule or the NYSE Listing Company Manual Section 806.01. The Exchange proposes to modify the current Allocation Policy to create a process based on an objective measure to determine a specialist unit's eligibility to participate in the allocation process. As such, the Exchange proposes to permanently discontinue the use of the SPEQ and to allow issuers to directly select the specialist units the issuer seeks to interview, thus obviating the need for an Allocation Committee.

A. Amendments to NYSE Rule 103A

The Exchange seeks to amend NYSE Rule 103A to eliminate the concept of a performance improvement action. The Exchange has recently amended its system of variable payments to specialist units to create a liquidity provision payment (''LPP'') to incent

[6] MKS administers the New Member Orientation Program in conjunction with the NYSE Specialist and Floor Broker Training Department. It administers the Floor Member Continuing Education classes and the New Floor Official Education Program. MKS also develops testing instruments and administers the ''Series 15'' examination for general membership on the Exchange, the Specialist Examination, the Floor Official Examination and the Registered Competitive Market Maker Examination. All Floor members are required to complete these educational programs and pass qualification tests before they are permitted to act as members on the Exchange or serve as a Floor Official. MKS is also responsible for maintaining records of the aforementioned examinations.

[7] NYSE Rule 103B, Section I.

[8] As an administrative matter, NYSE Rule 103B provides that all specialist units are deemed to have filed with the Exchange a blanket application pursuant to which the specialist unit agrees to accept the allocation of any security. This allows the Exchange the necessary flexibility to see that allocation decisions are still fairly made in instances where few or no applications are received for a particular listing company.

[9] The SPEQ is a survey that the Exchange distributes to the Floor brokers in order to evaluate specialist performance. Floor brokers are required to rate and may provide written comments on the performance of specialist units with whom they deal regularly on the Floor. The Allocation Committee, in its professional judgment, determines how much weight to afford each of the facets of the SPEQ. The results of the SPEQ are to be given 25% weight to the overall evaluation of the specialist unit.

The Exchange filed with the Commission to impose a moratorium on the administration of the SPEQ (''Moratorium''). The Moratorium commenced on June 4, 2007, and was scheduled to end no later than December 31, 2007. Pursuant to the Moratorium, the results of the SPEQ, among other things, no longer serve as criteria in the decision to allocate a security to a specialist unit. *See* Securities Exchange Act Release No. 55852 (June 4, 2007), 72 FR 31868 (June 8, 2007) (SR–NYSE–2007–47). The Exchange filed to extend the operation of the Moratorium until March 31, 2008. *See* Securities Exchange Act Release No. 57184 (January 22, 2008), 73 FR 5254 (January 9, 2008) (SR–NYSE–2008–02). [sic] The Exchange filed to extend the operation of the Moratorium until June 30, 2008. *See* Securities Exchange Act Release No. 57591 (April 1, 2008), 73 FR 18838 (April 7, 2008) (SR–NYSE–2008–21). The Exchange filed to extend the operation of the Moratorium until September 30, 2008. *See* Securities Exchange Act Release No. 58036 (June 26, 2008), 73 FR 38267 (July 3, 2008) (SR–NYSE–2008–51).

[10] The current objective measures are: (1) Timeliness of regular openings; (2) promptness in seeking Floor Official approval of a non-regulatory delayed opening; (3) timeliness of DOT turnaround; and (4) response to administrative messages. Pursuant to the Moratorium, timeliness of DOT turnaround and response to administrative measures are not included in the assessment of allocations or performance improvement actions. *See* Securities Exchange Act Release No. 55852 (June 4, 2007), 72 FR 31868 (June 8, 2007) (SR–NYSE–2007–47); Securities Exchange Act Release No. 57184 (January 22, 2008), 73 FR 5254 (January 9, 2008) (SR–NYSE–2008–02) [sic]; Securities Exchange Act Release No. 57591 (April 1, 2008), 73 FR 18838 (April 7, 2008) (SR–NYSE–2008–21); Securities Exchange Act Release No. 58036 (June 26, 2008), 73 FR 38267 (July 3, 2008) (SR–NYSE–2008–51).

specialist unit performance. The payment is based, in part, on the specialist unit's trading performance by measuring its liquidity enhancing behavior. LPPs are based on two revenue sources in NYSE-listed securities: (1) The Exchange's share of market data revenue derived from quoting share and (2) the Exchange's transaction fee revenue.[11] The Exchange believes that payments derived from market data incent specialist units to post quotes more frequently at the National Best Bid or Offer (''NBBO''). The payments derived from transaction revenue are based on Exchange reviews of the specialist unit's executed volume in four categories: (1) Price improvement; (2) size improvement; (3) providing liquidity from posting bids or offers on the book; and (4) matching better bids or offers published by other market centers to reduce client routing cost.[12] The Exchange believes that specialist units will be incented to engage in trading activity that provides liquidity and results in a better execution experience for the customer. Additionally, the Exchange believes that this positive incentive acts as a more powerful mechanism to encourage specialist unit performance. As such, the Exchange seeks to eliminate the performance improvement action in NYSE Rule 103A.

Moreover, the Exchange proposes to amend NYSE Rule 103A to vest the overview of member education programs with NYSER.[13] The day to day administration of member education is currently performed by MKS staff. The Exchange, therefore, believes that it is more appropriate to have NYSER completely responsible for this function.

B. Amendments to NYSE Rule 103B

The Exchange believes that the current allocation policy contained in NYSE Rule 103B is no longer consistent with the current more electronic trading environment. The Exchange believes that a clear single objective standard to determine specialist unit eligibility to participate in the allocation process will create a more efficient process that is consistent with its current trading environment. As such, the SPEQ (discussed more fully below), along with several objective performance measures, namely SuperDOT turnaround and responses to administrative messages, are no longer relevant.

Moreover, the Exchange's move to a single objective measure for eligibility in the allocation process simplifies the process by allowing an issuer to directly select the specialist units it seeks to interview in order to determine the ultimate specialist unit to be assigned to trade the security. As such, the Exchange proposes to eliminate the Allocation Committee. Furthermore, because the Exchange seeks to eliminate the Allocation Committee, such elimination would obviate the necessity for an Allocation Panel. Accordingly, the Exchange seeks to also eliminate the Allocation Panel.

1. Proposed Objective Measure for Eligibility for Allocation Process

The Exchange proposes to establish a single objective measure which will determine a specialist unit's eligibility to participate in the allocation process.[14] Proposed NYSE Rule 103B, Section II sets forth the objective measure that a specialist unit must meet in order to be eligible to participate in the allocation process.

A specialist unit is eligible to participate in the allocation process of a listed security when the specialist unit meets the quoting requirements for ''Less Active'' and ''More Active'' securities.[15]

A ''Less Active Security'' is defined as any listed security that has a consolidated average daily volume of less than one million shares per calendar month.[16] A ''More Active Security'' is defined as any listed security that has a consolidated average daily volume equal to or greater than one million shares per calendar month.[17]

For Less Active Securities, a specialist unit must maintain a bid and an offer at the National Best Bid (''NBB'') and National Best Offer (''NBO'') (collectively herein ''NBBO'') for an aggregate average monthly NBBO of 10% or more during a calendar month.[18] For More Active Securities, a specialist unit must maintain a bid and an offer at the NBBO for an aggregate average monthly NBBO of 5% or more during a calendar month.[19]

Specialist units must satisfy the quoting requirement for both categories (Less Active and More Active) of their assigned securities.[20] The Exchange will determine whether a specialist unit has met its quoting requirements for Less Active and More Active securities for the ''Trading Days''[21] in a calendar month by calculating:

(1) The ''Daily NBB Quoting Percentage'' by determining the percentage of time a specialist unit has at least one round lot of displayed interest in an Exchange bid at the National Best Bid during each Trading Day for a calendar month;

(2) The ''Daily NBO Quoting Percentage'' by determining the percentage of time a specialist unit has at least one round lot of displayed interest in an Exchange offer at the National Best Offer during each Trading Day for a calendar month;

(3) The ''Average Daily NBBO Quoting Percentage'' for each Trading Day by summing the ''Daily NBB Quoting Percentage'' and the ''Daily NBO Quoting Percentage'' then dividing such sum by two;

(4) The ''Monthly Average NBBO Quoting Percentage'' for each security by summing the security's ''Average Daily NBBO Quoting Percentages'' for each Trading Day in a calendar month then dividing the resulting sum by the total number of Trading Days in such calendar month; and

(5) For the total Less Active Securities (More Active Securities) assigned to a specialist unit, the Exchange will determine the ''Aggregate Monthly Average NBBO Quoting Percentage'' by summing the Monthly Average NBBO Quoting Percentages for each Less Active Security (More Active Security) assigned to a specialist unit, then dividing such sum by the total number of Less Active Securities (More Active Securities) assigned to such specialist unit.[22]

Example of Quoting Requirement Calculation

Below is an example of a quoting requirement calculation. For purposes of this example, it is assumed that

[11] *See* Securities Exchange Act Release No. 56591 (October 1, 2007), 72 FR 57371 (October 9, 2007) (SR–NYSE–2007–89).

[12] NYSE Rule 104 sets forth quoting messages that specialists are permitted to send as part of their quoting functionality.

[13] NYSE Rule 103A, Section I.

[14] Proposed Rule Text, NYSE Rule 103B, Section II(A).

[15] Proposed Rule Text, NYSE Rule 103B, Section II(A).

[16] Proposed Rule Text, NYSE Rule 103B, Section II(B).

[17] Proposed Rule Text, NYSE Rule 103B, Section II(C).

[18] Proposed Rule Text, NYSE Rule 103B, Section II(D).

[19] Proposed Rule Text, NYSE Rule 103B, Section II(E).

[20] The Exchange Strategic Analysis Department will be responsible for generating and monitoring the specialist units' performance data in order to determine which specialist units are eligible for security allocation.

[21] For purposes of Section II of NYSE Rule 103B, ''Trading Day'' shall mean any day on which the Exchange is scheduled to be open for business. Days on which the Exchange closes prior to 4:00 p.m. (Eastern Time) for any reason, which may include any regulatory halt or trading halt, shall be considered a Trading Day.

[22] Proposed Rule Text, NYSE Rule 103B, Section II(F) and II(H)(1)–(5).

Specialist Unit 1 has two assigned securities, A and B, and that there were 5 trading days in the selected calendar month.

The ''Average Daily NBBO Quoting Percentage'' for Specialist Unit 1 is calculated for each security by summing the daily NBB and NBO of each security for that day and dividing that number by two:

Trading days	NBB (percent)	NBO (percent)	Calculation of ''Average Daily NBBO Quoting Percentage'' for Specialist Unit 1	''Average Daily NBBO Quoting Percentage''
Security A				
T1	4	6	4% + 6% = 10% divided by 2 = 5%	5
T2	3	5	3% + 5% = 8% divided by 2 = 4%	4
T3	4	4	4% + 4% = 8% divided by 2 = 4%	4
T4	6	8	6% + 8% = 14% divided by 2 = 7%	7
T5	5	5	5% + 5% = 10% divided by 2 = 5%	5
Security B				
T1	5	7	5% + 7% = 12% divided by 2 = 6%	6
T2	4	6	4% + 6% = 10% divided by 2 = 5%	5
T3	6	8	6% + 8% = 14% divided by 2 = 7%	7
T4	7	9	7% + 9% = 16% divided by 2 = 8%	8
T5	9	9	9% + 9% = 18% divided by 2 = 9%	9

The ''Monthly Average NBBO Quoting Percentage'' for each security is then calculated by summing the security's ''Average Daily NBBO Quoting Percentages'' for all five Trading Days of the calendar month and then dividing the resulting total by the number of Trading Days in the calendar month (in this instance 5).

''Average Daily NBBO Quoting Percentage''					Calculation of ''Monthly Average NBBO Quoting Percentage'' for Specialist Unit 1	''Monthly Average NBBO Quoting Percentage''
T1	T2	T3	T4	T5		
Security A						
5%	4%	4%	7%	5%	5% + 4% + 4% + 7% + 5% = 25% divided by 5 = 5%	5
Security B						
6%	5%	7%	8%	9%	6% + 5% + 7% + 8% + 9% = 35% divided by 5 = 7%	7

The ''Aggregate Monthly Average NBBO Quoting Percentage'' is determined by summing the ''Monthly Average NBBO Quoting Percentage'' for each security and then dividing such sum by two, the total number of securities in this example.

''Aggregate Monthly Average NBBO Quoting Percentage'' for Specialist Unit 1

Monthly Average NBBO Security A + Monthly Average NBBO Security B divided by 2; 5% + 7% = 12% divided by 2 = 6% Aggregate Monthly Average

If a specialist unit fails to satisfy the requirements of proposed NYSE Rule 103B, Section II(D) and (E) for a one-month period, the Exchange will issue an initial warning letter to the specialist unit, advising it of its deficiency.[23] The specialist unit shall provide in writing an explanation and articulation of corrective action.[24] If the specialist unit fails to meet the requirement of proposed NYSE Rule 103B, Section II(D) and (E) for a second consecutive month, the specialist unit will be ineligible to participate in the allocation process for a minimum of two months following the second consecutive month of its failure to meet its quoting requirement (''Penalty Period'').[25]

The specialist unit must satisfy the quoting requirement for the two consecutive months of the Penalty Period. In the event a specialist unit fails to satisfy its quoting requirements for the two consecutive months of the Penalty Period, the specialist unit will remain ineligible to participate in the allocation process until it has met the quoting requirement for a consecutive two calendar month period.[26] The Exchange will review each specialist unit's trading on a monthly basis to determine whether the specialist unit has satisfied its quoting requirement.[27]

2. Elimination of the SPEQ

The Exchange submits that the establishment of a single objective measure to determine a specialist unit's ability to participate in the allocation process obviates the need to use subjective criteria in the allocation process and therefore proposes to permanently eliminate the use of the SPEQ. Initially, the SPEQ provided critical information to the Exchange to maintain the quality of its market when the Exchange's market model was primarily dependent on transactions involving the specialist handling orders directly. As such, the specialist and Floor brokers were in contact on a more

[23] Proposed Rule Text, NYSE Rule 103B, Section II(J)(1). The Exchange Specialist Liaison Department will be responsible for issuing the warning letter to a special unit that fails to meet its requirement. It will also be responsible for advising a specialist unit of its eligibility or ineligibility to participate in the allocation process.

[24] Proposed Rule Text, NYSE Rule 103B, Section II(J)(1).

[25] Proposed Rule Text, NYSE Rule 103B, Section II(J)(2).

[26] Proposed Rule Text, NYSE Rule 103B, Section II(J)(3).

[27] Proposed Rule Text, NYSE Rule 103B, Section II(J)(4).

or less continual basis, as both sought and gave information on orders, trade executions and market conditions. The SPEQ was designed to reflect that relationship by seeking Floor broker input on the relationship the Floor broker had with the specialists he or she came in contact with most frequently.

While the SPEQ has been an important mechanism to evaluate specialist performance for allocation and performance improvement action purposes, current trends in the Exchange market have rendered the SPEQ less reliable as an assessment tool. SPEQ evaluations are subjective, with ratings based on personal experiences rather than comparisons with accepted objective standards. Further, except for the written comments, which are not incorporated into the formula for SPEQ tier classifications, SPEQ does not focus on market-making by individual specialists. Importantly, as the number of specialist units has decreased, SPEQ tier classifications have become tightly clustered with statistically insignificant differences among the specialist units. Also, SPEQ participants recognize the limitations of SPEQ and have requested a more meaningful process for evaluating specialist performance.

More significantly, the introduction of the Hybrid Market further diminished the effectiveness of the SPEQ to assess adequately specialist performance by Floor brokers. Floor brokers and specialists are now provided with electronic trading tools which effectively replace much of the necessity for continual personal and verbal contact between them. Furthermore, the increased transparency with respect to the Display Book through conduits like Exchange OPENBOOK (''OPENBOOK'') has also decreased the need for a Floor broker to obtain state of the book and market information verbally from a specialist. The SPEQ does not account for the operation of the electronic tools available in the current more electronic trading environment. As such, the Exchange seeks to permanently eliminate its use.

3. Elimination of the Allocation Committee

The Exchange further submits that the more efficient and streamlined process for allocation obviates the need for the Allocation Committee. The Exchange proposes to allow an issuer to select the specialist units it chooses to interview directly from the specialist units that are eligible to participate in the allocation process.[28] In this manner, the Exchange believes that issuers will no longer be required to submit letters outlining a specialist unit that was pivotal in the issuer's decision to list on the Exchange because the issuer will now have the ability to directly select specialist units to interview.

C. Administration of the New Allocation Policy

Once the list of specialist units that meet the objective standard established by the Exchange is generated, it will be provided to the listing company and the listing company may proceed under one of two options. Under the first option, the listing company selects the specialist units it wishes to interview. The issuer will then proceed to conduct interviews of the selected units. A specialist unit's eligibility to participate in the allocation process is determined at the time the interview is scheduled, *i.e.*, if it has met the quoting requirements set forth above at the time of the interview, it is eligible to be considered for allocation.[29]

If the issuer selects the specialist unit, the issuer shall select a minimum of three specialist units to interview from the pool of specialist units eligible to participate in the allocation process.[30] Specialist units selected for an interview may provide material to the Exchange which will be given to the issuer the day before the scheduled interview. Such material may include a corporate overview of the specialist unit and the trading experience of the designated specialist. Specialist units are prohibited from giving issuers information about other specialist units or any additional market performance data.[31]

Within five business days after the issuer selects the specialist units to be interviewed (unless the Exchange has determined to permit a longer time period in a particular case), the issuer shall meet with representatives of each of the specialist units. At least one representative of the listing company must be a senior official of the rank of Corporate Secretary or above of that company. In the case of the listing of a structured product, a senior officer of the issuer may be present in lieu of the Corporate Secretary. No more than three representatives of each specialist unit may participate in the meeting, each of whom must be employees of the specialist unit, and one of whom must be the individual specialist who is proposed to trade the company's security, unless that specialist is unavailable to appear, in which case a telephone interview is permitted. Meetings shall normally be held at the Exchange, unless the Exchange has agreed that they may be held elsewhere.[32]

Following its interview, a specialist unit may not have any contact with an issuer. If an issuer has a follow-up question regarding any specialist unit(s) it interviewed, it must be conveyed to the Exchange. The Exchange will contact the unit(s) to which the question pertains and will provide any available information received from the unit(s) to the listing company.[33]

Within two business days of the issuer's interviews with the specialist units, the issuer shall select its specialist unit in writing, signed by a senior official of the rank of Corporate Secretary or higher, or in the case of a structured product listing, a senior officer of the issuer, duly authorized to so act on behalf of the company. The Exchange shall then confirm the allocation of the security to that specialist unit, at which time the security shall be deemed to have been so allocated. An issuer may request an extension from the Exchange if the issuer is unable to complete its selection within the specified period.[34]

If the issuer delegates authority to the Exchange to select its specialist unit, three members of the Exchange's Senior Management, as designated by the Chief Executive Officer (''CEO'') of the Exchange or his or her designee, one non-specialist Executive Floor Governor (''EFG'') and two non-specialist Floor Governors (''FGs'') (''Exchange Selection Panel''), shall select a specialist unit based on a review of all information that would be available to the issuer. The non-specialist EFG and non-specialist FGs shall be designated on a rotating basis.

The Exchange Selection Panel shall select the specialist unit pursuant to the provisions of 103B Section III (A) (''Specialist Unit Selected by the Issuer'') with the Exchange Selection Panel acting on behalf of the issuer. The Exchange Selection Panel will be responsible for informing the issuer of the specialist unit it selects.

The selection of the specialist unit shall be made by majority vote with any tie votes being decided by the CEO of the Exchange or his/her designee. The

[28] Proposed Rule Text, NYSE Rule 103B, Section III(A)(1)–(3).

[29] Proposed Rule Text, NYSE Rule 103B, Section II(I).

[30] Proposed Rule Text, NYSE Rule 103B, Section III(A)(1).

[31] Proposed Rule Text, NYSE Rule 103B, Section III(A)(2)(a).

[32] Proposed Rule Text, NYSE Rule 103B, Section III(A)(2)(b).

[33] Proposed Rule Text, NYSE Rule 103B, Section III(A)(2)(d).

[34] Proposed Rule Text, NYSE Rule 103B, Section III(A)(3)(a).

Exchange shall notify the specialist unit and the issuer immediately of its decision. The specialist unit shall then be responsible for providing the issuer with the name of the specialist with the requisite experience and skill it believes is appropriate to trade the issuer's security.[35]

Whether the issuer or the Exchange selects the specialist unit to receive the security allocation, the individual specialist ultimately assigned the proposed security shall be required to remain the assigned specialist for one year from the date that the issuer begins trading on the Exchange. The specialist unit may designate a different individual specialist within the year by notifying the Exchange of the change in specialist and setting forth the reasons for the change with the consent and approval of the issuer.[36]

D. Reallocation

When an issuer has requested and confirmed a change of specialist unit pursuant to Section 806.01 of the Exchange Listed Company Manual, the security will be put up for reallocation as soon as practicable, in accordance with the allocation process set forth in proposed NYSE Rule 103B, Section III.[37]

E. Egregious Situations

The Exchange seeks to move current provisions codified in NYSE Rule 103A that outline the reallocation of a security when a specialist unit's performance is so egregiously deficient as to call into question the Exchange's integrity or impair the Exchange's reputation for maintaining an efficient, fair and orderly market to proposed NYSE Rule 103B. Currently, NYSE Rule 103A provides that in such an instance, the MPC may immediately initiate a reallocation proceeding upon written notice to the specialist unit, specifying the reasons for the initiation of the proceeding. The Exchange proposes to incorporate this concept to NYSE Rule 103B and transfer the authority to initiate a reallocation proceeding upon written notice to the specialist unit from the MPC to the CEO or his/her designee.[38] As previously discussed above in Section A of the Proposed Allocation Process, the MPC shall no longer retain responsibility for security reassignments. The Exchange believes that in these instances in which the specialist unit's performance is so egregiously deficient as to call into question the Exchange's integrity or impair the Exchange's reputation in maintaining an efficient, fair and orderly market, the Exchange's CEO, as the most Senior Member of the Exchange, or his/her designee, is the appropriate entity to initiate reallocation proceedings upon written notice to the specialist unit.

Following this decision, if the CEO or his/her designee makes a final determination that a security should be referred for reallocation, the Exchange proposes that the CEO or his/her designee will, in their expert business judgment, be responsible for distributing the security to the eligible specialist units. The CEO or his/her designee shall then make a final determination as to which one or more of the specialist unit's securities shall be referred for reallocation. All determinations made by the CEO or his/her designee shall be communicated in writing to the specialist unit, with a statement of the reasons for such determinations. In order to preserve due process, specialist units have a right to have this decision reviewed by the Exchange Board of Directors.

F. Specialist Unit Communication Policies and Procedures With Listing Company

Currently, NYSE Rule 106 requires, among other things, that specialist units make themselves available for contact with their listing companies periodically throughout the year. NYSE Rule 106 was adopted in 1989 at a time when orders entered with the specialist were handled manually and contact between a specialist unit and its listed companies was necessary to ensure that listed companies were informed about the trading in its listed security on the Floor.[39] The Exchange believes that the management of the business relationship between the specialist unit and its listed company is more appropriately left to direct communications between the specialist unit and the listed company.

In today's world of electronic messaging, internet connectivity and automated trading, the entities described above may not need the contact with a specialist unit specified in NYSE Rule 106. In addition to the entities' ability to access public information, specialist units have internal departments that are responsible for communicating with these entities during the trading day. Specifically, specialist units have corporate relations groups that serve to provide information and are available to answer questions from the aforementioned entities during the trading day. The Exchange therefore believes that the requirements of NYSE Rule 106 are unnecessary.[40] As such, the Exchange seeks to rescind NYSE Rule 106 which sets forth the specialist unit's obligation to communicate with the aforementioned entities.

G. Right To Review

A decision by the Exchange that one or more securities should be reallocated shall be final, subject to the specialist unit's right to have that decision reviewed by the Exchange's Board of Directors.[41] In the event that a specialist unit asserts its right to review, no reallocation may occur until the Board of Directors completes its review.[42]

H. Exchange-Traded Funds

The Exchange proposes to delete from NYSE Rule 103B the section related to the allocation of Exchange-Traded Funds (''ETFs'') admitted to trading on the Exchange on an Unlisted Trading Privileges (''UTP'') basis. On October 19, 2007, the Exchange completed a transfer of all ETFs admitted to trading on the Exchange on a UTP basis to NYSE Arca℠ NYSE Euronext's fully electronic U.S. listing and trading platform.[43] The Exchange believes that a single, harmonized platform for listing and trading ETFs on NYSE Arca further improves efficiencies and market quality. The transfer of all ETFs trading on the NYSE to NYSE Arca obviates the necessity for this section in the rule.

[35] Proposed Rule Text, NYSE Rule 103B, Section III(B)(1).

[36] Proposed Rule Text, NYSE Rule 103B, Section III(B)(2).

[37] Proposed Rule Text, NYSE Rule 103B, Section IV.

[38] Proposed Rule Text, NYSE Rule 103B, Section V, extracted from Exchange Rule 103A(f).

[39] *See* Securities Exchange Act Release No. 27292 (September 26, 1989), 54 FR 41193 (October 5, 1989) (SR–NYSE–89–13). As a result, NYSE Rule 106 mandates interaction between a specialist unit and representatives of listed companies. The rule requires that one or more senior officials of the rank of Corporate Secretary or higher at the listing company have an opportunity to have contact with the specialist unit on a quarterly basis. Further, the rule mandates that at least one of the quarterly meetings be in-person.

[40] NYSE Rule 106 further mandates that the specialist unit makes itself available to the Exchange's fifteen (15) largest member organizations through required semi-annual ''off the Exchange Floor'' contact. The interpersonal relationship between specialist units and member organizations that once took front stage in the marketplace has been significantly replaced by automated trading initiatives and computerized market data reports. Specialist units are generally in contact with member organizations, either through electronic and/or telephonic means on a regular basis, which similarly renders the requirements of NYSE Rule 106(b) unnecessary.

[41] Proposed Rule Text, NYSE Rule 103B, Section V(D).

[42] Proposed Rule Text, NYSE Rule 103B, Section V(E).

[43] On December 31, 2007, the Exchange completed a transfer of all ETF trading to NYSE Arca.

Accordingly, the Exchange proposes to delete it from the rule.

I. Closed-End Management Investment Companies (''Funds'')

The Exchange further proposes that Funds listing on the Exchange pursuant to this policy will be subject to the allocation process pursuant to proposed NYSE Rule 103B, Section III. If the issuer of an initial Fund lists additional funds within nine months from the date of its initial listing, the issuer may choose to maintain the same specialist unit for those subsequently listed funds or it may select a different specialist unit from the group of eligible specialist units that the issuer interviewed in the allocation process for its initial fund. The fund may also delegate the selection of its specialist unit to the Exchange if it so chooses pursuant to proposed NYSE Rule 103B, Section III(B).[44]

If a specialist unit is ineligible from participating in an allocation as set forth in proposed NYSE Rule 103B, Section III, at the time of a subsequent new Fund listing (within the designated nine-month period), that specialist unit will not be included for consideration for subsequent listings.[45]

J. Spin-offs, Relistings, Common Stock, Target Stock, Warrants and Rights

The Exchange proposes to rename the section entitled ''Spin-offs and listing of related companies'' to also include ''related securities'' in order to address the assignment of warrants and rights.[46] Proposed NYSE Rule 103B, Section VI(A) continues to allow the listing company to remain with the specialist unit registered in the related spin-off or related company and will also allow the listing company to be referred for allocation through the allocation process pursuant to proposed NYSE Rule 103B, Section III, if it so chooses. If the spin-off company, company related to a listed company or relisting chooses to have its specialist unit selected by the Exchange pursuant to NYSE Rule 103B, Section III(B), and requests not to be allocated to the specialist unit that was its listed company's specialist unit, such request will be honored.

The Exchange further proposes that common stock (listed after preferred stock) be referred for allocation through the allocation process pursuant to proposed NYSE Rule 103B, Section III.[47]

In addition, NYSE Rule 103B, Section VI(A) will be amended to codify that a warrant issued by a listed company and traded on the Exchange is allocated to the specialist unit registered in the underlying security of the listed company.[48] Upon request by the issuer, the warrant may be allocated through the allocation process pursuant to proposed NYSE Rule 103B, Section III.[49]

Moreover, the Exchange proposes to further codify that rights are not subject to the allocation process pursuant to proposed NYSE Rule 103B, Section III. Rights are considered short-term securities, which are exempt from registration under the Act.[50] Accordingly, rights are not treated as listed securities on the Exchange and are not subject to the allocation process pursuant to proposed NYSE Rule 103B, Section III. Rights are assigned, when issued, to the specialist unit by the Exchange.[51]

Specialist units that are ineligible to receive a new allocation due to its failure to meet the requirements of proposed NYSE Rule 103B, Section (II)(D) and (E) will remain eligible to receive an allocation pursuant to Section 103B(VI) of the Proposed Rule.

K. Listed Company Mergers

When two NYSE listed companies merge, the merged entity is assigned to the specialist in the company that is determined to be the survivor-in-fact (dominant company). Where no surviving/dominant entity can be identified after two NYSE listed companies merge, the NYSE proposes that the merged company may select one of the units trading the merging companies without the security being referred for reallocation, or it may request that the matter be referred for allocation through the allocation process pursuant to NYSE Rule 103B, Section III.[52] Specialist units that are ineligible to receive a new allocation due to its failure to meet the requirements of NYSE Rule 103B, Section II(D) and (E) will remain eligible to receive an allocation pursuant to this section.[53]

In situations involving the merger of a listed company and an unlisted company, where the unlisted company is determined to be the survivor-in-fact, such company may choose to remain registered with the specialist unit that had traded the listed company entity in the merger, or it may request that the matter be referred for allocation through the allocation process pursuant to proposed NYSE Rule 103B, Section III.[54] If the unlisted company chooses to have its specialist unit selected by the Exchange, the company may not request that the Exchange exclude from consideration the specialist unit that had traded the listed company.[55]

L. Allocation Sunset Policy

The Exchange is proposing to extend the effectiveness of allocation decisions with respect to any initial public offering listing company which lists on the Exchange from three months to six months.[56] In situations in which the selected specialist unit merges or is involved in a combination within the six month period, the company may choose whether to stay with the selected specialist unit, or be referred to allocation. If a listing company does not list within six months, the matter shall be referred for allocation through the allocation process pursuant to proposed NYSE Rule 103B, Section III.[57]

M. Provisions For Allocation Of Listing Companies Transferring From NYSE ARCA, Inc. (''NYSE ARCA^{SM}'') To The NYSE

The Exchange further proposes that if a listing company transferring from NYSE Arca^{SM} to the NYSE was assigned a NYSE Arca Lead Market Maker unit, the listing company can choose to follow the regular allocation process and refer the matter for allocation through the allocation process pursuant to NYSE Rule 103B.[58] Since the Exchange is proposing elimination of the Allocation Committee, the Exchange believes that this amendment is appropriate.

[44] Proposed Rule Text, NYSE Rule 103B, Section VI(F).

[45] Proposed Rule Text, NYSE Rule 103B, Section VI(F).

[46] Proposed Rule Text, NYSE Rule 103B, Section VI(A).

[47] Proposed Rule Text, NYSE Rule 103B, Section VI(A).

[48] Proposed Rule Text, NYSE Rule 103B, Section VI(A)(2).

[49] Proposed Rule Text, NYSE Rule 103B, Section VI(A)(2).

[50] *See* Rule 12a–4 under the Act; *see also* NYSE Listed Company Manual, Section 703.03(O).

[51] Proposed Rule Text, NYSE Rule 103B, Section VI(A)(4). The Exchange Market Watch, Security Operations, Records Management Division is responsible for assigning rights to the specialist unit.

[52] Proposed Rule Text, NYSE Rule 103B, Section VI(D)(1).

[53] Proposed Rule Text, NYSE Rule 103B, Section VI(D)(1).

[54] Proposed Rule Text, NYSE Rule 103B, Section VI(D)(3).

[55] Proposed Rule Text, NYSE Rule 103B, Section VI(D)(4).

[56] Proposed Rule Text, NYSE Rule 103B, Section VI(H).

[57] Proposed Rule Text, NYSE Rule 103B, Section VI(H).

[58] Proposed Rule Text, NYSE Rule 103B, Section VIII.

III. Conforming Changes to NYSE Rule 476a, NYSE Rule 123e and NYSE Listed Manual Section 106.02

A. NYSE Rule 476A

The Exchange seeks to make a conforming amendment to NYSE Rule 476A by removing failure to complete the SPEQ from the list of minor rule violations. NYSE Rule 476A provides for the imposition of fines for Minor Violation(s) of NYSE Rules. The Supplementary Material of NYSE Rule 476A enumerates the specific rules and conduct eligible for the imposition of a fine. Included in this list is ''Participation in the Specialist Performance Evaluation Questionnaire (SPEQ) Process (Rule 103A).'' Since the Exchange proposes the elimination of the SPEQ process in the New Allocation Policy, the Exchange further proposes to amend NYSE Rule 476A to reflect this rescission.

B. NYSE Rule 123E

The Exchange also seeks to make conforming amendments to NYSE Rule 123E to change specialist ''organization'' to specialist ''unit'' and ''stock'' to ''security'' throughout the proposed rule. The Exchange further proposes to delete and replace all references to the Quality of Markets Committee (''QoMC'') and the MPC with ''the Exchange.'' [59] Given the proposed changes to NYSE Rule 103A that rescind MPC's responsibility to monitor specialist performance, the Exchange seeks to assume responsibility for conducting a review of a proposed specialist combination. Similarly, the Exchange seeks to make a conforming amendment to eliminate the specialist performance measures from NYSE Rule 123E that are also proposed for deletion in connection with the proposed amendments to NYSE Rule 103B. Finally, the Exchange seeks to correct a typographical error from the existing rule.

C. NYSE Listed Company Manual

Finally, the Exchange seeks to make conforming changes to Section 106.02 of the NYSE Listed Company Manual. Currently Section 106.02 provides in pertinent part:

> As soon as the Exchange makes the allocation decision, the company is immediately notified by telephone and in writing of the name of the specialist unit, selected background information on the unit and the reasons why the unit was selected.

Section 106.02 gives the reader the impression that the Exchange is always responsible for the selection of the specialist unit to be allocated a listing company's security. The Exchange proposes to clarify Section 106.02 by amending it to read as follows:

> In instances where a company has delegated to the Exchange the selection of its specialist unit, the Exchange will immediately notify the company by telephone and in writing of the name of the specialist unit, selected background information on the unit and the reasons why the unit was selected.

IV. Conclusion

The proposed Allocation Policy is in keeping with the Exchange's overall objective to maintain the integrity of the market and to further the Exchange's goal of an allocation system that is based primarily on an objective measure of specialist unit performance. The new objective measure is designed to promote fairness and consistency, reward performance, provide an incentive for a specialist unit to continually improve its performance and give the issuer more choice in the selection of its assigned specialist unit. The Exchange believes that the establishment of an objective minimum performance standard on which to determine a specialist unit's eligibility to participate in the allocation or reallocation process protects the investor and the public interest because it creates a system that provides specialist units with incentive for maximum performance which the Exchange believes will result in a better quality market.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act,[60] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change is consistent with these objectives in that it enables the Exchange to further enhance the process by which securities are allocated. The Exchange seeks to create an allocation policy that is rooted in an objective performance measure that accommodates the increased electronic trading environment. The Exchange believes that the quantifiable measure of specialist unit performance proposed in this current rule filing provides the objective criteria to continue an allocation process that is not designed to permit unfair discrimination between specialist units as it relates to a specialist unit's receipt of an allocation.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2008–52 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2008–52. This file number should be included on the

[59] In March 2006 after the NYSE's business combination with Archipelago Holdings, Inc., the QoMC ceased to exist upon completion of the revised corporate structure.

[60] 15 U.S.C. 78f(b)(5).

subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2008–52 and should be submitted on or before September 11, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[61]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–19357 Filed 8–20–08; 8:45 am]

BILLING CODE 8010–01–P

[61] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58365; File No. SR–NYSEArca–2008–81]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to Listing and Trading of Four CurrencyShares Trusts

August 14, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 30, 2008, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange''), through its wholly owned subsidiary, NYSE Arca Equities, Inc. (''NYSE Arca Equities''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On August 11, 2008, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is granting approval to the proposed rule change, as modified by Amendment No. 1 thereto, on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list shares (''Shares'') of the following trusts: CurrencyShares℠ Hong Kong Dollar Trust, CurrencyShares℠ Russian Ruble Trust, CurrencyShares℠ Singapore Dollar Trust, and CurrencyShares℠ South African Rand Trust (''Trusts'') under NYSE Arca Equities Rule 8.202. The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE Arca included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item III below. NYSE Arca has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under NYSE Arca Equities Rule 8.202, the Exchange may propose to list and/or trade pursuant to unlisted trading privileges (''UTP'') ''Currency Trust Shares.'' [3] The Exchange proposes to list the Shares of the Trusts under NYSE Arca Equities Rule 8.202.[4]

Rydex Specialized Products LLC is the sponsor of the Trusts (''Sponsor''); The Bank of New York is the trustee of the Trusts (''Trustee''); JPMorgan Chase Bank, N.A., London Branch, is the depository for the Trusts (''Depository''); and Rydex Distributors, Inc. is the distributor for the Trusts (''Distributor''). The Sponsor, Trustee, Depository and Distributor are not affiliated with the Exchange or one another, with the exception that the Sponsor and Distributor are affiliated. For more information on these entities, see below.

The Shares represent units of fractional undivided beneficial interest in, and ownership of, the respective Trust. The investment objective of the Trusts is for the Shares issued by the Trusts to reflect the price of the applicable foreign currency owned by the specific Trust, plus accrued interest, less the expenses and liabilities of such Trust, according to the Registration Statements for the Trusts.[5] The Shares

[3] *See* NYSE Arca Equities Rule 8.202 and Securities Exchange Act Release No. 53253 (February 8, 2006), 71 FR 8029 (February 15, 2006) (SR–PCX–2005–123) (order granting accelerated approval for the Exchange to adopt listing and trading standards for Currency Trust Shares and approving the UTP trading of shares of the Euro Currency Trust (now known as the ''CurrencyShares Euro Trust'')). E-mail from Michael Cavalier, Associate General Counsel, NYSE Group, Inc., to Brian O'Neill, Staff Attorney, and Edward Cho, Special Counsel, Division of Trading and Markets, Commission, dated August 4, 2008 (confirming the name change of the Euro Currency Trust to the CurrencyShares Euro Trust). As defined in NYSE Arca Equities Rule 8.202(c), the term ''Currency Trust Shares'' means a security that (a) Is issued by a trust (''Trust'') that holds a specified non-U.S. currency deposited with the Trust; (b) when aggregated in some specified minimum number may be surrendered to the Trust by the beneficial owner to receive the specified non-U.S. currency; and (c) pays beneficial owners interest and other distributions on the deposited non-U.S. currency, if any, declared and paid by the Trust.

[4] The Commission has previously approved listing or UTP trading of issues of CurrencyShares based on non-US currencies. *See* Securities Exchange Act Release No. 52843 (November 28, 2005), 70 FR 72486 (December 5, 2005) (SR–NYSE–2005–65) (order granting accelerated approval for the New York Stock Exchange (''NYSE'') to list and trade shares of the CurrencyShares Euro Trust); Securities Exchange Act Release No. 54020 (June 20, 2006), 71 FR 36579 (June 27, 2006) (SR–NYSE–2006–35) (order granting accelerated approval for NYSE to list and trade shares of the CurrencyShares Australian Dollar Trust, CurrencyShares British Pound Sterling Trust, CurrencyShares Canadian Dollar Trust, CurrencyShares Mexican Peso Trust, CurrencyShares Swedish Krona Trust and CurrencyShares Swiss Franc Trust); Securities Exchange Act Release No. 55268 (February 9, 2007), 72 FR 7793 (February 20, 2007) (SR–NYSE–2007–03) (order granting accelerated approval for NYSE to list and trade shares of the CurrencyShares Japanese Yen Trust); Securities Exchange Act Release No. 55320 (February 21, 2007), 72 FR 8828 (February 27, 2007) (SR–NYSEArca–2007–15) (order granting accelerated approval for the Exchange to UTP trade shares of the CurrencyShares Japanese Yen Trust); Securities Exchange Act Release No. 56131 (July 25, 2007), 72 FR 42212 (August 1, 2007) (SR–NYSEArca–2007–57) (order granting accelerated approval for Exchange to list eight CurrencyShares Trusts).

[5] *See* Preliminary Prospectuses for the CurrencyShares Hong Kong Dollar Trust

are intended to provide institutional and retail investors with a simple, cost-effective means of hedging their exposure to a particular foreign currency and otherwise implement investment strategies that involve foreign currency (*e.g.*, diversify more generally against the risk that the U.S. Dollar (''USD'') would depreciate).[6]

Futures and options on futures on the Russian Ruble and the South African Rand are traded on the Chicago Mercantile Exchange (''CME''). Futures on the Russian Ruble are also traded on the Moscow Interbank Currency Exchange and the Russian Trading System. Based upon the Exchange's review of information supplied by major market data vendors, futures or options are not traded on the Singapore Dollar or Hong Kong Dollar. Because the Shares are traded on NYSE Arca, investors are able to access the applicable foreign currency market through a traditional brokerage account which provides investors with an efficient means of implementing investment tactics and strategies that involve the applicable foreign currency.

Foreign Currency Regulation

Most trading in the global over-the-counter (''OTC'') foreign currency markets is conducted by regulated financial institutions such as banks and broker-dealers. In addition, in the United States, the Foreign Exchange Committee of the New York Federal Reserve Bank has issued Guidelines for Foreign Exchange Trading, and central-bank sponsored committees in Japan and Singapore have published similar best practice guidelines. In the United Kingdom, the Bank of England has published the Non-Investment Products Code, which covers foreign currency trading. The Financial Markets Association, whose members include major international banking organizations, has also established best practices guidelines called the Model Code.

Participants in the U.S. OTC market for foreign currencies are generally regulated by their oversight regulators. For example, participating banks are regulated by the banking authorities. In addition, in the U.S. the Commodity Futures Trading Commission (''CFTC'') regulates trading of futures, options and options on futures on foreign currencies on regulated futures exchanges.[7] The CFTC has established rules designed to prevent market manipulation, abusive trade practices and fraud, as does the CME.

The CME has authority to perform surveillance on its members' trading activities, review positions held by members and large-scale customers, and monitor the price movements of options and/or futures markets by comparing them with cash and other derivative markets' prices. As noted above, based upon the Exchange's review of market data information, futures or options are not traded on the Singapore Dollar or Hong Kong Dollar. Therefore, CME surveillance and CFTC oversight would pertain only to futures and options on futures on the Russian Ruble and South African Rand.

The Sponsor

The Sponsor of each Trust is a Delaware limited liability company. The sole member of the Sponsor is PADCO Advisors II, Inc., a Maryland corporation solely owned by Rydex Holdings, Inc., a Maryland corporation. Rydex Holdings, Inc. is solely owned by Rydex NV, Inc., a Nevada corporation that is privately-held. The Sponsor and its affiliates collectively do business as ''Rydex Investments.''

The Sponsor is responsible for establishing the Trusts and for the registration of the Shares. The Sponsor generally oversees the performance of the Trustee and the Trusts' principal service providers, but does not exercise day-to-day oversight over the Trustee or such service providers. The Sponsor regularly communicates with the Trustee to monitor the overall performance of the Trusts. The Sponsor, with assistance and support from Rydex affiliates who also do business as ''Rydex Investments,'' the Trustee and outside professionals, are responsible for preparing and filing periodic reports on behalf of the Trusts with the SEC.[8] The Sponsor designates the auditors of the Trusts and may from time to time employ legal counsel for the Trust.

The Distributor is assisting the Sponsor in developing a marketing plan for the Trusts, preparing marketing materials on the Shares, executing the marketing plan for the Trusts and providing strategic and tactical research on the global foreign exchange markets. The Sponsor would not enter into an agreement with the Distributor covering these services, because the Distributor is an affiliate and would not be paid any compensation by the Sponsor for performing these services.

The Sponsor with the Distributor's assistance maintains a public Web site on behalf of the Trusts, *http://www.currencyshares.com*, which contains information about the Trusts and the Shares, and oversees certain Shareholder services, such as a call center and prospectus delivery.

The Sponsor may direct the Trustee in the conduct of its affairs, but only as provided in the Depositary Trust Agreement. For example, the Sponsor may direct the Trustee to sell the Trusts' foreign currency to pay certain extraordinary expenses, to suspend a redemption order, postpone a redemption settlement date, or to terminate the Trusts if certain criteria are met. The Sponsor anticipates that, if the market capitalization of a Trust is less than $300 million for five consecutive trading days beginning after the first anniversary of such Trust's inception, then the Sponsor would, in accordance with the Depositary Trust Agreement, direct the Trustee to

(Registration No. 333–150686), CurrencyShares Russian Ruble Trust (Registration No. 333–150687), CurrencyShares Singapore Dollar Trust (Registration No. 333–150684), and CurrencyShares South African Rand Trust (Registration No. 333–150685), each dated July 21, 2008. The Preliminary Prospectuses listed in this paragraph are collectively referred to herein as the ''Registration Statements.'' All information in this proposed rule change relating to the Shares and the Trusts is based on information in the Registration Statements.

[6] For April 2007, the daily average reported foreign exchange market turnover of the USD against the Hong Kong Special Administrative Region (SAR), Russia, Singapore and South Africa was $175 billion, $50 billion, $231 billion and $14 billion, respectively. (Source: Bank for International Settlements, Triennial Central Bank Survey, December 2007, Table B.2 (''Central Bank Survey'')). The Central Bank Survey reports that there appears to have been an increase in total turnover of emerging market currencies. In April 2007, emerging market currencies were involved in almost 20% of all transactions. Specifically, the Hong Kong Dollar, Singapore Dollar, Rand and Ruble experienced a percentage share of average daily turnover of 2.8%, 1.2%, 0.9% and 0.8%, respectively, reflecting slight increases from previously reported years. (Source: Bank for International Settlements, Triennial Central Bank Survey, December 2007, Table B.6)

[7] The CFTC is an independent government agency with the mandate to regulate commodity futures and options markets in the United States under the Commodity Exchange Act. In addition to its oversight of regulated futures exchanges, the CFTC has jurisdiction over certain foreign currency futures, options and options on futures transactions occurring other than on a regulated exchange and involving retail customers.

[8] The Sponsor has obtained guidance from the SEC Division of Corporation Finance with respect to the Trusts pursuant to which the Sponsor's principal executive officer and principal financial officer will provide any certifications that are required from a ''registrant's'' principal executive officer and principal financial officer. *See* letters from the Office of Chief Counsel, Division of Corporation Finance, at the Commission dated March 22, 2006 (with respect to the CurrencyShares℠ Euro Trust); September 13, 2006 (with respect to the CurrencyShares℠ Australian Dollar Trust, CurrencyShares℠ British Pound Sterling Trust, CurrencyShares℠ Canadian Dollar Trust, CurrencyShares℠ Mexican Peso Trust, CurrencyShares℠ Swedish Krona Trust, and CurrencyShares℠ Swiss Franc Trust) and March 27, 2007 (with respect to the CurrencyShares℠ Japanese Yen Trust).

terminate and liquidate such Trust. The Sponsor's fee accrues daily at an annual nominal rate of 0.40% of the applicable foreign currency in the Trust (including all unpaid interest but excluding unpaid fees, each as accrued through the immediately preceding day) and is paid monthly.

The Trustee

The Trustee is generally responsible for the day-to-day administration of the Trusts, including keeping the Trusts' operational records. The Trustee's principal responsibilities include selling the Trusts' foreign currency if needed to pay the Trusts' expenses, calculating the Net Asset Value (''NAV'') of the Trusts and the NAV per Share, receiving and processing orders from Authorized Participants to create and redeem Baskets (as discussed below) and coordinating the processing of such orders with the Depository and DTC. The Trustee earns a monthly fee that is paid by the Sponsor.

The Trustee intends to regularly communicate with the Sponsor to monitor the overall performance of the Trusts. The Trustee, along with the Sponsor, consults with the Trusts' legal, accounting and other professional service providers as needed. The Trustee assists and supports the Sponsor with the preparation of all periodic reports required to be filed with the SEC on behalf of the Trusts. Affiliates of the Trustee may from time to time act as Authorized Participants or purchase or sell foreign currency or Shares for their own account.

The Depository

The Depository accepts Trust foreign currency deposited with it as a banker by Authorized Participants in connection with the creation of Baskets. The Depository facilitates the transfer of the applicable foreign currency into and out of the Trust through the primary and secondary deposit accounts maintained with it as a banker by the Trust.

The Depository is not paid a fee for its services to the Trusts. The Depository may earn a ''spread'' or ''margin'' over the rate of interest it pays to the Trusts on the applicable foreign currency deposit balances.

The Depository is not a trustee for the Trusts or the Shareholders. The Depository and its affiliates may from time to time act as Authorized Participants or purchase or sell foreign currency or Shares for their own account, as agent for their customers and for accounts over which they exercise investment discretion.

The Distributor

The Distributor is a registered broker-dealer and is a member of FINRA. The Distributor is assisting the Sponsor in developing a marketing plan for the Trusts on an ongoing basis, preparing marketing materials regarding the Shares, including the content on the Trusts' Web site, *http://www.currencyshares.com*, executing the marketing plan for the Trusts, and providing strategic and tactical research on the global foreign exchange market. The Distributor and the Sponsor are affiliates of one another. There is no written agreement between them, and no compensation is paid by the Sponsor to the Distributor in connection with services performed by the Distributor for the Trusts.

Description of the Trusts

The Trusts holds the applicable foreign currency and are expected from time to time to issue Baskets in exchange for deposits of the foreign currency and to distribute the foreign currency in connection with redemptions of Baskets. The investment objective of the Trusts is for the Shares to reflect the price in USD of the applicable foreign currency. The Shares represent units of fractional undivided beneficial interest in, and ownership of, the respective Trusts. The Trusts are not managed like business corporations or active investment vehicles. The foreign currency held by the Trusts would only be sold (1) If needed to pay Trust expenses, (2) in the event a Trust terminates and liquidates its assets or (3) as otherwise required by law or regulation. The sale of foreign currency by the Trusts is a taxable event to Shareholders. According to the Registration Statements, the Trusts are not registered as investment companies under the Investment Company Act of 1940 [9] and are not required to register under such Act.

Each of the Trust's assets consists primarily of the applicable foreign currency on demand deposit in two deposit accounts maintained by the Depository: A primary deposit account which earns interest and a secondary deposit account which does not earn interest. The secondary deposit account is used only in connection with mid-month creations and redemptions of blocks of 50,000 Shares (''Baskets''). The secondary account is used to account for interest that has been earned on the primary deposit account during the month but not yet paid and to receive interest earned on the primary deposit account, pay Trust expenses and distribute any excess interest to shareholders on a monthly basis.

The Trusts do not hold any derivative products. Each Share represents a proportional interest, based on the total number of Shares outstanding, in the applicable foreign currency owned by the respective Trusts, plus accrued but unpaid interest, less the estimated accrued but unpaid expenses (both asset-based and non-asset based) of a Trust. The Sponsor expects that the price of a Share will fluctuate in response to fluctuations in the price of the applicable foreign currency and that the price of a Share will reflect accumulated interest as well as the estimated accrued but unpaid expenses of a Trust. The Trusts will terminate upon the occurrence of any of the termination events listed in the Depositary Trust Agreement and will otherwise terminate on a specified date 40 years after formation of the Trusts.

The Sponsor, on behalf of the Trusts, relies on relief previously granted by the Division of Market Regulation (now known as the Division of Trading and Markets) [10] from certain trading requirements of the Securities Exchange Act of 1934 (''Act'').[11] The Sponsor has received guidance from the Commission regarding the application of the certification rules for quarterly and annual reports adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.[12] In addition, the Trusts will not be subject to the Exchange's corporate governance requirements.[13]

[9] 15 U.S.C. 80a.

[10] *See* letter from Racquel L. Russell, Branch Chief, SEC Division of Market Regulation, to George T. Simon, Foley & Lardner, dated June 21, 2006 (''June 21, 2006 letter'') (granting relief from certain rules under the Act for certain of the Trusts); letter from James A Brigagliano, Assistant Director, SEC Division of Market Regulation to Michael Schmidtberger, Sidley, Austin, Brown & Wood, dated January 19, 2006 (''January 19, 2006 Letter'') (granting relief from certain rules under the Act for the DB Commodity Index Tracking Master Fund). The Sponsor is relying on the June 21, 2006 Letter regarding Rule 10a–1, Rule 200(g) of Regulation SHO, and Rules 101 and 102 of Regulation M under the Act, and is relying on the January 19, 2006 Letter regarding Section 11(d)(1) of the Act and Rule 11d1–2 thereunder.

[11] 15 U.S.C. 78a.

[12] *See* note 10, *supra*.

[13] *See* Securities Exchange Act Release No. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003) (SR–NYSE–2002–33, *et al.*) (specifically noting that the corporate governance standards will not apply to, among others, passive business organizations in the form of trusts). *See also* Securities Exchange Act Release No. 47654 (April 9, 2003), 68 FR 18788 (April 16, 2003) (File No. S7–02–03) (noting in Section II(F)(3)(c) that ''SROs may exclude from Exchange Act Rule 10A–3's requirements issuers that are organized as trusts or other unincorporated associations that do not have a board of directors or persons acting in a similar capacity and whose activities are limited to passively owning or holding (as well as

Liquidity

The amount of the discount or premium in the trading price relative to the NAV per Share may be influenced by non-concurrent trading hours between the major foreign currency markets and the Exchange. Because of the potential for arbitrage inherent in the structure of the Trusts, the Sponsor believes that the Shares will not trade at a material discount or premium to the value of underlying currency held by a Trust. The arbitrage process, which in general provides investors the opportunity to profit from differences in prices of assets, increases the efficiency of the markets, serves to prevent potentially manipulative efforts and can be expected to operate efficiently in the case of the Shares and the foreign currency. If the price of the Shares deviates enough from the price of the foreign currency to create a material discount or premium, an arbitrage opportunity is created. If the Shares are inexpensive compared to foreign currency that underlies them, an Authorized Participant, either on its own behalf or acting as agent for investors, arbitrageurs or traders, may buy the Shares at a discount, immediately redeem them in exchange for the foreign currency and sell the foreign currency in the cash market at a profit. If the Shares are expensive compared to the foreign currency that underlies them, an Authorized Participant may sell the Shares short, buy enough foreign currency to create the number of Shares sold short, acquire the Shares through the creation process and deliver the Shares to close out the short position.[14] In both instances the arbitrageur serves efficiently to correct price discrepancies between the Shares and the underlying foreign currency.

Issuance of the Shares

Each Trust creates and redeems Shares in Baskets on a continuous basis. A Basket is a block of 50,000 Shares. The creation and redemption of Baskets requires the delivery to the Trust or the distribution by the Trust of the amount of the applicable foreign currency represented by the Baskets being created or redeemed. This amount is based on the combined NAV per Share of the number of Shares included in the Baskets being created or redeemed, determined on the day the order to create or redeem Baskets is accepted by the Trustee.

Additional information regarding an overview of the foreign exchange industry, the specific foreign currency underlying each issue of Shares, creation and redemption procedures, risk factors, distributions, fees and expenses, and clearance and settlement procedures is available in the Registration Statements.

Valuation of the Applicable Foreign Currency, Definition of Net Asset Value and Adjusted Net Asset Value

The Trustee calculates, and the Sponsor publishes, each Trust's NAV each business day. To calculate the NAV, the Trustee adds to the amount of foreign currency in the Trust at the end of the preceding day accrued but unpaid interest, the foreign currency receivable under pending purchase orders and the value of other Trust assets, and subtracts the accrued but unpaid Sponsor's fee, the foreign currency payable under pending redemption orders and other Trust expenses and liabilities, if any. The result is the NAV of the Trust for that business day. The Trustee shall also divide the NAV of each Trust by the number of Shares outstanding for the date of the evaluation then being made, which figure is the ''NAV per Share.'' The NAV will be expressed in USD based on the Closing Spot Rate[15] as determined by WM/Reuters at 4:00 p.m. (London time). If, on a particular evaluation day, the Closing Spot Rate has not been determined and announced by 6 p.m. (London time), then the most recent Closing Spot Rate shall be used to determine the NAV of the Trust unless the Trustee, in consultation with the Sponsor, determines that such price is inappropriate to use as the basis for such valuation. In the event that the Trustee and the Sponsor determine that the most recent Closing Spot Rate is not an appropriate basis for valuation of the Trust's currency, the Trustee and the Sponsor shall determine an alternative basis or such evaluation to be employed by the Trustee. Such an alternative basis may include reference to the market price of futures contracts that reflect the value of the foreign currency relative to the USD. The use of any alternative basis to determine NAV would be disclosed on the Trust's Web site. The Trustee also determines the NAV per Share, which equals the NAV of the Trust divided by the number of outstanding Shares. The Sponsor publishes the NAV and NAV per Share for each Trust on each day that the Exchange is open for regular trading on the Trusts' Web site, *http://www.currencyshares.com*.[16]

Availability of Information Regarding Foreign Currency Prices

Currently, the Consolidated Tape Plan does not provide for dissemination of the spot price of a foreign currency over the Consolidated Tape. However, there is disseminated over the Consolidated Tape the last sale price for the Shares, as is the case for all equity securities traded on the Exchange (including exchange-traded funds). In addition, there is a considerable amount of foreign currency price and market information available on public Web sites and through professional and subscription services. As is the case with equity securities generally and exchange-traded funds specifically, in most instances, real-time information is only available for a fee, and information available free of charge is subject to delay (typically, 15 to 20 minutes).

Complete real-time data for foreign currency futures and options on futures prices traded on the CME are also available by subscription from information service providers. The CME also provides delayed futures and options information on current and past trading sessions and market news free of charge on their respective Web sites.

Investors may obtain, 24 hours a day, continuously updated every 15 seconds, foreign exchange pricing information based on the spot price of the applicable foreign currency from various financial information service providers, which service providers include Bloomberg, (*http://www.bloomberg.com/markets/currencies/fxc.html*), CBS Market Watch (*http://www.marketwatch.com/tools/stockresearch/globalmarkets*), Yahoo! Finance (*http://www.finance.yahoo.com/currency*), *http://www.moneycentral.com*, *http://www.cnnfn.com* and *http://www.reuters.com*. Such service providers provide spot price or currency conversion information about the

administering and distributing amounts in respect of) securities, rights, collateral or other assets on behalf of or for the benefit of the holders of the listed securities.'')

[14] The Exchange notes that the Trusts, which will only hold the applicable foreign currency as an asset in the normal course of its operations, differs from index-based exchange-traded funds, which may involve a trust holding hundreds or even thousands of underlying component securities, necessarily involving in the arbitrage process movements in a large number of security positions. *See, e.g.*, Securities Exchange Act Release No. 46306 (August 2, 2002), 67 FR 51916 (August 9, 2002) (SR–NYSE–2002–28) (approving the UTP trading of Vanguard Total Market VIPERs based on the Wilshire 5000 Total Market Index, among other funds).

[15] Closing Rate is defined in the Registration Statements as ''the [Foreign Currency]/USD exchange rate as determined by WM/Reuters at 4:00 PM (London time).'' WM/Reuters is a joint venture of The WM Company PLC and Thomson Reuters.

[16] The Exchange will obtain a representation from the Trusts that the NAV per Share will be calculated daily and made available to all market participants at the same time.

foreign currencies. Many of these sites offer price quotations drawn from other published sources, and as the information is supplied free of charge, it generally is subject to time delays. In addition, major market data vendors regularly report current currency exchange pricing for a fee for other currencies.[17] In addition, the Trusts' Web site provides ongoing pricing information for the applicable foreign currency spot prices and the Shares. Market prices for the Shares are available from a variety of sources, including brokerage firms, financial information Web sites and other information service providers. The NAV of the Trusts is published by the Sponsor on each day that the Exchange is open for regular trading and is posted on the Trusts' Web site. Like bond securities traded in the OTC market with respect to which pricing information is available directly from bond dealers, current foreign currency spot prices are also generally available with bid/ask spreads from foreign currency dealers.[18] Quotation and last sale information for the Shares will be made available via the Consolidated Tape.

In addition, the Trusts' Web site (*http://www.currencyshares.com*) provides the following information: (1) The spot price for each applicable foreign currency,[19] including the bid and offer and the midpoint between the bid and offer for the foreign currency spot price, updated every 5 to 10 seconds [20] which is an essentially real-time basis; (2) an intraday indicative value (''IIV'') per share for the Shares calculated by multiplying the indicative spot price of the applicable foreign currency by the quantity of foreign currency backing each Share, updated at least every 15 seconds [21]; (3) a delayed indicative value (subject to a 20 minute delay), which is used for calculating premium/discount information; (4) premium/discount information, calculated on a 20 minute delayed basis; (5) the NAV of each Trust as calculated each business day by the Trustee; (6) accrued interest per Share; (7) the Basket Amount for each applicable foreign currency; and (8) the last sale price of the Shares as traded in the U.S. market, subject to a 20-minute delay, as it is provided free of charge.[22] On the Trusts' Web site, the foreign currency spot price is available and disseminated at least every 15 seconds and the IIV per Share is calculated and disseminated at least every 15 seconds during NYSE Arca's Core Trading Session.[23] The Exchange will provide on its own public Web site (*http://www.nyse.com*) a link to the Trusts' Web site.

Initial and Continued Listing Criteria

The Shares would be subject to the criteria for initial and continued listing of Currency Trust Shares under NYSE Arca Equities Rules 8.202. A minimum of two Creation Units (at least 100,000 Shares) would be required to be outstanding at the start of trading. This minimum number of Shares required to be outstanding at the start of trading would be comparable to requirements that have been applied to previously listed series of exchange-traded funds. The Exchange believes that the proposed minimum number of Shares outstanding at the start of trading is sufficient to provide market liquidity. The Exchange would remove the Shares from trading and listing upon termination of the Trusts.[24]

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The trading hours for the Shares on the Exchange are the same as those set forth in NYSE Arca Equities Rule 7.34 (4 a.m. to 8 p.m. Eastern time). The minimum trading increment for Shares on the Exchange would be $0.01.

NYSE Arca Equities Rules 8.202(g)–(i) set forth certain restrictions on ETP Holders acting as registered Market Makers in the Shares to facilitate surveillance. NYSE Arca Equities Rule 8.202(h) requires that the ETP Holder acting as a registered Market Maker in the Shares provide the Exchange with information relating to its trading in the applicable foreign currency, options, futures or options on futures on such currency, or any other derivatives based on such currency. NYSE Arca Equities Rule 8.202(i) prohibits the ETP Holder acting as a registered Market Maker in the Shares from using any material nonpublic information received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in the applicable foreign currency, options, futures or options on futures on such currency, or any other derivatives based on such currency (including the Shares). In addition, NYSE Arca Equities Rule 8.202(g) prohibits the ETP Holder acting as a registered Market Maker in the Shares from being affiliated with a market maker in the applicable foreign currency, options, futures or options on futures on such currency, or any other derivatives based on such currency, unless adequate information barriers are in place, as provided in NYSE Arca Equities Rule 7.26.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of a Trust. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (i) The extent to which trading is not occurring in the applicable underlying foreign currency; or (ii) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in the Shares could be halted pursuant

[17] There may be incremental differences in the foreign currency spot price among the various information service sources. While the Exchange believes the differences in the foreign currency spot price may be relevant to those entities engaging in arbitrage or in the active daily trading of the applicable foreign currency or derivatives thereon, the Exchange believes such differences are likely of less concern to individual investors intending to hold the Shares as part of a long-term investment strategy.

[18] *See, e.g.*, Securities Exchange Act Release No. 46252 (July 24, 2002), 67 FR 49715 (July 31, 2002) (SR–Amex–2001–35) (noting that quote and trade information regarding debt securities is widely available to market participants from a variety of sources, including broker-dealers, information service providers, newspapers and Web sites).

[19] The Trusts' Web site's foreign currency spot prices will be provided by FactSet Research Systems (*http://www.factset.com*). FactSet Research Systems is not affiliated with the Trusts, Trustee, Sponsor, Depository, Distributor or the Exchange.

[20] The midpoint will be calculated by the Sponsor. The midpoint is used for purposes of calculating the premium or discount of the Shares.

[21] The intraday indicative value of the Shares is analogous to the intraday optimized portfolio value (sometimes referred to as the IOPV), indicative portfolio value and the intraday indicative value (sometimes referred to as the IIV) associated with the trading of exchange-traded funds. *See, e.g.*, Securities Exchange Act Release No. 46686 (October 18, 2002), 67 FR 65388 (October 24, 2002) (SR–NYSE–2002–51) for a discussion of indicative portfolio value in the context of an exchange-traded fund.

[22] The last sale price of the Shares in the secondary market is available on a real-time basis for a fee from regular data vendors.

[23] Pursuant to NYSE Arca Equities Rule 7.34(a), the NYSE Arca Marketplace trading hours for exchange-traded funds are as follows: (1) Opening trading session—4:00 a.m. to 9:30 a.m. ET; (2) core trading session—9:30 a.m. to 4:15 p.m. ET; and (3) late trading session—4:15 p.m. to 8:00 p.m. ET. The Sponsor has represented to the Exchange that the spot price will be available on the Trust's Web site without interruption 24 hours a day, seven days a week.

[24] E-mail from Michael Cavalier, Associate General Counsel, NYSE Group, Inc., to Edward Y. Cho, Special Counsel, Division of Trading and Markets, Commission, dated August 14, 2008 (confirming that the Trusts are not required to comply with Rule 10A–3 under the Act, 17 CFR 240.10A–3, for the initial and continued listing of the Shares).

to the Exchange's ''circuit breaker'' rule.[25]

If the IIV or the value of foreign currency is not being calculated or widely disseminated as required, the Exchange may halt trading during the day in which the interruption to the calculation or wide dissemination of the IIV or the foreign currency value occurs. If the interruption to the calculation or wide dissemination of the IIV or the foreign currency value persists past the trading day in which it occurred, the Exchange would halt trading no later than the beginning of the trading day following the interruption. Under NYSE Arca Equities Rule 7.34(a)(5), if the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.[26]

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products, including Currency Trust Shares, to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange's current trading surveillance focuses on detecting when securities trade outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members of ISG.[27] Specifically, the Exchange can obtain such information from the CME in connection with foreign currency futures and options on futures trading on the CME pertaining to futures and options on futures on the Russian Ruble and South African Rand.[28] Therefore, as noted earlier, CME surveillance and CFTC oversight would pertain only to futures and options on futures on the Russian Ruble and South African Rand. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to listing the Shares on the Exchange, the Exchange would inform its ETP Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin would discuss the following: (i) The procedures for purchases and redemptions of Shares in Baskets (and that Shares are not individually redeemable); (ii) NYSE Arca Equities Rule 9.2(a),[29] which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (iii) how information regarding the IIV and applicable foreign currency value is disseminated; (iv) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (v) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IIV will not be calculated or publicly disseminated; and (vi) trading information.

The Bulletin would also state that the number of units of the applicable foreign currency required to create a Basket or to be delivered upon redemption of a Basket may gradually decrease over time in the event that a Trust is required to withdraw or sell units of foreign currency to pay the Trust's expenses, and that if done at a time when the price of the applicable foreign currency is relatively low, it could adversely affect the value of the Shares. In addition, the Bulletin would reference that the Trusts are subject to various fees and expenses described in the Registration Statements. The Bulletin would also reference the fact that there is no regulated source of last sale information regarding foreign currency, and that the Commission has no jurisdiction over the trading of foreign currency. The Bulletin would also discuss any exemptive, no-action and interpretive relief granted by the Commission from Section 11(d)(1) of the Act[30] and certain rules under the Act.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[31] of the Act, in general, and Section 6(b)(5),[32] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the proposed rule change will facilitate the listing and trading of additional types of exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. In addition, the listing and trading criteria set forth in Rule 8.202 are intended to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

NYSE Arca does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2008–81 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange

[25] *See* NYSE Arca Equities Rule 7.12.

[26] *See* Securities Exchange Act Release No. 58111 (July 7, 2008), 73 FR 40643 (July 15, 2008) (SR–NYSEArca–2008–50).

[27] For a list of the current members of ISG, *see http://www.isgportal.org.*

[28] CME is a member of ISG.

[29] NYSE Arca Equities Rule 9.2(a) provides that ETP Holders, before recommending a transaction, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer as to his other security holdings and as to his financial situation and needs. Further, the rule provides, with a limited exception, that prior to the execution of a transaction recommended to a non-institutional customer, ETP Holders shall make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives, and any other information that they believe would be useful to make a recommendation. *See* Securities Exchange Act Release No. 54045 (June 26, 2006), 71 FR 37971 (July 3, 2006) (SR–PCX–2005–115).

[30] 15 U.S.C. 78k(d)(1).

[31] 15 U.S.C. 78f(b).

[32] 15 U.S.C. 78f(b)(5).

Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2008–81. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2008–81 and should be submitted on or before September 11, 2008.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[33] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[34] which requires that the rules of an exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that it previously approved the original listing and trading of shares of other CurrencyShares Trusts, and the instant proposal is substantively identical to the previous proposals.[35]

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[36] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations and last-sale price information for the Shares are disseminated over the Consolidated Tape. The Trust disseminates the foreign currency spot prices for each of the Trusts and the IIV per Share at least every 15 seconds on its Web site during the Core Trading Session of the Exchange. In addition, the Sponsor publishes the NAV and NAV per Share for each Trust on each day that the Exchange is open for regular trading on the Trusts' Web site. Investors may obtain on a 24-hour basis foreign currency pricing information based on the foreign currency spot price of each applicable foreign currency from various financial information service providers. Current spot prices are also generally available with bid/ask spreads from foreign exchange dealers. In addition, the Trusts' Web site provides ongoing pricing information for the applicable foreign currency spot prices and the Shares. The Exchange represents that complete, real-time data for foreign currency futures and options prices traded on CME are also available by subscription from information service providers. CME also provides delayed futures and options information on current and past trading sessions and market news free of charge on its Web site. There are a variety of other public Web sites available at no charge that provide information on the foreign currencies underlying the Shares, including spot price or currency conversion information about the foreign currencies. In addition, the Trusts' Web site provides the following information: (1) The spot price for each applicable foreign currency, including the bid and offer and the midpoint between the bid and offer for the foreign currency spot price, updated every 5 to 10 seconds; (2) IIV, updated at least every 15 seconds; (3) a delayed indicative value (subject to a 20 minute delay), which is used for calculating premium/discount information; (4) premium/discount information, calculated on a 20 minute delayed basis; (5) accrued interest per Share; (6) NAV of each Trust; (7) the Basket amount for each applicable foreign currency; and (8) the last-sale price of the Shares as traded in the U.S. markets, subject to a 20-minute delay. The Exchange states that it will provide on its own Web site a link to the Trusts' Web site.

Furthermore, the Commission believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately. The Commission notes that the Exchange will obtain a representation from the Trusts that the NAV per Share for each Trust would be calculated daily and made available to all market participants at the same time.[37] NYSE Arca Equities Rule 8.202(i) provides that, in connection with trading in the applicable foreign currency, options, futures or options on futures on such currency, or any other derivatives based on such currency, including Currency Trust Shares, an ETP Holder acting as a Market Maker (as defined in NYSE Arca Equities Rule 1.1(u)) in the Shares is restricted from using any material, non-public information received from any person associated with such ETP Holder who is trading such foreign currency, options, futures or options on futures on such currency, or any other derivatives based on such currency. In addition, NYSE Arca Equities Rule 8.202(g) prohibits an ETP Holder acting as a registered Market Maker in the Shares from being affiliated with a market maker in the applicable foreign currency, options, futures or options on futures on such currency, or any other derivatives based on such currency, unless adequate information barriers are in place, as provided in NYSE Arca Equities Rule 7.26.

The Commission also believes that the Exchange's trading halt rules are reasonably designed to prevent trading in the Shares when transparency is impaired. NYSE Arca Equities Rule 8.202(e)(2) provides that, when the Exchange is the listing market, if the value of the underlying foreign currency or IIV is no longer calculated or available on at least a 15-second delayed basis, the Exchange would consider suspending trading in the Shares. NYSE Arca Equities Rule 8.202(e)(2) also provides that the Exchange may seek to delist the Shares in the event the value of the applicable foreign currency or IIV is no longer calculated or available as

[33] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[34] 15 U.S.C. 78f(b)(5).

[35] *See supra* note 4.

[36] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[37] *See supra* note 16.

required. In addition, NYSE Arca Equities Rule 7.34(a)(5) provides that, if the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.[38]

The Commission further believes that the trading rules and procedures to which the Shares will be subject pursuant to this proposal are consistent with the Act. The Exchange has represented that any securities listed pursuant to this proposal will be deemed equity securities and be subject to existing Exchange rules governing the trading of equity securities.

In support of this proposal, the Exchange has made the following representations:

(1) The Exchange represents that it intends to utilize its existing surveillance procedures applicable to derivative products, including Currency Trust Shares, to monitor trading in the Shares and that such procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information via ISG from other exchanges that are members of ISG. Specifically, the Exchange can obtain such information from CME in connection with foreign currency futures and options on futures trading on CME pertaining to futures and options on futures on the Russian ruble and South African rand.

(2) The Exchange represents that if the interruption to the calculation or wide dissemination of the value of the underlying foreign currency or IIV persists past the trading day in which it occurred, the Exchange would halt trading no later than the beginning of the trading day following the interruption.

(3) Prior to listing and trading the Shares, the Exchange represents that it will inform its ETP Holders in the Bulletin of the special characteristics and risks associated with trading the Shares.

This approval order is based on the Exchange's representations.

The Commission finds good cause for approving this proposal before the 30th day after the publication of notice thereof in the **Federal Register**. As noted above, the Commission previously approved the original listing and trading, and trading pursuant to UTP, of shares of other CurrencyShares Trusts.[39] The Commission presently is not aware of any regulatory issue that should cause it to revisit those findings or would preclude the listing and trading of the Shares on the Exchange. Accelerating approval of this proposed rule change would allow the Shares to be listed on the Exchange without undue delay.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[40] that the proposed rule change (SR–NYSEArca–2008–81), as modified by Amendment No. 1 thereto, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[41]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–19356 Filed 8–20–08; 8:45 am]

BILLING CODE 8010–01–P

[38] *See supra* note 26 and accompanying text.

[39] *See supra* notes 3 and 4.

[40] 15 U.S.C. 78s(b)(2).

[41] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58361; File No. SR–Phlx–2008–50]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving a Proposed Rule Change Relating to the Electronic Handling of Complex Orders

August 14, 2008.

I. Introduction

On July 1, 2008, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposal to adopt Phlx Rule 1080, Commentary .08, ''Complex Orders on Phlx XL,'' to provide for the electronic handling of certain Complex Orders on Phlx XL, the Phlx's electronic trading platform for options. The proposed rule change was published for comment in the **Federal Register** on July 10, 2008.[3] The Commission received no comments regarding the proposed rule change. This order approves the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 58099 (July 3, 2008), 73 FR 39769 (''Notice'').

II. Description of the Proposal

The Phlx proposes to adopt Phlx Rule 1080, Commentary .08 to provide for the electronic handling of certain Complex Orders on Phlx XL.[4] Phlx members and Phlx XL participants quoting and trading in open outcry will be required to submit quotes and/or orders electronically to participate in the electronic Complex Order system.[5]

As described briefly below and in greater detail in the Notice,[6] the proposal establishes a Complex Order Opening Process (''COOP''), a Complex Order Book (''CBOOK''), and a Complex Order Live Auction (''COLA''). In addition, the proposal includes a Strategy Price Protection (''SPP'') feature that will prevent certain Complex Orders from trading at prices outside of specified pre-set limits.

COOP

After trading has opened in each component of a pending Complex Order or re-opened following a trading halt, the Phlx XL system will initiate the COOP.[7] There will be one COOP per Complex Order Strategy.[8] The COOP is composed of two components: (1) The COOP Timer, a period ranging from 0 to 600 seconds, as determined by the Phlx, during which the Complex Order will not trade; and (2) the COOP Evaluation, the period following the conclusion of the COOP Timer during which the Phlx XL system will determine which Complex Order on the CBOOK, if any, will be eligible for a COLA. Complex Orders received during the COOP Timer and the COOP Evaluation will reside on the CBOOK and will be visible to Phlx XL participants.[9]

At the conclusion of the COOP Timer, the Phlx XL system will identify the ''COLA-eligible order,'' [10] if any, from

[4] The ''Complex Orders'' that may be traded on Phlx XL are spread orders, as defined in Phlx Rule 1066(f)(1); straddle orders, as defined in Phlx Rule 1066(f)(2); combination orders, as defined in Phlx Rule 1066(f)(3); ratio orders; and collar (risk reversal) orders. *See* Phlx Rule 1080, Commentary .08(a)(i).

[5] *See* Phlx Rule 1080, Commentary .08(e)(ix).

[6] *See* Notice, *supra* note 3.

[7] *See* Phlx Rule 1080, Commentary .08(d)(ii). However, as described in greater detail in the Notice, *supra* note 3, a COOP will not be initiated if any of the conditions in Phlx Rule 1080, Commentary .08(c)(ii) exist.

[8] *See* Phlx Rule 1080, Commentary .08(d)(i). A ''Complex Order Strategy'' is any Complex Order involving any option series that is priced at a net debit or credit based on the relative prices of each component. *See* Phlx Rule 1080, Commentary .08(a)(ii).

[9] *See* Phlx Rule 1080, Commentary .08(d)(ii)(A)(3) and (4).

[10] A ''COLA-eligible order'' is a Complex Order (a) identified by way of a COOP; or (b) that, upon receipt, improves the cPBBO (*i.e.*, the Phlx best net

Continued

market and marketable limit Complex Orders, including Complex Orders that cross the ''cPBBO,''[11] and Complex Orders that improve the cPBBO, according to the methodology set forth in Phlx Rule 1080, Commentary .08(d)(ii)(B)(2). If the system receives no such orders, Complex Orders received during the COOP Timer will be placed on the CBOOK.[12]

COLA

COLA Broadcast and Responses

After identifying a COLA-eligible order, the Phlx will send a broadcast notice to Phlx XL participants[13] indicating that the system has initiated a COLA. The broadcast message will identify the Complex Order Strategy, and the size of the order and any contingencies, but not the side of the market or the price.[14] During the COLA Timer, which will not exceed five seconds, Phlx XL participants may bid and/or offer on either or both side(s) of the market by submitting one or more bids or offers that improve the cPBBO, known as ''COLA Sweeps.''[15] COLA Sweeps will not be visible to Phlx XL participants or disseminated by the Phlx.[16] The requirements in Phlx Rule 1080(c)(ii)(C) regarding trading as principal with agency orders will apply to Complex Orders and COLA Sweeps.[17] Complex Orders for the same Complex Order Strategy as the COLA-eligible order may not be cancelled during the COLA.[18]

Executions and Allocations

If the system receives no COLA Sweeps or responsive Complex Orders during the COLA Timer, the COLA-eligible order may trade at the Phlx best bid or offer (''PBBO'') with quotes or orders on the limit order book for the components of the Complex Order, provided that the order can be executed in the correct ratio and at the desired price.[19]

If the system receives responses during the COLA Timer, the COLA-eligible order and the responsive COLA Sweeps or Complex Orders will trade, first, based on the best price or prices available at the end of the COLA Timer, with responses at the same price allocated in the following sequence: (1) Customer marketable Complex Orders on the CBOOK; (2) COLA Sweeps on a size pro-rata basis; (3) SQT, RSQT, and non-SQT ROT Immediate or Cancel Complex Orders on a size pro-rata basis; and (4) non-market maker off-floor broker-dealers on a size pro-rata basis.[20]

Executions in the COLA will comply with the complex order priority requirements of Phlx Rule 1033(d).[21] In addition, the COLA's priority rules provide that a non-broker-dealer customer's Complex Order will have priority over specialists, SQTs, RSQTs, and off-floor broker-dealers bidding for or offering any components of the Complex Order at the same price, but not over non-broker-dealer customer orders for any components of the Complex Order at the same price.[22]

If the specialist submits a COLA Sweep at the same price as other COLA Sweeps, then, after any customer marketable Complex Orders have been executed against the COLA-eligible order, the specialist will be entitled to receive the greater of: (1) The proportion of the aggregate size at the cPBBO associated with the specialist's COLA Sweep, SQT and RSQT COLA Sweeps, and non-SQT ROT Complex Orders on the CBOOK; (2) the Enhanced Specialist Participation described in Phlx Rule 1014(g)(ii)–(iv); or (3) 40% of the remainder of the order.[23]

The components of a COLA-eligible order may be executed in one-cent increments, regardless of the minimum quoting increments otherwise applicable to the individual legs of the order.[24]

Treatment of Incoming Orders Received During the COLA

Incoming Complex Orders on the same side of the market as the COLA-eligible order that are received during the COLA will join the COLA, although the original COLA-eligible order will have priority at all price points over any incoming Complex Order, regardless of the price of the incoming order.[25] If the incoming Complex Order is not executed in its entirety, any remaining contracts will be placed on the CBOOK, subject to other instructions.[26]

Incoming customer and non-customer Complex Orders on the opposite side of the market from the COLA-eligible order that have prices equal to or better than the best-priced COLA Sweep may execute against the COLA-eligible order or be placed on the CBOOK, subject to other instructions, if unexecuted interest remains in the incoming order after the COLA-eligible order has been executed in its entirety.[27] Incoming Complex Orders on the opposite side of the market that have a price inferior to the COLA Sweep Price(s) will execute against the COLA-eligible order after interest at the better COLA Sweep Price(s) has been executed. Any unexecuted remaining contracts in the

debt or credit price for a Complex Order based on the Phlx best bid or offer for the individual components of the Complex Order). *See* Phlx Rule 1080, Commentary .08(e)(i)(B)(1). The methodology for determining the COLA-eligible order is described in greater detail in the Notice, *supra* note 3.

[11] The cPBBO is the best net debit or credit price for a Complex Order based on the Phlx's best bid and/or offer for the individual legs of the Complex Order. *See* Phlx Rule 1080, Commentary .08(a)(iv).

[12] *See* Phlx Rule 1080, Commentary .08(d)(ii)(B)(1).

[13] Under the proposal, Phlx XL participants are Streaming Quote Traders (''SQTs''), Remote Streaming Quote Traders (''RSQTs''), non-SQT Register Options Traders (''ROTs''), specialists and non-Phlx market makers on another exchange; non-broker-dealer customers and non-market maker off-floor broker-dealers; and Floor Brokers using the Options Floor Broker Management System. *See* Phlx Rule 1080, Commentary .08(a)(vii).

[14] *See* Phlx Rule 1080, Commentary .08(e)(ii).

[15] *See* Phlx Rule 1080, Commentary .08(e)(iii) and (iv).

[16] *See* Phlx Rule 1080, Commentary .08(e)(iv)(C).

[17] *See* Phlx Rule 1080, Commentary .08(e)(iv)(D). Phlx Rule 1080(c)(ii)(C) prohibits an Order Entry Firm from executing as principal against an order on the limit order book that it represents as agent unless: (a) The agency order is first exposed on the limit order book for at least three seconds; (b) the Order Entry Firm has been bidding or offering on the Phlx for at least three seconds prior to receiving the agency order that is executable against such order; or (c) the Order Entry Firm proceeds in accordance with the crossing rules in Phlx Rule 1064.

[18] *See* Phlx Rule 1080, Commentary .08(e)(iii).

[19] *See* Phlx Rule 1080, Commentary .08(e)(vi)(A)(1). An SQT or RSQT quoting all components of the Complex Order would have priority over SQTs and RSQTs quoting a single component, but would not have priority over customer orders. *See* Phlx Rule 1080, Commentary .08(e)(vi)(A)(1).

[20] *See* Phlx Rule 1080, Commentary .08(e)(v) and (vi)(B)(1)–(4). If the markets for the individual components of the COLA-eligible order improve during the COLA Timer and match the best price of COLA Sweep(s) and/or responsive Complex Order(s), the system will execute the COLA Sweep(s) and/or responsive Complex Order(s) before executing the individual components of the COLA-eligible order. *See* Phlx Rule 1080, Commentary .08(e)(vi)(A)(2).

[21] *See* Phlx Rule 1080, Commentary .08(e)(v). Phlx Rule 1033(d) provides that when a member holding a hedge order (*i.e.*, a spread, straddle, or combination order), and bidding or offering on the basis of a total credit or debit for the order has determined that the order may not be executed by a combination of transactions at or within the bids and offers established in the marketplace, then the order may be executed as a hedge order at the total credit or debit with one other member with priority over either the bid or the offer established in the marketplace that is not better than the bids or offers comprising the total credit or debit, provided that the member executes at least one option leg at a better price than the established bid or offer for that contract and no option leg is executed at a price outside of the established bid or offer for that option contract.

[22] *See* Phlx Rule 1080, Commentary .08(e)(vi)(A)(3).

[23] *See* Phlx Rule 1080, Commentary .08(e)(vi)(C). The specialist is not entitled to receive an allocation that would exceed the size of the specialist's COLA Sweep. *See* Phlx Rule 1080, Commentary .08(e)(vi)(C)(4).

[24] *See* Phlx Rule 1080, Commentary .08(e)(v).

[25] *See* Phlx Rule 1080, Commentary .08(e)(viii)(B).

[26] *Id.*

[27] *See* Phlx Rule 1080, Commentary .08(e)(viii)(C)(1) and (2).

incoming Complex Order will be placed on the CBOOK, subject to other instructions.[28]

CBOOK

Non-broker-dealer customer and non-market maker broker-dealer Complex Orders may be entered on the CBOOK.[29] An order resting on the CBOOK may execute against quotes or orders on the limit order book for the individual components of the order or against incoming Complex Order(s) that do not trigger a COLA Timer, whichever arrives first.[30] An incoming Complex Order that does not trigger a COLA Timer may execute against interest on the limit order book for the individual components of the order or against Complex Orders resting on the CBOOK.[31] Complex Orders on the CBOOK may be executed in one-cent increments, regardless of the minimum increments applicable to the individual components of the Complex Order.[32] Executions against orders on the CBOOK will comply with the complex order priority requirements of Phlx Rule 1033(d).[33] In addition, the CBOOK rules provide that a non-broker-dealer customer Complex Order will have priority over specialists, SQTs, RSQTs, and off-floor broker-dealers bidding for or offering any component(s) of a Complex Order at the same price, but not over non-broker-dealer customer orders representing any component(s) of the Complex Order at the same price.[34]

SPP

The SPP is a system feature that will prevent ''Vertical Spreads'' [35] and ''Time Spreads'' [36] from trading at prices outside of pre-set standard limits. If an execution would violate these limits, the system will place the order on the CBOOK.[37]

[28] *See* Phlx Rule 1080, Commentary .08(e)(viii)(C)(3).

[29] *See* Phlx Rule 1080, Commentary .08(f).

[30] *See* Phlx Rule 1080, Commentary .08(f)(iii)(A).

[31] *See* Phlx Rule 1080, Commentary .08(f)(iii)(B).

[32] *See* Phlx Rule 1080, Commentary .08(f)(i).

[33] *See* Phlx Rule 1080, Commentary .08(f)(iii)(B)(2).

[34] *See* Phlx Rule 1080, Commentary .08(f)(iii)(B)(3).

[35] A Vertical Spread is a Complex Order Strategy consisting of the purchase of one call (put) option and the sale of another call (put) option overlying the same security that have the same expiration but different strike prices. *See* Phlx Rule 1080, Commentary .08(g)(i).

[36] A Time Spread is a Complex Order Strategy consisting of the purchase of one call (put) option and the sale of another call (put) option overlying the same security that have different expirations but the same strike price. *See* Phlx Rule 1080, Commentary .08(g)(ii).

[37] *See* Phlx Rule 1080, Commentary .08(g)(iii).

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[38] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[39] which requires, in part, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposal to supplement the trading of complex orders on the Phlx's floor with a facility for the electronic handling of Complex Orders is consistent with the Act.

In particular, the Commission finds that the COOP is consistent with the Act because it is designed to provide an orderly procedure for opening electronic trading in Complex Orders. The Commission also finds that the rules for the display of orders on the CBOOK, which will be visible to Phlx XL participants, also are consistent with the Act and are likely to increase transparency.

In addition, the Commission finds that the COLA is consistent with the Act because it is designed to provide a competitive auction process, lasting up to five seconds, that could provide price improvement for COLA-eligible orders. During the COLA Timer, Phlx XL participants will be able to bid and/or offer on either or both sides of the market by submitting COLA Sweeps that improve the cPBBO. At the conclusion of the COLA Timer, the COLA-eligible order may execute against COLA Sweeps, Complex Orders received during the COLA, or, if the Phlx receives no COLA Sweeps or responsive Complex Orders, against existing interest on the limit order book for the individual components of the Complex Order. A member could elect to forego the COLA by sending its order to the Phlx's floor for execution.

The Commission finds that the Phlx's rules for the allocation of trades with Complex Orders are consistent with the Act. Executions of Complex Orders through the COLA and the CBOOK will comply with the complex order priority requirements of Phlx Rule 1033(d).[40] The CBOOK and COLA rules also provide that non-broker-dealer customer Complex Orders will have priority over specialists, SQTs, RSQTs, and off-floor-broker-dealers bidding for and/or offering any component(s) of the Complex Order at the same price, but not over non-broker-dealer customer orders representing any component(s) of the Complex Order at the same price.[41] The Commission notes that other options markets have comparable priority provisions for complex orders.[42]

The COLA rules provide for a specialist participation guarantee equal to the greater of: (a) The proportion of the aggregate size at the cPBBO associated with such specialist's COLA Sweep, SQT and RSQT COLA Sweeps, and non-SQT ROT Complex Orders on the CBOOK (*i.e.*, size pro rata); (b) the Enhanced Specialist Participation as described in current Phlx Rule 1014(g)(ii) to (iv); or (c) 40% of the remainder of the order. In addition, public customer Complex Orders that are marketable against the COLA-eligible order will have priority over the specialist's participation guarantee and the specialist will not be entitled to receive an allocation that would exceed the size of the specialist's COLA Sweep.[43]

The Commission finds that the specialist participation guarantee in the COLA is consistent with the Act. The Commission notes that it has closely scrutinized exchange rule proposals relating to specialist guarantees to determine whether the specialist's participation would rise to a level that could have a material adverse impact on quote competition within a particular exchange.[44] Because the current proposal would not increase the overall percentage of an order that is guaranteed beyond the existing thresholds, the Commission does not believe that the proposal will negatively impact quote competition on the Exchange for

[38] In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[39] 15 U.S.C. 78f(b)(5).

[40] *See* Phlx Rule 1080, Commentary .08(e)(v) and (f)(iii)(B)(2). *See* note 21, *supra.*

[41] *See* Phlx Rule 1080, Commentary .08 (e)(vi)(A)(3) and (f)(iii)(B)(3). In addition, the COLA allocation rules provide that if a COLA-eligible order executes against interest in the market for the individual components of the order, SQTs and RSQTs quoting all components of the Complex Order will have priority over SQTs and RSQTs quoting a single component, but not over customer orders. *See* Phlx Rule 1080, Commentary .08(e)(vi)(A)(1).

[42] *See, e.g.*, CBOE Rules 6.45A(b)(ii) and 6.45B(b)(ii); and ISE Rule 722(b)(2).

[43] *See* Phlx Rule 1080, Commentary .08(e)(vi)(C).

[44] *See, e.g.*, Securities Exchange Act Release No. 43100 (July 31, 2000), 65 FR 48788 (August 9, 2000).

Complex Orders. The Commission also notes that it previously approved the Enhanced Specialist Participation for the individual components of the Complex Order.[45] To receive an Enhanced Specialist Participation in the COLA, the specialist must satisfy the applicable requirements in current Phlx Rule 1014(g)(ii) to (iv).

The Commission also notes that Phlx Rule 1080(c)(ii)(C), relating to an Order Entry Firm's trading as principal with agency orders, will apply to Complex Orders and COLA Sweeps.[46]

Finally, the Commission finds that the SPP is consistent with the Act. It is designed to protect market participants by preventing the automatic execution of certain Complex Order Strategies outside of a pre-set acceptable price range, which the Phlx will communicate to members by Exchange Circular.[47] The Phlx XL system will place orders that would execute outside of the acceptable price range on the CBOOK, rather than executing them automatically.[48]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[49] that the proposed rule change (SR–Phlx–2008–50) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[50]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–19352 Filed 8–20–08; 8:45 am]

BILLING CODE 8010–01–P

[45] *See* Securities Exchange Act Release No. 41588 (July 1, 1999), 64 FR 37185 (July 9, 1999) (order approving File No. SR–Phlx–98–56).

[46] *See* Phlx Rule 1080, Commentary .08(e)(iv)(D).

[47] *See* Phlx Rule 1080, Commentary .08(g)(i)(C).

[48] *See* Phlx Rule 1080, Commentary .08(g)(iii).

[49] 15 U.S.C. 78s(b)(2).

[50] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11378 and # 11379]

Indiana Disaster # IN–00022

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Indiana dated 08/15/2008.

Incident: Severe Storm Flooding and Tornadoes.

Incident Period: 08/04/2008.

Effective Date: 08/15/2008.

Physical Loan Application Deadline Date: 10/14/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 05/15/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: M. Mitravich, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Lake.

Contiguous Counties:

Illinois: Cook, Kankakee, Will.

Indiana: Jasper, Newton, Porter.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere	5.375
Homeowners Without Credit Available Elsewhere	2.687
Businesses With Credit Available Elsewhere	8.000
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11378 C and for economic injury is 11379 0.

The States which received an EIDL Declaration # are Indiana, Illinois.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: August 15, 2008.

Jovita Carranza,

Acting Administrator.

[FR Doc. E8–19370 Filed 8–20–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11380 and #11381]

Louisiana Disaster #LA–00018

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Louisiana dated 08/15/2008.

Incident: Severe Storms, Tornadoes and Flooding.

Incident Period: 05/13/2008 through 05/15/2008.

Effective Date: 08/15/2008.

Physical Loan Application Deadline Date: 10/14/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 05/15/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: M. Mitravich, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Caddo.

Contiguous Counties:

Arkansas: Lafayette, Miller.

Louisiana: Bossier, De Soto, Red River.

Texas: Cass, Harrison, Marion, Panola.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere	5.375
Homeowners Without Credit Available Elsewhere	2.687
Businesses With Credit Available Elsewhere	8.000
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11380 B and for economic injury is 11381 0.

The States which received an EIDL Declaration # are Louisiana, Arkansas, Texas.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: August 15, 2008.

Jovita Carranza,

Acting Administrator.

[FR Doc. E8–19368 Filed 8–20–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11371]

Massachusetts Disaster # MA–00018 Declaration of Economic Injury

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of Massachusetts, dated 08/15/2008.

Incident: Fire.

Incident Period: 07/04/2008.

Effective Date: 08/15/2008.

EIDL Loan Application Deadline Date: 05/15/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: M. Mitravich, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury 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: Dukes

Contiguous Counties:

Massachusetts: Barnstable

The Interest Rate is: 4.000.

The number assigned to this disaster for economic injury is 113710.

The States which received an EIDL Declaration number are Massachusetts.

(Catalog of Federal Domestic Assistance Number 59002)

Dated: August 15, 2008.

Jovita Carranza,

Acting Administrator.

[FR Doc. E8–19372 Filed 8–20–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11376 and #11377]

Pennsylvania Disaster # PA–00016

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Pennsylvania dated: 08/15/2008.

Incident: Apartment Building Fire.

Incident Period: 07/11/2008.

Effective Date: 08/15/2008.

Physical Loan Application Deadline Date: 10/14/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 05/15/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: M. Mitravich, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Allegheny.

Contiguous Counties:

Pennsylvania: Armstrong, Beaver, Butler, Washington, Westmoreland.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere	5.375
Homeowners Without Credit Available Elsewhere	2.687
Businesses With Credit Available Elsewhere	8.000
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11376 5 and for economic injury is 11377 0.

The States which received an EIDL Declaration number are Pennsylvania.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: August 15, 2008.

Jovita Carranza,

Acting Administrator.

[FR Doc. E8–19379 Filed 8–20–08; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 6326]

Notice of Availability of the Final Environmental Assessment and A Finding of No Significant Impact for the Proposed PMI Frontera Juarez Pipeline Project

August 15, 2008.

AGENCY: Department of State.

ACTION: Notice of Availability of the Final Environmental Assessment and A Finding of No Significant Impact for the Proposed PMI Frontera Juarez Pipeline Project.

SUMMARY: This notice announces the availability of the Final Environmental Assessment and a Finding of No Significant Impact for the Proposed PMI Frontera Juarez Pipeline Project.

On January 18, 2008, PMI Services North America (''PMI'') applied for a Presidential permit to construct, connect, operate and maintain a 10.75-inch liquid hydrocarbon (gasoline and diesel) pipeline for the transportation of liquid hydrocarbon products between the United States and Mexico, to be located at the international border between the United States and Mexico, near San Elizario, Texas. Currently, the refined products are transported across the international border via trucks from El Paso to Ciudad Jua rez. The Frontera Juárez Pipeline would displace this mode of delivery with the proposed net effect of increasing safety and decreasing the negative impact to the local environment.

Executive Order 13337 of April 30, 2004, as amended, delegates to the Secretary of State the President's authority to receive applications for permits for the construction, connection, operation, or maintenance of facilities, including pipelines, for the exportation or importation of petroleum, petroleum products, coal, or other fuels at the border of the United States and to issue or deny such Presidential Permits upon a national interest determination. The Executive Order directs the Secretary of State to refer the application and pertinent information to, and to request the views of, the heads of certain agencies before issuing a Permit and authorizes the Secretary to consult with other interested federal and state officials, as appropriate. The

Executive Order also authorizes **Federal Register** notification of receipt of Presidential permit applications and for public comments on those applications. The functions assigned to the Secretary have been further delegated within the Department of State.

The Department of State published in the **Federal Register** a Notification of Receipt and Notice of Intent to prepare an Environment Assessment (EA) regarding the PMI Application for a permit on March 26, 2008 (73 FR 16090–01). That notification advised the public that the Department intended to prepare an EA on the application and solicited public comment. The Department's Notice of Availability of the draft EA and request for public comment was published in the **Federal Register** on April 29, 2008 (73 FR 23301–01), seeking comments by May 29, 2008. The Department received public comments in response to its two notices and has taken them into account in preparing the Final Environmental Assessment on the PMI Application.

As required by Executive Order 13337, PMI's pipeline application and a Draft Environmental Assessment were also transmitted to the relevant federal agencies for their review and comment on May 22, 2007. The Department of State received no objections from federal agencies regarding the issuance of a permit.

In accordance with the National Environmental Policy Act of 1969 (''NEPA''), 42 U.S.C. 4321–4370f, the Council of Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA, 40 CFR parts 1500–1508, and the Department's regulations for the implementation of NEPA, 22 CFR part 161, PMI has prepared a Final Environmental Assessment (''FEA'') under the guidance and supervision of the Department, with full public participation, including a public meeting and ample opportunity for written and oral public comment on the project. Based on the FEA and the record created as part of the Department's evaluation of the PMI application, on August 16, 2008 the Department determined that ''issuance of a Presidential Permit authorizing construction, connection, operation and maintenance of the proposed Frontera Juarez Pipeline would not have a significant impact on the quality of the human environment within the United States.'' Accordingly, the Department on that date adopted a ''Finding Of No Significant Impact'' (FONSI) and determined that an environmental impact statement will not be prepared on the PMI application.

FOR FURTHER INFORMATION CONTACT: The Final Environmental Assessment addressing this action is on file and may be reviewed by interested parties, along with the Finding of No Significant Impact, at the Department of State, 2200 C Street NW., Room 4843, Washington, DC 20520 (Attn: Mr. J. Brian Duggan, Tel. 202–647–1291). The above documents may also be requested by e-mail at *DugganJB@state.gov.*

Issued in Washington, DC on August 15, 2008.

Stephen J. Gallogly,

Director, Office of International Energy and Commodity Policy, Department of State.

[FR Doc. E8–19415 Filed 8–20–08; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 6327]

Notice of Receipt of Application for a Presidential Permit To Operate and Maintain Pipeline Facilities on the Border of the United States

Notice is hereby given that the Department of State has received an application from Razorback L.L.C. for a Presidential permit, pursuant to Executive Order 13337 of April 30, 2004, to operate and maintain two pipelines for transporting petroleum products from Brownsville, Texas, to Matamoros, Mexico (''Matamoros pipelines''), crossing the international boundary line between the United States and Mexico at a point near Brownsville, Texas. On July 26, 1999, the Department of State (the ''Department''), acting pursuant to delegated authority, issued a Presidential permit to the Penn Octane Corporation (''Penn Octane''), a California corporation with its principal place of business in Redmond, California, to ''construct, maintain and operate'' the Matamoros pipelines. According to the application, Rio Vista Operating Partnership L.P. (''Rio Vista'') was the successor in interest to Penn Octane and Razorback acquired the Matamoros pipelines from Rio Vista on December 31, 2007, as part of a large asset acquisition.

According to the application, Razorback is a Delaware Limited liability company doing business in Texas as Diamondback Pipeline L.L.C. and is engaged in the interstate and intrastate transportation of liquid petroleum products by pipeline. Also, according to the application, Razorback is an indirect wholly owned subsidiary of TransMontaigne Partners, L.P., a Delaware Limited Partnership. Razorback has, in written correspondence to the Department of State, committed to abide by the relevant terms and conditions of the permit previously issued by the Department to Penn Octane. Further, Razorback indicates in that correspondence that there have been no substantial changes in the operations of the Matamoros pipelines from those originally authorized by the Department and further states that the future operation of the pipeline will remain essentially unchanged from that previously permitted. Therefore, in accordance with 22 CFR 161.7(b)(3) and the Department's Procedures for Issuance of a Presidential Permit Where There Has Been a Transfer of the Underlying Facility, Bridge or Border Crossing for Land Transportation (70 FR 30990, May 31, 2005), the Department of State does not intend to conduct an environmental review of the application unless information is brought to its attention that the transfer potentially would have a significant impact on the quality of the human environment.

As required by E.O. 13337, the Department of State is circulating this application to concerned federal agencies for comment.

DATES: Interested parties are invited to submit, in duplicate, comments relative to this proposal on or before September 22, 2008 to J. Brian Duggan, Office of International Energy and Commodities Policy, Department of State, Washington, DC 20520. The application and related documents that are part of the record to be considered by the Department of State in connection with this application are available for inspection in the Office of International Energy and Commodities Policy during normal business hours.

FOR FURTHER INFORMATION CONTACT: J. Brian Duggan, Office of International Energy and Commodity Policy (EB/ESC/IEC/EPC), Department of State, Washington, DC 20520; or by telephone at (202) 647–1291; or by e-mail at *DugganJB@state.gov.*

Dated: August 15, 2008.

Stephen J. Gallogly,

Director, Office of International Energy and Commodity Policy, Department of State.

[FR Doc. E8–19414 Filed 8–20–08; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program; Centennial Airport, Englewood, CO; FAA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Arapahoe County Public Airport Authority for the Centennial Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150, Airport Noise Compatibility Planning. These findings are made in recognition of the description of federal and non-federal responsibilities in Senate Report No. 96–52 (1980). On August 12, 2008, the Airports Division Manager approved the Centennial Airport noise compatibility program. Of the twelve proposed program elements, FAA approved eight and reserved approval of another two measures pending further study. The remaining two measures were disapproved.

DATES: The effective date of the FANs approval of the Centennial Airport noise compatibility program is August 12, 2008.

FOR FURTHER INFORMATION CONTACT: Linda Bruce, Federal Aviation Administration, Denver Airports District Office, 26805 E. 68th Avenue, Suite 224, Denver, Colorado 80249–6361, Telephone (303) 342–1264. Documents reflecting this FAA action may be obtained from Ms. Bruce or on the Internet at *http://www.faa.gov/airports_airtraffic/airports/regional guidance/northwest_ mountain/environmental/*.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the Centennial Airport noise compatibility program, effective August 12, 2008. Under Section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter the Act), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the noise exposure maps.

The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with 14 CFR Part 150 is a local program, not a federal program. The FAA does not substitute its judgment for that of the airport sponsor with respect to which measures should be recommended for action. The FAA's approval or disapproval of Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act, and is limited to the following determinations:

(a) The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

(b) Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

(c) Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the federal government; and

(d) Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator as prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in 14 CFR Part 150, Section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law.

Approval does not by itself constitute a FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982. Where Federal funding is sought, the airport sponsor must submit requests for project grants to the FAA Denver Airports District Office in Denver, Colorado.

The Centennial Airport study contains a proposed noise compatibility program comprised of actions designed for implementation by airport management and adjacent jurisdictions from the date of study completion to beyond the year 2012. The Arapahoe County Public Airport Authority, Englewood, CO, requested that the FAA evaluate and approve this material as a noise compatibility program for the Centennial Airport, as described in Section 104(b) of the Act. The FAA began its review of the program on February 22, 2008, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such a program within the 180-day period shall be deemed to be an approval of such a program.

The submitted program contained 12 proposed actions to address noise on and off the airport. The FAA completed its review and determined that the overall program complied with procedural and substantive requirements of the Act and Part 150. The overall program, therefore, was approved by FAA effective August 12, 2008. Outright approval was granted for eight of the specific program elements. One of these elements proposes the ban of Stage I aircraft from operating at Centennial Airport. Since there is no Federal preemption to banning such aircraft, FAA approved this element. Two other elements proposed involve voluntary measures that the airport sponsor can encourage pilots to use to help minimize aircraft noise.

The only land use planning element proposed by the airport sponsor was approved by FAA. This element involves the airport authority working with the local municipalities to amend zoning requirements, comprehensive plans and development regulations to minimize new, non-compatible land uses near the airport and to minimize the impact on airspace surrounding the airport, including 14 CFR Part 77 imaginary surfaces.

The remaining approved elements involve program management and are intended to assist in the development and operations of a noise abatement office and noise monitoring efforts. These measures include the installation of permanent noise monitoring system to monitor noise levels and compliance with noise abatement measures and the use of a public advisory committee to

monitor programs implemented as a result on the adoption of the NCP, including the Fly Quiet Program guidelines and the Noise Monitoring Program.

The airport sponsor proposed three changes to flight procedures. One of these measures, a change to nighttime flight procedures for jets departing to the north, will require further safety and environmental analysis. The other two programs elements FAA disapproved as they involve proposed changes to flight paths that FAA Air Traffic Control determined would create numerous adverse impacts to safety and efficiency of air traffic control operations. These program elements propose testing 24-hour flight tracks between 350 and 010 degree headings and implementing a 170 degree departure heading to 4 DME or 8,000 MSL (+/−20 degrees).

FAA disapproved the remaining program element, the proposed ban of Stage 2 aircraft under 75,000 lbs. from operating at Centennial Airport at nighttime, pending further study. Per the requirements of 14 CFR Part 16, this measure requires further study to determine the impact on the national airspace system and air commerce.

FAA's determinations are set forth in detail in a Record of Approval endorsed by the Airports Division Manager on August 12, 2008. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office and Internet site listed above and at the administrative offices of the Arapahoe County Public Airport Authority, Englewood, CO.

Issued in Renton, Washington on August 12, 2008.

Donna Taylor,

Manager, Airports Division, FAA Northwest Mountain Region.

[FR Doc. E8–19278 Filed 8–20–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Town of Ipswich, Massachusetts

[Waiver Petition Docket Number FRA–2008–0093]

The Town of Ipswich, Massachusetts (Town) seeks a permanent waiver of compliance from certain provisions of FRA's regulations on the Use of Locomotive Horns at Highway-Rail Grade Crossings, 49 CFR Part 222. The Town intends to establish a Pre-Rule Quiet Zone to formalize existing restrictions on routine sounding of the locomotive horn that were previously continued under the provisions of 49 CFR 222.41(c)(1). The Town is seeking a waiver to extend the filing date for a Detailed Plan, as provided in 49 CFR 222.41(c)(2)(i)(B), which indicates that the Detailed Plan must be filed with FRA by June 24, 2008. The waiver petition requests that the Detailed Plan filed by the Town on July 28, 2008 be accepted as a valid Detailed Plan even though it was filed after June 24, 2008.

Initially, the Town of Ipswich submitted a Detailed Plan dated June 23, 2008, which was not received by FRA until June 30, 2008. The original Detailed Plan stated that the Town intended to reassess the risk index for the Topsfield Road grade crossing after March 2009, 5 years after an accident that occurred at the Topsfield Road location, to determine if additional safety improvements at this grade crossing would be required. FRA rejected this Detailed Plan because it was not received by the agency until June 30, 2008, and it did not include a detailed explanation of, and timetable for, the safety improvements that would be implemented as required by 49 CFR 222.41(c)(2)(i)(B). The Town, after discussion with representatives of FRA and the Massachusetts Bay Transportation Authority (MBTA), resubmitted the Detailed Plan on July 28, 2008, outlining the intended supplemental safety measures for the Topsfield Road grade crossing.

The Town seeks the waiver in order to continue the restrictions on routine sounding of locomotive horns at the grade crossings identified in its Detailed Plan until June 24, 2010.

The Town of Ipswich, the public authority, is filing this waiver request without the support of the MBTA, which is the railroad providing service over the five grade crossings identified in the Detailed Plan. However, the petition contains an explanation of the steps that the Town has taken to reach an agreement with the MBTA, in accordance with 49 CFR 222.15(b). As stated in the petition, the Town has made a written request to the MBTA to support its waiver request and the Detailed Plan. The Town also conducted a meeting of its Board of Selectmen on August 1, 2008, where an MBTA official in attendance stated that it is the policy of the MBTA to neither support nor oppose requests by municipalities to maintain quiet zones or obtain waivers from FRA regulations.

The Town has also asserted in its waiver petition that the joint submission requirement contained in 49 CFR 222.15(a) would not be likely to contribute significantly to public safety in this instance, based on its plans to install a four-quadrant gate system with enhanced electronic monitoring at the Topsfield Road crossing, where an accident occurred in March 2004.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2008–0093) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received within 20 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at: *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments

received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Issued in Washington, DC on August 18, 2008.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E8–19434 Filed 8–20–08; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Application for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of Applications for Special Permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before September 22, 2008.

Address Comments to: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington DC or at *http://dms.dot.gov.*

This notice of receipt of applications for special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on August 8, 2008.

Delmer F. Billings,

Director, Office of Hazardous Materials, Special Permits and Approvals.

NEW SPECIAL PERMITS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
14739–N		Battery Council International (BCI), Chicago, IL.	49 CFR 172.316	To authorize the transportation in commerce of certain Consumer commodities that have been overpacked and do not have the correct markings on the inner package when transported by motor vehicle. (mode 1)
14740–N		Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.301(c) and (f) and 173.40.	To authorize the transportation in commerce of certain DOT-specification cylinders containing nitric oxide that do not meet the requirements for pressure relief devices. (modes 1, 3)
14741–N		Weatherford International, Fort Worth, TX.	49 CFR 173.304	To authorize the transportation in commerce of sulfur hexafluoride in non-DOT specification cylinders. (modes 1, 3, 4, 5)
14742–N		Strong Environmental, Inc., Norcross, GA.	49 CFR 173.12(b)	To authorize the manufacture, marking, sale and use of a IJN standard 4G fiberboard box for use as the outer packaging for lab pack applications in accordance with § 173.12(b). (mode 1)
14743–N		TIER DE, Inc., Gap, PA	49 CFR 173.24b and 173.244.	To authorize the one-time, one-way transportation in commerce of a non-DOT specification metal tank containing approximately 700 lbs. of sodium by motor vehicle. (mode 1)
14744–N		Sandia National Laboratories, Albuquerque, NM.	49 CFR 173.24(b)(1) and 173.302a.	To authorize the transportation in commerce of DOT Specification 3AA and ICC 3A cylinders containing nitrogen, compressed, and a non-DOT specification refrigeration system containing helium that are installed in the Advance Flight Telescope (AFT) Payload where the cylinders release nitrogen into the satellite telescope during transportation. (modes 1, 4, 5)
14746–N		Preferred Foam Products, Inc., Clinton, CT.	49 CFR 173.315(a)	To authorize the transportation in commerce of certain non-DOT specification portable tanks containing a Division 2.2 compressed gas. (modes 1, 2)

[FR Doc. E8–19250 Filed 8–20–08; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Special Permit

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of Applications for Modification of Special Permit.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Request of modifications of special permits (e.g., to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. Their applications have been separated from the new application for special permits to facilitate processing.

DATES: Comments must be received on or before September 5, 2008.

Address Comments To: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue, Southeast, Washington DC or at *http://dms.dot.gov.*

This notice of receipt of applications for modification of special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on August 8, 2008.

Delmer F. Billings,

Director, Office of Hazardous Materials, Special Permits and Approvals.

MODIFICATION SPECIAL PERMITS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
11379–M		TRW Occupant Safety Systems, Washington, MI.	49 CFR 173.301(h), 173.302.	To modify the special permit to allow the transportation in commerce of an additional Division 1.4G and Division 2.2 material.
12155–M		S&C Electric Company, Chicago, IL.	49 CFR 172.301(c); 173.304.	To modify the special permit to remove the placarding requirement when transporting by motor vehicle.
14576–M		Structural Composites Industries (SCI), Pomona, CA.	49 CFR 173.302a and 173.304a.	To modify the special permit to authorize an increase in the maximum water volume from 300 liters to 315 liters.
14694–M	PHMSA–08–0113.	Department of Defense, Scott AFB, IL.	49 CFR 173.62	To reissue the special permit originally issued on an emergency basis for the transportation in commerce of certain equipment contaminated with explosives in non-DOT specification packaging.

[FR Doc. E8–19249 Filed 8–20–08; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Special Permits Applications

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: Delmer F. Billings, Director, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001, (202) 366–4535.

Key to ''Reason for Delay''

1. Awaiting additional information from applicant
2. Extensive public comment under review
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis
4. Staff review delayed by other priority issues or volume of special permit applications

Meaning of Application Number Suffixes

N—New application

M—Modification request

PM—Party to application with modification request

Issued in Washington, DC, on August 15, 2008.

Delmer F. Billings,

Director, Office of Hazardous Materials, Special Permits and Approvals.

MODIFICATION TO SPECIAL PERMITS

Application No.	Applicant	Reason for delay	Estimated date of completion
11579–M	Austin Powder Company Cleveland, OH	3, 4	09–30–2008
14167–M	Trinityrail Dallas, TX	4	09–30–2008
8723–M	Alaska Pacific Powder Company Anchorage, AK	1	09–30–2008
New Special Permit Applications			
14621–N	Beijing Tianhai Industry Co., Ltd. Beijing	1	09–30–2008
14643–N	World Airways, Inc. Peachtree City, GA	3	11–30–2008
14661–N	FIBA Technologies, Inc. Millbury, MA	4	09–30–2008

[FR Doc. E8–19248 Filed 8–20–08; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–LTC

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099–LTC, Long-Term Care and Accelerated Death Benefits.

DATES: Written comments should be received on or before October 20, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carolyn N. Brown at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6688, or through the Internet at *Carolyn.N.Brown@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Long-Term Care and Accelerated Death Benefits.

OMB Number: 1545–1519.

Form Number: 1099–LTC.

Abstract: Under the terms of Internal Revenue Code sections 7702B and 101g, qualified long-term care and accelerated death benefits paid to chronically ill individuals are treated as amounts received for expenses incurred for medical care. Amounts received on a per diem basis in excess of $175 per day are taxable. Code section 6050Q requires all such amounts to be reported.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations, individuals or households, not-for-profit institutions, and state, local or tribal governments.

Estimated Number of Responses: 79,047.

Estimated Time per Response: 14 minutes.

Estimated Total Annual Burden Hours: 18,181.

The following paragraph applies to all of the collections of information covered by this notice:

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. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

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.

Approved: August 1, 2008.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E8–19343 Filed 8–20–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Notice 123059–05]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice–123059–05, Limitations on Dividends Received Deduction and Other Guidance.

DATES: Written comments should be received on or before October 20, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carolyn N. Brown, at (202) 622–6688, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Carolyn.N.Brown@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Limitations on Dividends Received Deduction and Other Guidance.

OMB Number: 1545–1943.

Regulation Project Number: Notice–123059–05.

Abstract: This document provides guidance under new section 965, which was enacted by the American Jobs Creation Act of 2004 (Pub. L. 108–357). In general, and subject to limitations and conditions, section 975(a) provides that a corporation that is a U.S. shareholder of a controlled foreign corporation (CFC) may elect, for one taxable year, an 85 percent dividends received deduction (DRD) with respect to certain cash dividends it receives from its CFCs. This document addresses limitations imposed on the maximum amount of section 965(a) DRD under section 965(b)(1) (under which the maximum amount of an eligible dividend is the greatest of $500 million, or earnings permanently reinvested outside the United States), section 965(b)(2) (regarding certain base-period repatriations), section 965(b)(3) (regarding certain increases in related party indebtedness), and certain miscellaneous limitations (related to the foreign tax credit).

Current Actions: There is no change to this notice.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 25,000.

Estimated Time per Respondent: 3 hours.

Estimated Total Annual Burden Hours: 1,250,000

The following paragraph applies to all of the collections of information covered by this notice:

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. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

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.

Approved: August 1, 2008.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E8–19344 Filed 8–20–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8892

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8892, Payment of Gift/GST Tax and/or Application for Extension to File Form 709.

DATES: Written comments should be received on or before October 20, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carolyn N. Brown, at (202) 622–6688, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Carolyn.N.Brown@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Payment of Gift/GST Tax and/or Application for Extension to File Form 709.

OMB Number: 1545–1913.

Form Number: Form 8892.

Abstract: Form 8892 was created to serve a dual purpose. First, the form enables the taxpayers to request an extension of time to file Form 709 when they are not filing an individual income tax extension. Second, it serves as a payment voucher for taxpayers who are filing an individual income tax extension (by Form 4868) and will have a gift tax balance due on Form 709.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 10,000.

Estimated Time per Respondent: 44 mins.

Estimated Total Annual Burden Hours: 7,400.

The following paragraph applies to all of the collections of information covered by this notice:

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. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

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.

Approved: August 6, 2008.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E8–19345 Filed 8–20–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–25: OTS Nos. 06789]

Elk County Savings and Loan Association, Ridgway, PA; Approval of Conversion Application

Notice is hereby given that on August 13, 2008, the Office of Thrift Supervision approved the application of Elk County Savings and Loan Association, Ridgway, Pennsylvania, to convert to the stock form of organization. Copies of the application are available for inspection by appointment (phone number: (202) 906–5922 or e-mail: *Public.Info@OTS.Treas.gov*) at the Public Reading Room, 1700 G Street, NW., Washington, DC 20552, and the OTS Northeast Regional Office, Harborside Financial Center, Plaza Five, Suite 1600, Jersey City, NJ 07311.

By the Office of Thrift Supervision.

Dated: August 14, 2008.

Sandra E. Evans,

Federal Register Liaison.

[FR Doc. E8–19226 Filed 8–20–08; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–24: OTS Nos. 0890 and H4521]

Home Bank, Lafayette, LA; Approval of Conversion Application

Notice is hereby given that on August 12, 2008, the Office of Thrift Supervision approved the application of Home Bank, Lafayette, Louisiana, to convert to the stock form of organization. Copies of the application are available for inspection by appointment (phone number: (202) 906–5922 or e-mail: *Public.Info@OTS.Treas.gov*) at the Public Reading Room, 1700 G Street, NW., Washington, DC 20552, and the OTS Midwest Regional Office, 225 E. John Carpenter Freeway, Suite 500, Irving, Texas 75062–2326.

Dated: August 14, 2008.

By the Office of Thrift Supervision.

Sandra E. Evans,

Federal Register Liaison.

[FR Doc. E8–19225 Filed 8–20–08; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on OIF/OEF Veterans and Families; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on OIF/OEF Veterans and Families will conduct a meeting and a site visit in the Palo Alto, California area on September 16–18, 2008. Committee activities will include tours and briefings at various VA facilities.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the full spectrum of health care, benefits delivery and related family support issues that confront service members during their transition from active duty to veteran status and during their post-service years. The Committee will focus on the concerns of all men and women with active military service in Operation Iraqi Freedom and/or Operation Enduring Freedom, but will pay particular attention to severely disabled veterans and their families.

The agenda for the September 16–18 meeting will include briefings on recent site visits, discussions on proposed recommendations to the Department of Veterans Affairs (VA), and tours of the VA Medical Center. The Committee will discuss its findings and observations based on previous Committee meetings, site visits, written reports, and personal experiences.

On Tuesday, September 16, from 9 a.m. until 12 noon, the Committee will meet at The Cabana Hotel Palo Alto, 4290 El Camino Real, Palo Alto, CA. In the afternoon, the Committee will meet at the Palo Alto VA Medical Center, tour the facility and receive briefings from staff.

On Wednesday, September 17, from 9 a.m. to 12 noon, the Committee will meet in closed session. The Committee will be meeting with clinicians and individual patients receiving services at VA's Menlo Park facility. The session will be closed to protect the privacy of the patients and to minimize possible interference with the delivery of medical services. Closing the meeting is in compliance with 5 U.S.C. Sec 552b(c)(6). In the afternoon, from 2 p.m.–5 p.m., the Committee will meet in open session at The Cabana Hotel Palo Alto, 4290 El Camino Real, Palo Alto, CA.

On Thursday, September 18, from 9 a.m. to 4 p.m., the Committee will meet in open session at The Cabana Hotel Palo Alto, 4290 El Camino Real, Palo Alto, CA.

The meeting will include time reserved for public comments. Individuals wishing to make oral statements must pre-register not later than September 10, 2008 by contacting Syreeta Cherry via e-mail at *Syreeta.Cherry@va.gov,* and by submitting 1–2 page summaries of their statements for inclusion in the official record of the meeting. Oral statements by the public will be limited to five minutes each and will be received at 3 p.m.–3:30 p.m. on September 17, and 1 p.m.–1:30 p.m. on September 18. Interested individuals may also submit written statements for the Committee's review to the Advisory Committee on OIF/OEF Veterans and Families (008), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

Any member of the public seeking additional information should contact Laura O'Shea, Designated Federal Officer, at (202) 461–5765.

Dated: August 15, 2008.

By direction of the Secretary:

E. Philip Riggin,

Committee Management Officer.

[FR Doc. E8–19300 Filed 8–20–08; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Thursday,
August 21, 2008

Part II

Department of Housing and Urban Development

24 CFR Parts 901, 902, and 907

Public Housing Evaluation and Oversight: Changes to the Public Housing Assessment System (PHAS) and Determining and Remedying Substantial Default; Asset Management Transition Year Information and Uniform Financial Reporting Standards (UFRS) Information; Proposed Rule and Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 901, 902 and 907

[Docket No. FR–5094–P–01]

RIN 2577–AC68

Public Housing Evaluation and Oversight: Changes to the Public Housing Assessment System (PHAS) and Determining and Remedying Substantial Default

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would make two sets of amendments to improve evaluation and oversight of public housing agencies (PHAs). First, this proposed rule would amend HUD's Public Housing Assessment System (PHAS) regulations for the purposes of: Consolidating the regulations governing assessment of a PHA's program in one part of the Code of Federal Regulations (CFR); revising certain PHAS regulations based on the Department's experience with PHAS since it was established as the new system for evaluating a PHA in 1998; and updating certain PHAS procedures to reflect recent changes in public housing operations from conversion by PHAs to asset management, including updating and revising the PHAS scoring. PHAS is designed to improve the delivery of services in public housing and to enhance trust in the public housing system among PHAs, public housing residents, and the general public, by providing a management tool for effectively and fairly measuring the performance of a PHA in essential housing operations of its projects, based on standards that are uniform and verifiable. The changes proposed by this rule are intended to enhance the efficiency and utility of PHAS.

Second, the proposed rule would establish, in a separate part of the CFR, the regulations that would specify the actions or inactions by which a PHA would be determined to be in substantial default, the procedures for a PHA to respond to such a determination or finding, and the sanctions available to HUD to address and remedy substantial default by a PHA. To date, such regulations have been included in the PHAS regulations, but the actions or inactions that constitute substantial default are not limited to failure to comply with PHAS regulations. Accordingly, the proposed regulations applicable to substantial default are more appropriately codified in a separate CFR part.

This proposed rule is also publishing the scoring processes for each of the PHAS scoring categories as appendices to part 902. Although these scoring processes are proposed as appendices, it is also possible that, at the final rule stage, they will be published as separate notices as has been HUD's practice to this point.

DATES: *Comment Due Date:* October 20, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov*. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service, toll-free, at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Wanda Funk, Senior Advisor, Department of Housing and Urban Development, Office of Public and Indian Housing, Real Estate Assessment Center (REAC), 550 12th Street, SW., Suite 100, Washington, DC 20410; or the REAC Technical Assistance Center at 888–245–4860 (this is a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339. Additional information is available from the REAC Internet site at *http://www.hud.gov/offices/reac/.*

SUPPLEMENTARY INFORMATION:

I. Changes to the PHAS

A. Background on PHAS

PHAS was established by a final rule published on September 1, 1998 (63 FR 46596). Prior to 1998, a PHA was evaluated by HUD with respect only to its management operations. PHAS expanded assessment of a PHA to four key areas of a PHA's operations: (1) The physical condition of the PHA's properties; (2) the PHA's financial condition; (3) the PHA's management operations; and (4) the residents' service and satisfaction assessment (through a resident survey). On the basis of these four indicators, a PHA receives a composite score that represents a single score for a PHA's entire operation and a corresponding performance designation. PHAs that are designated high performers receive public recognition and relief from some HUD requirements. PHAs that are designated standard performers may be required to take corrective action to remedy identified deficiencies. PHAs that are designated substandard performers are required to take corrective action to remedy identified deficiencies. PHAs that are designated troubled performers are subject to remedial action.

By final rule published on January 11, 2000 (65 FR 1712), HUD amended the PHAS regulations to, among other things, elaborate on some PHAS procedures; revise the mechanism for obtaining technical review of physical inspections results and resident survey

results, and for appealing PHAS scores; and implement statutory changes resulting from enactment of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105–276, October 21, 1998).

B. Public Housing Operating Fund Program

The regulations governing the Public Housing Operating Fund program are of key relevance to the proper operation of PHAs and, consequently, to PHAS. Operating funds are made available to a PHA for the operation and management of public housing; therefore, the regulations applicable to a PHA's operation and management of public housing must be considered in any changes proposed to PHAS. The regulations for the Public Housing Operating Fund program are found at 24 CFR part 990; were published on September 19, 2005 (70 FR 54983), which was followed by a correction published on October 24, 2005 (70 FR 61366); and became effective on November 18, 2005.

Subpart H of the part 990 regulations (§§ 990.255 to 990.290), as revised by the September 2005 rule, establishes the requirements regarding asset management. Under § 990.260(a), PHAs that own and operate 250 or more dwelling rental units must operate using an asset management model consistent with the subpart H regulations. PHAs with fewer than 250 dwelling rental units may elect to transition to asset management, but are not required to do so. HUD's Fiscal Year (FY) 2008 appropriations, provided in Title IV of Division K of the Consolidated Appropriations Act, 2008 (Pub. L. 110–161, approved December 26, 2007), state, in administrative provision section 225, that PHAs that own or operate 400 or fewer public housing units may elect to be exempt from any asset management requirement imposed by HUD in connection with HUD's operating fund rule, with one exception: A PHA seeking discontinuance of a reduction of subsidy under the operating fund formula shall not be exempt from asset management requirements. Since requirements in appropriations acts, unless otherwise indicated, apply only to the fiscal year to which the appropriations act is directed, HUD's proposed rule to revise PHAS does not reflect this one-year provision. PHAs are required to implement project-based management, project-based budgeting, and project-based accounting, which are all defined in the regulations of 24 CFR part 990, subpart H, and are essential components of asset management.

C. Proposed Amendments to PHAS

The proposed amendments to PHAS retain the basic structure of the existing regulations. PHAs will continue to be scored based on evaluation in four indicators: Physical condition, financial condition, management operations, and the PHA's management of its Capital Fund program. PHAS would continue to rely on information that is verifiable by a third party, wherever possible.

Overview of Proposed Changes to PHAS

This proposed rule modifies PHAS primarily to conform to the new regulations on the Public Housing Operating Fund program and the conversion by PHAs to asset management, including project-based budgeting, project-based accounting, and project-based performance evaluation. Highlights of some of the major changes proposed to each of the four current PHAS indicators are as follows:

Physical. The physical inspection indicator would remain largely unchanged. Independent physical inspections would continue to be conducted on each public housing project, although the frequency of inspections would depend on the scores of individual projects, not the score for the entire PHA. For example, if a specific project scored below 80 points, it would be inspected the following year, regardless of whether the overall physical score for the PHA, based on all projects, was 80 points or higher (as is the case in the currently codified PHAS regulations). If a PHA's overall physical score is less than 80 points, and one or more projects score 80 points or above, those projects that score 80 points or above would be inspected every other year.

Financial. The financial assessment system would be modified to include an assessment of the financial condition of each project. A PHA would continue to submit an annual Financial Data Schedule (FDS) to HUD that contains financial information on all major programs and business activities. However, for purposes of PHAS, the PHA would be scored on the financial condition of each project, and these scores would be the basis for a program-wide score.

Subindicators that are currently available through financial reports but are more appropriately measures of management performance (*e.g.*, bad debt, tenant accounts receivables, and occupancy loss) would be removed from this indicator and moved to the management operations indicator. HUD considered the option of allowing these items to remain as part of the financial condition indicator. HUD now has 10 years of experience with PHAS, and, based on that experience, believes that bad debt, accounts receivables, and occupancy loss are more properly measures of management operations, as is currently the prevailing view in the multifamily industry. Even after these items were moved from their original location as part of the management operations assessment, they were tracked in both the financial condition and management operations indicators. The fact that these items continued to be tracked as management operations-related even after they were moved to the financial condition indicator demonstrates that they are, in fact, closely related to management operations. The U.S. Housing Act of 1937 (1937 Act) itself, in section 6(j), 42 U.S.C. 1437d(6)(j), associates items in these categories with management operations (see 42 U.S.C. 1437d(j)(1)(A)) (vacancy rate, that is, occupancy loss) and (j)(1)(C) (percentage of rents collected, related to tenant accounts receivable and bad debt), both of which are referred to by the statute as examples of ''indicators to assess the management performance.'' For these reasons, HUD has decided to move these factors to management operations, where HUD, based on multifamily industry practice and its own experience, believes they belong.

Management. The current management operations assessment system relies on PHA submission of a range of information that is self-certified. Under the proposed rule, this current system would be replaced with management reviews conducted of each project by HUD staff (or, where applicable, HUD's agents). Preferably, such reviews would be conducted annually, consistent with the standards for HUD's subsidized housing programs. As part of this project management review process, HUD would examine a PHA's performance in the area of resident programs and participation, thereby eliminating a separate resident satisfaction survey.

Resident Satisfaction Surveys. A PHA's performance in the area of resident programs and participation would be evaluated as part of the project management review, thus eliminating the need for a separate indicator on resident satisfaction and, therefore, a separate satisfaction survey. The project management review would include a subindicator that would measure efforts to coordinate, promote, or provide effective programs and activities to promote economic self-sufficiency of residents, and measure the extent to

which residents are provided with opportunities for involvement in the administration of the public housing. This subindicator would include all of the elements regarding economic self-sufficiency and resident participation that are included in section 6(j) of the 1937 Act (42 U.S.C. 1437d(j)). Separately, HUD may perform resident surveys at different frequencies that would be used as diagnostic tools that would assess residents' satisfaction with their living conditions and not be made part of a PHA's score.

The current survey instrument has been in place since 1999. In evaluating the results of the survey, HUD has found strong indications that the survey is not useful. Even some of the more troubled projects have received high resident satisfaction scores. As the table below shows, the average satisfaction rate is 82.57 percent. For the period from FY 2002 through FY 2006, the satisfaction rate has varied by no greater than 1.88 percent for the entire 5-year period. The services survey area has consistently been in the 90th percentile, while the lowest-scoring survey area, communication, has an average satisfaction rate of 75.68 percent. Given the actual condition of some of the projects surveyed, it is highly unlikely that these results are accurately reflecting resident satisfaction.

RESIDENT SATISFACTION

Survey area	FY 2002 %	FY 2003 %	FY 2004 %	FY 2005 %	FY 2006 %	Average %
Maintenance & Repair	89.25	89.11	85.16	86.62	88.50	87.73
Communication	76.35	76.31	74.80	75.61	75.35	75.68
Safety	74.40	82.31	80.69	81.24	80.13	79.75
Services	92.32	92.24	91.90	91.78	91.99	92.05
Appearance	77.12	78.63	76.66	78.29	77.39	77.62
Average	81.89	83.72	81.84	82.71	82.67	82.57

The response rate for the survey has also remained relatively static, as the following table shows.

RESIDENT SURVEY RESPONSE RATES

FY 2002 %	FY 2003 %	FY 2004 %	FY 2005 %	FY 2006 %
40.33	37.12	39.15	42.40	39.06
Average Response Rate: 39.61				

At some of the smaller PHAs, residents have complained that they are answering the same questions year after year. Industry groups have also indicated that they believe the survey instrument needs to be revised.

As an alternative to the resident survey, the new management review format for public housing projects includes two areas that take into consideration resident participation: Economic self-sufficiency and resident involvement in project administration. These two areas assess the percentage of adults with some form of employment income, the percentage of adults participating in self-sufficiency, the number of self-sufficiency opportunities offered at the project, and the number of resident involvement opportunities offered by a project. In addition, as much as possible, the management operations subindicators focus on residents. For example, the work order subindicator measures tenant-generated work orders rather than emergency and nonemergency work orders. The advantage of these management subindicators is that they measure objective results rather than subjective satisfaction, and also that they are not dependent on voluntary participation but rather are determined by actual reviews and site visits.

HUD invites comments on whether the survey should be retained in some form, how it might be improved, and whether HUD's proposed solution is sufficient to gather resident feedback on resident satisfaction.

Capital Fund. HUD proposes to establish a new indicator, which previously was part of the management operations indicator, that measures a PHA's performance with respect to the obligation and expenditure of Capital Fund program grants. This Capital Fund program indicator is statutory, required by section 6(j) of the 1937 Act (42 U.S.C. 1437d(j)(1)(B)), and can be measured only at the agency level.

In addition to the changes in the four indicators, discussed above, the rule would modify the score adjustment for physical condition and neighborhood environment. This adjustment would be applied to the management operations indicator on a project-by-project basis rather than to the physical condition indicator. The statutory language states that HUD should reflect in the weights assigned to the various indicators the differences in the difficulty in managing individual projects that result from their physical condition and neighborhood environment. The application of the adjustment to the management operations indicator would specifically address the difficulty in managing individual projects, and would also result in a true physical condition score without any adjustments outside of the physical condition inspection results.

HUD believes the changes proposed to the PHAS regulations by this rule offer the following advantages:

- HUD and PHAs would be better able to identify and measure the performance of individual projects, which is necessary for asset management.
- The new system conforms to HUD's performance monitoring protocols and regulations in the area of multifamily housing.
- The new system would be much simpler for PHAs and HUD to

administer. PHAs would only be required to submit their FDS schedule and would no longer need to submit a management certification. Moreover, PHAs would have greater flexibility in developing internal monitoring systems.

• The new system would focus more on performance than process.

Additional changes to PHAS proposed by this rule include:

• Corrective Action Plans are proposed to replace current Improvement Plans.

• References to the Troubled Agency Recovery Center (TARC), an area center to which troubled PHAs were referred for oversight, monitoring, or other remedial action, have been removed since the TARCs no longer exist. The duties and responsibilities of the TARCs were transferred to and assumed by HUD's field offices.

D. Section-by-Section Overview of PHAS Amendments

The following section-by-section overview does not describe each and every change made to the PHAS regulation, but provides an overview of some of the key changes proposed by this rule.

1. Part 901, Public Housing Management Assessment Program (PHMAP)

This proposed rule would remove part 901, which contains the PHMAP regulations. When HUD issued the final PHAS rule in September 1998, the preamble to the final rule noted that the PHMAP regulations in part 901 would be retained because PHAS would not be implemented until October 1999, one year after the September 1998 rule became effective. The preamble advised PHAs that they would continue to comply with the PHMAP regulations until the implementation of PHAS in October 1999. This proposed rule will consolidate all public housing assessment regulations in the PHAS regulations in part 902, and part 901 will be removed.

2. Part 902, PHAS

Subpart A—General Provisions

Section 902.1 (Purpose, scope, and general matters). Proposed § 902.1 would consolidate the purpose, scope, and applicability sections into a single introductory section to better capture the overall objectives of PHAS in one regulatory location.

Proposed § 902.1(a) is unchanged from the purpose paragraph of the currently codified regulations.

Proposed § 902.1(b) remains similar to currently codified § 902.3.

Proposed § 902.1(c) briefly describes PHAS indicators.

Proposed § 902.1(d) would be revised to include the project assessment approach, which is now the relevant assessment as PHAs convert to asset management. With the proposed removal of the resident survey, to be discussed more fully later in this preamble, a reference to gathering data from residents would be removed. Material concerning HUD data systems would be added.

Currently codified § 902.1(e) pertaining to changes in a PHA's fiscal year end would be moved to a revised § 902.60(a). New proposed § 902.1(e) would provide for a PHA with fewer than 250 units that does not convert to asset management to be considered a single project.

Proposed § 902.1(f) would revise currently codified § 902.1(b) to reflect that REAC is now part of HUD's Office of Public and Indian Housing (PIH).

Section 902.3 (Definitions). Currently codified § 902.3 would be revised to include the definitions of additional important terms used in the regulations. In the currently codified regulations, the definitions are found in both 24 CFR 902.7 and 24 CFR 902.24, where definitions used in the physical condition indicator are presented. HUD proposes to place all definitions in one section for greater convenience.

Currently codified § 902.3 would be revised to remove the following definitions that are no longer applicable or are not referenced in the regulations: average number of days non-emergency work orders were active; improvement plan; occupancy loss; property; reduced actual vacancy rate within the previous 3 years; reduced average time nonemergency work orders were active; tenant receivables outstanding; unit months available; unit months leased; and work orders deferred to the Capital Fund program.

The following definitions would be added to this section: Assistant Secretary; Corrective Action Plan; decent, safe, sanitary and in good repair (DSS/GR); memorandum of agreement (MOA); Alternative Management Entity (AME); Resident Management Corporation (RMC); Direct Funding RMC; and unit-weighted average. In addition, the following definitions from currently codified § 902.24 are proposed to be added to this section: criticality; deficiencies; dictionary of deficiency definitions; inspectable areas; inspectable item; item weights and criticality levels document; normalized weight; score; severity; and subarea.

Section 902.5 (Applicability). To allow sufficient time for PHAs to adjust to PHAS, as proposed to be revised by this rule, proposed § 902.5(b)(1) would change applicability to commence with PHAs with fiscal years ending on and after June 30, 2009. The information in currently codified § 902.5(b), pertaining to the issuance of PHAS advisory scores, would be removed because it is no longer applicable.

Proposed § 902.5(b)(2) would address transition scores and the fiscal-year-end dates for transition scores.

Section 902.9 (PHAS scoring). This proposed section would address the PHAS scoring system. (Those parts of currently codified § 902.9 that address the frequency of PHAS scoring would be incorporated into proposed § 902.13.)

Proposed § 902.9(a) would briefly describe the PHAS indicators, which would include the new Capital Fund program indicator that replaces the current resident service and satisfaction indicator.

Proposed § 902.9(b) would provide information about the weights of the four indicators.

Proposed § 902.9(c) would provide for PHAS scores to be calculated in accordance with appendices A–D. Accordingly, repetitive information about scoring is removed from the regulations governing individual indicators. No further changes to any of the scoring processes will be implemented until after they are published for public comment in the **Federal Register**. The currently codified PHAS regulations provide for this notice and comment process, and HUD does not propose to change that process by this rule.

The proposed scoring documents that correspond to this proposed rule are published as appendices to this proposed rule.

Section 902.11 (PHAS performance designation). Proposed § 902.11 would address PHAS performance designation information. The performance designations would be high performer, standard performer, substandard performer, and troubled performer (except for the new ''substandard'' designation, these are the designations provided in currently codified § 902.67).

Proposed §§ 902.11(a) and (b) would amend the performance requirements for PHAS designations that are currently codified in §§ 902.67(a) and (b). Proposed § 902.11(a) would state that a high performer must achieve an overall PHAS score of 90 percent, in contrast to currently codified § 902.67(a), which requires at least a 60 percent score in each PHAS indicator.

Proposed § 902.11(a)(2) would provide that a PHA would not be designated a high performer if more than 10 percent of the PHA's total units are in projects that fail the physical

condition, financial, or management operations indicators. Proposed § 902.11(c) would explain the new substandard designation. Generally, a PHA's overall PHAS score determines its designation.

The ''substandard'' designation, however, would be calculated differently. A substandard designation would be based on a PHA achieving a PHAS score of at least 60 percent and a score of less than 60 percent under one or more of the physical condition, financial, or management operations indicators. In the proposed rule, to avoid confusion, ''substandard'' would not be used to mean a subcategory of troubled performer.

Section 902.13 (Frequency of PHAS assessments). Proposed § 902.13 would be added to address the revised frequency of PHAS assessments, and would incorporate, in § 902.13(a), the information in currently codified § 902.9, with the exception that a small PHA with fewer than 250 units would not be able to elect an annual assessment. As the PHAS regulations are proposed to be revised by this rule, the frequency of physical condition assessments would be based on the size of the PHA and the performance of the PHA under the physical condition indicator.

Proposed § 902.13(b) would provide that a project that scores 80 points or higher for the physical condition indicator would be inspected every other year.

Proposed § 902.13(c) would require a PHA to submit the unaudited and audited financial information to HUD every year, whether or not the PHA receives a PHAS assessment.

Subpart B—Physical Condition Indicator

Section 902.20 (Physical condition assessment). Proposed § 902.20 would address the basic components of the physical condition assessment. Proposed § 902.20(b) would provide for independent physical inspections in accordance with HUD's physical condition standards for decent, safe, and sanitary housing as codified at 24 CFR 5.703–5.705.

Section 902.21 (Physical condition standards for public housing). Proposed § 902.21 would be similar to currently codified § 902.23, and summarizes the standards that the five major inspectable areas are required to meet. The five major inspectable areas are site, building exterior, building systems, dwelling units, and common areas. The main difference between this proposed rule and the currently codified regulations is that where the currently codified section incorporates provisions directly from HUD's physical conditions standards at 24 CFR 5.703, the proposed section would cross-reference to § 5.703 where necessary, resulting in a more concise and streamlined regulatory provision.

Section 902.22 (Physical inspection of PHA projects). The information in proposed § 902.22(a) would be similar to currently codified § 902.24(a), but it would add a specific reference to HUD's standards for decent, safe, and sanitary housing. Proposed new § 902.22(b)(1) would address how HUD would achieve the objectives of paragraph (a) and provides for an inspection of a ''statistically valid'' sample of units.

Proposed § 902.22(d) would clarify the differences between health and safety deficiencies and exigent health and safety deficiencies. Proposed § 902.22(d)(1) would contain the information in currently codified § 902.24(a)(2), but would add that the project or PHA should correct exigent health and safety deficiencies within 24 hours, and that the PHA must certify the correction to HUD within 3 business days.

Section 902.23 (Adjustment for physical condition and neighborhood environment). HUD proposes to remove this section because physical condition and neighborhood environment would be assessed under the management operations indicator in the proposed rule. See new proposed § 902.44.

Section 902.24 (Database adjustment). Proposed § 902.24 would contain the information currently codified in § 902.25(c) and would be designated as a separate section for the purpose of greater clarity. The section would be revised to be consistent with project-based assessment.

Section 902.25 (Physical condition scoring and thresholds). Proposed § 902.25(a) revises currently codified § 902.25(a) to reflect the project-based approach to administration of public housing, and to remove material regarding scoring, which would be consolidated in proposed § 902.9(c) rather than being restated as to each indicator.

Proposed new § 902.25(b) provides similar information as found in currently codified § 902.25(d), but with further explanation of how the weighted scores are calculated.

Proposed new § 902.25(c) would include new information regarding the conversion of a project score from a 100-point scale to a 30-point scale for the overall PHAS physical condition indicator, and provide the number of points required for a passing score and the score at which a PHA would be considered a substandard performer.

Section 902.26 (Physical inspection report). Currently codified §§ 902.26(a) and (a)(3) would be slightly revised by this proposed rule to be consistent with project-based assessment. Sections 902.26(a)(2) and (a)(5) would be revised to make the deadline for a request for reinspection 30 days after a PHA's receipt of the physical inspection report.

Current § 902.27 (Physical condition portion of total PHAS points). HUD proposes to remove this section and instead provide for the number of points assigned to each indicator in § 902.9(b).

Subpart C—Financial Condition Indicator

Section 902.30 (Financial condition assessment). Proposed § 902.30 is similar to currently codified § 902.30. The section would be revised to reflect individual project assessment.

Section 902.33 (Financial reporting requirements). Proposed § 902.33(b) pertains to unaudited financial information and contains the same information in currently codified § 902.33(b). As proposed to be revised, this section removes a reference to the Uniform Financial Reporting Standards in 24 CFR part 5, subpart H, and removes reference to the information regarding an automatic 1-month extension, which no longer applies.

Proposed § 902.33(b) also includes the same unaudited reporting deadlines included in currently codified § 902.33(c).

Proposed § 902.33(c) contains information related to audited financial statements that is contained in currently codified § 902.33(c).

Section 902.35 (Financial condition scoring and thresholds). Proposed § 902.35(a)(1) would be similar to currently codified § 902.35(a), but would remove the repetitive information about scoring that, in the codified regulations, is provided in each section addressing a PHAS indicator. This section also would provide a reference to individual projects.

Proposed § 902.35(a)(2) contains information regarding the basis for the financial condition score. Currently codified § 902.35(a)(2) would be removed because the information regarding advisory scores and high liquidity would no longer be applicable.

Proposed § 902.35(b) lists the new financial condition subindicators under asset management and replaces the financial management components listed in the current § 902.35(b).

Proposed § 902.35(c) would explain how the overall financial condition score is calculated. This score would be

a unit-weighted average of the individual project scores on this indicator.

Proposed § 902.35(d) would address the maximum points and scoring thresholds, similar in function to currently codified § 902.35(c).

Current § 902.37 (Financial condition portion of total PHAS points). HUD proposes to remove this section and instead provide for the number of points assigned to each indicator in § 902.9(b).

Subpart D—Management Operations Indicator

Section 902.40 (Management operations assessment). Proposed § 902.40(a) would be revised to more comprehensively address the management operations assessment of projects, given the removal of 24 CFR part 901.

Section 902.43 (Management operations performance standards). Proposed § 902.43(a) would list the statutory subindicators that must be utilized in this assessment. This section, as proposed, would also reference the asset management review form that would be used to assess a PHA's management operations and a PHA's individual project management operations, and the subindicators are included in appendix C. Specifically, new proposed §§ 902.43(a)(1) through (a)(6) would list the statutory subindicators that are not addressed elsewhere in PHAS, and would replace the currently codified §§ 902.43(a)(1) through (a)(6). Paragraphs (a)(7) through (a)(9) of § 902.43 would address the following subindicators, respectively: security, economic self-sufficiency, and resident involvement in project management.

Proposed § 902.43(b) would provide that a project management review be used to assess this indicator, supported by other data available to HUD. Currently codified §§ 902.43(b)(1) and (b)(2) would be removed because PHAs would no longer certify to the management operations information and because manual submissions are no longer necessary.

Section 902.44 (Adjustment for physical condition and neighborhood environment). A proposed § 902.44 would be added and the adjustment for physical condition and neighborhood environment would apply to the management operations indicator. Proposed § 902.44(a) would include the new definitions for physical condition and neighborhood environment, and § 902.44(b) would describe the application of the adjustment.

Section 902.45 (Management operations scoring and thresholds). Proposed § 902.45(a) would be similar to currently codified § 902.45(a), except that projects, as well as PHAs, would receive a management operations score.

Proposed § 902.45(b) would provide information regarding the overall indicator score.

Proposed § 902.45(c) would be similar to currently codified § 902.45(b), and would provide information regarding the maximum points for this indicator and scoring thresholds. The section removes a reference to sanctions under section 6(j)(4) of the 1937 Act (42 U.S.C. 1437d(j)(4)).

Current § 902.47 (Management operations portion of total PHAS points). HUD proposes to remove this section and instead provide for the number of points assigned to each indicator in § 902.9(b).

Subpart E—Capital Fund Program Indicator

Proposed new subpart E addresses the Capital Fund program indicator, and would replace the current subpart E, resident services and satisfaction indicator. HUD is removing the resident services and satisfaction indicator because, after almost 10 years of experience, this indicator has not yielded the degree of feedback that HUD hoped to obtain from this indicator. HUD has determined that PHAs expend considerable effort to obtain resident input on the PHA's performance, but with little change in the response rate over the past 5 years. HUD will examine alternatives to obtain resident feedback, possibly through funding for Resident Opportunities and Supportive Services (ROSS) provided annually through its notice of funding availability (NOFA). HUD specifically welcomes comment on proposals to improve resident feedback on a PHA's performance and to measure resident satisfaction.

Section 902.50 (Capital Fund program assessment). Proposed § 902.50(a) would provide for assessment of a PHA's Capital Funds that remain unexpended after 4 years and unobligated after 2 years.

Proposed § 902.50(b) would provide that this indicator would not apply to PHAs that choose not to participate in the Capital Fund program, and would only be applicable on a PHA-wide basis, rather than a project basis. Section 9(j) of the 1937 Act (42 U.S.C. 1437g(9)(j)(1) and (5)) makes the obligation to expend funds in a timely manner applicable to PHAs.

Proposed § 902.50(c) would provide that information for this indicator would be derived through an analysis of HUD's electronic Line of Credit Control System (e-LOCCS) (or its successor system). Proposed §§ 902.50(c)(1) and (c)(2) would address a PHA's responsibility to submit Capital Fund program information in a timely manner and appeal restrictions, respectively.

Section 902.53 (Capital Fund program scoring and thresholds). This proposed section would explain the scoring and thresholds for this indicator, overall points, and passing score.

Subpart F—PHAS Scoring

Section 902.60 (Data collection). This proposed section would completely revise currently codified § 902.60. Currently codified § 902.60(a), pertaining to fiscal year reporting periods, would be revised to provide that a PHA would not be permitted to change its fiscal year for the first 3 full fiscal years following June 30, 2009, unless such change is approved by HUD for good cause. The moratorium on changing fiscal years is consistent with the currently codified PHAS regulations, which provide for a halt to fiscal year changes commencing with the year new HUD regulations are to be implemented. Proposed § 902.60(b) would address extensions for submitting unaudited financial information. The information in currently codified § 902.60(c), pertaining to the submissions of financial information, would be revised to include information about weighting and applicability of the Single Audit Act (codified at 31 U.S.C. 7501 *et seq.*) and be moved to proposed §§ 902.9(b) and 902.33.

Proposed § 902.60(c) would address waivers of the due date for submitting audited financial information to HUD.

Proposed § 902.60(d) would address rejection and resubmission of a PHA's unaudited year-end financial information submission. The requirement in currently codified § 902.60(d)(2) pertaining to the retention of documentation would be incorporated in proposed § 902.3(b).

Information in currently codified § 902.60(e)(2) and (f) would be moved to proposed § 902.62, with some revisions. Certifications referenced in currently codified §§ 902.60(e)(2) and (f), and material regarding the performance designation of a PHA as ''troubled'' in currently codified § 902.60(e)(2) would no longer be included.

Section 902.62 (Failure to submit data). Proposed § 902.62 addresses penalties for failing to submit required information. Much of this material is similar to that in currently codified § 902.60(e).

Section 902.64 (PHAS scoring and audit reviews). Proposed § 902.64(a) would be similar to currently codified § 902.63(b).

Proposed § 902.64(b) would be similar to currently codified § 902.63(c), except that references to certifications would be removed.

Proposed § 902.64(c) would include the material on the review of audits in currently codified § 902.63(d), along with certain revisions. The revised material includes standards and procedures for determining if an audit is deficient.

Section 902.66 (Withholding, denying, and rescinding designation). Proposed § 902.66 would provide that, in limited circumstances, HUD may deny or rescind a high or standard performer designation. Denial or rescission may occur in cases of fraud or misconduct, litigation cases that bear directly on the performance of the PHA, where the PHA is operating under a court order, or where the PHA demonstrates substantial evidence of noncompliance with applicable laws or regulations. HUD action taken in accordance with this section may be appealed under § 902.69(d).

Section 902.68 (Technical review of results of PHAS physical condition indicator). Proposed § 902.68 largely retains the information regarding physical inspection technical reviews as provided in currently codified § 902.68, and removes reference to technical reviews for the resident survey and satisfaction indicator, which will no longer be an indicator. Proposed § 902.68(b)(7) would be included to provide that HUD's decision on a technical review is final agency action.

Section 902.69 (PHA right of petition and appeal). Proposed § 902.69 has been revised to elaborate on the rights of appeal, petition, and the appeal of any refusal of a petition to remove a troubled performer designation. Proposed § 902.69(a) would revise the current section to provide for four categories of appeals and one type of petition.

Currently codified § 902.69(b) would be designated § 902.69(b)(1) in this proposed rule, and revised to take into account the new designation of ''substandard performer.'' Proposed § 902.69(b)(2) would provide that a PHA may not appeal its physical condition score based on the subsequent correction of deficiencies identified as the result of a physical inspection or technical review items for which a decision has been previously rendered through the technical review process. Proposed § 902.69(b)(3) would specify procedures for appealing the score for the Capital Fund program indicator.

Proposed § 902.69(c)(1) would be revised to address only the appeal and petition procedures in currently codified § 902.69(c)(1). As proposed to be revised, § 902.69(c)(2) would specify the procedures for the appeal of the refusal of a petition to remove troubled performer designation, which is addressed in currently codified § 902.69(c)(1). Proposed § 902.69(c)(3) would provide that an appeal or petition must be submitted in writing to the Real Estate Assessment Center, Attention: Technical Review. The address is: Real Estate Assessment Center, 550 12th Street, SW., Suite 100, Washington, DC 20024–2135. Proposed § 902.69(c)(4) would include information in currently codified §§ 902.69(c)(1) and (c)(2) that requires the inclusion of appropriate supporting information.

Proposed § 902.69(d) would establish an appeal process for cases of denial, withholding, or rescission of a PHAS performance designation. Upon receipt of a request for reinstatement, the evidence submitted by the PHA will be reviewed to determine whether a reinstatement of the designation is warranted.

Proposed § 902.69(e) would establish a process for consideration of an appeal of an overall PHAS score, a troubled performer designation, or a petition to remove a troubled performer designation. HUD would evaluate the appeal and determine whether a reassessment of the PHA is warranted. There would no longer be a Board of Review as in the currently codified regulation.

Proposed § 902.69(e)(2) addresses the appeal of refusal to remove a troubled performer designation and provides that the decision-making officials would be different individuals than those that evaluated the petition to remove a troubled performer designation.

Proposed § 902.69(f) would provide for final appeal decisions similar to the provisions in currently codified § 902.69(e), but with some differences. Proposed § 902.69(f) would specify the remedies available to HUD if HUD grants an appeal, including undertaking a new inspection, arranging for audit services, or other reexamination of the results of assessment of a PHA's financial, management, or Capital Fund program performance, as appropriate. Following such reassessment, HUD will issue a new score and performance designation. The proposed rule would remove the option available to HUD to extend the deadline for HUD's decision to an additional 30 days. Finally, the rule would provide that HUD's decision is final agency action.

Subpart G—PHAS Incentives and Remedies

Section 902.71 (Incentives for high performers). Proposed § 902.71 would be largely the same as currently codified § 902.71. The proposed rule would remove the material in § 902.71(a)(1)(ii) concerning the frequency of physical inspection, because the remainder of the rule provides sufficient flexibility to relieve high-performing PHAs of monitoring requirements.

Section 902.73 (PHAs with deficiencies). The heading of this section would be changed from the section heading for currently codified § 902.73 to more accurately reflect the content in this section. This proposed section would remove the concept of the Improvement Plan and replace it with the concept of the Corrective Action Plan. This concept is consistent with the Corrective Action Plan terminology that is used in other program areas. If the PHA, under a Corrective Action Plan, fails to correct its deficiencies within the time period specified, HUD may take additional action, including, but not limited to, the remedies for substantial default.

Section 902.75 (Troubled performers). The heading of this section would be changed from the section heading for currently codified § 902.75 (Referral to a Troubled Agency Recovery Center (TARC)). Proposed § 902.75(a) removes the references to 24 CFR part 901 and the TARCs, because this proposed rule and accompanying proposed scoring documents will replace part 901, and because the TARCs, as noted previously, no longer exist. Their duties and responsibilities were transferred and assumed by HUD field offices in 2003.

Proposed §§ 902.75(b) and (c) cover the same subjects as currently codified §§ 902.75(b) and (c); that is, remedial measures for troubled performers—albeit with revisions. Proposed § 902.75(b) would specify that a memorandum of agreement (MOA) is required for a troubled performer. Proposed § 902.75(b)(3) would require identification of the party responsible for meeting each target. Proposed § 902.75(b)(7) would: (1) Eliminate a reference to the Departmental Enforcement Center, which is now part of HUD's Office of General Counsel; and (2) add cross-references to HUD's statutory and regulatory remedial authority in place of the current summary.

Proposed §§ 902.75(d)(1) and (d)(2) would clarify the time frames in currently codified §§ 902.75(d)(1) and (d)(2) by providing that the first- and second-year recovery periods are at least

12 months after issuance of the initial notice of troubled performer designation, and at least 24 months after issuance of the initial notice of troubled performer designation, respectively.

Proposed §§ 902.75(e) and (f) would largely be the same as the currently codified §§ 902.75(e) and (f). However, proposed § 902.75(e) would remove the reference in § 902.75(e)(3) to the Director of the area TARC, which would be replaced by reference to the regional or field office Public Housing Director.

Proposed §§ 902.75(g) and (h) would be largely the same as the current §§ 902.75(g) and (h), with the exception of proposed revisions to the example in § 902.75(g)(3), to be consistent with the proposed definitions of the one- and two-year recovery periods in proposed § 902.75(d). Proposed paragraph (i) would remove the reference to the TARCs.

Section 902.79 (Verification and records). Proposed § 902.79 would provide for the document retention and verification requirements applicable to PHAs. The section would provide for penalties for failure to maintain the required documentation for the required time period.

Section 902.81 (Resident petitions for remedial actions). Proposed § 902.81 is based on currently codified § 902.85 and would specify that residents of a PHA designated as troubled may petition HUD in writing for remedial action. The section would retain the requirement that 20 percent of the residents must support the petition, as is required in currently codified § 902.85. The section would retain the reference to HUD's discretion over the determination as to whether a substantial default has occurred, and provide for HUD to respond in writing to a petition. The response would include the planned course of action and, where the action differs from that proposed by the residents, the reasons for the difference.

Section 902.83 (Sanctions for troubled performer PHAs). Proposed § 902.83 would provide for differing sanctions for small and large PHAs. If a PHA that is designated as troubled and has less than 1,250 units fails to make substantial improvement within the recovery periods specified in proposed § 902.75(d), HUD has the option of petitioning for the appointment of a receiver or taking possession of all or a portion of the PHA or a PHA project. In the case of a PHA with 1,250 or more units that similarly fails, HUD shall petition for the appointment of a receiver. If a troubled performer PHA fails to execute the required MOA under § 902.75, or fails to meet the requirements of the MOA, the PHA may be declared to be in substantial default. In this case, all the remedies under this rule and the 1937 Act are available. Failure to execute the MOA, however, is not the only basis for a finding of substantial default. A violation of the law, regulations, or the annual contributions contract (ACC) can also be a predicate for such a finding, in which case all available remedies would equally be available. The procedures applicable to a finding of substantial default are now provided in new part 907.

Current § 902.85 (Resident petitions for remedial action). This section is redesignated as § 902.81, with only minor wording changes made.

II. New Part 907—Substantial Default by a Public Housing Agency

This proposed rule would establish, in new part 907, the regulations governing the determination of, and remedies for, substantial default. The regulations applicable to substantial default are currently codified in HUD's PHAS regulations. However, a determination of substantial default is not limited to troubled performance or violation of PHAS requirements. Therefore, it is more appropriate for substantial default regulations to be codified in a separate CFR part. The following provides a section-by-section overview of new part 907.

Section 907.1 (Purposed and scope). Proposed § 907.1 would provide that the purpose of this part is to establish the regulations for determination of, and remedies for, substantial default. This section would clarify that nothing in this part limits the discretion of HUD to take any action available under section 6(j)(3)(A) of the 1937 Act (42 U.S.C. 1437d(j)(3)(A)) to remedy a substantial default. HUD has flexible discretion both to determine substantial default and to apply the available remedies in any combination or order.

Section 907.3 (Bases for substantial default). Proposed § 907.3 would describe the violations of laws and agreements, and the failures to act on the part of the PHA that may result in a declaration of substantial default.

Section 907.5 (Procedures for declaring substantial default). Proposed § 907.5(a) would describe the process for notification of substantial default.

Section 907.5(b) would describe the opportunity of a PHA to respond or cure the default, except in cases of fraud, criminality, or an emergency posing an imminent threat to life and health.

Proposed § 907.5(c) would provide for a PHA to waive written notification of substantial default by HUD.

Proposed § 907.5(d) (Emergency situations) would describe the situations in which HUD may proceed to issue a default determination without giving the PHA an opportunity to respond.

Section 907.7 (Remedies for substantial default). Proposed § 907.7 would list the actions that may be taken by HUD against a PHA upon a determination of substantial default.

III. Cost and Benefits of This Proposed Rule

This proposed rule would significantly streamline PHAS by eliminating several PHA submissions, data collection requirements, and related processes. Through such streamlining, this proposed rule would reduce costs incurred by PHAs in compiling and submitting this information to HUD. In addition, the systems put in place to substitute for the data compilation and submissions would improve the assessment process, which would benefit PHAs, public housing residents, and taxpayers overall. The proposed rule would eliminate the requirement for PHAs to submit a management operation certification and to undertake resident satisfaction surveys, including pre- and post-survey administrative requirements. HUD is replacing these submission requirements with a system of on-site management reviews. Rather than requiring a PHA to prepare a detailed submission of various management indicators (inspections, work orders, security, etc.), HUD will assess conditions through an on-site review, consistent with the process utilized by HUD for its multifamily housing programs. Similarly, information obtained from the on-site reviews will better gauge the effectiveness of PHA efforts in the area of resident self-sufficiency and participation. Moreover, the current system of PHA self-certification requires HUD to conduct certification reviews. The proposed rule would eliminate the need for these certification reviews. Additionally, the new system of on-site management reviews are intended to consolidate into one assessment tool what today are multiple reviews. Through these measures, the proposed rule reduces administrative costs associated with PHAS, while improving the accuracy of PHAS assessments.

In seeking comment on this proposed rule, the Department would like to highlight the following:

Vacancy rates. The Department believes that one of the primary responsibilities of a PHA is to provide housing opportunities by maintaining high occupancy levels. As a result, a

high weight is assigned in the management review to a project's non-approved vacancy rate (the lower the rate, the higher the score). The Department seeks comment on the adequacy of the weight assigned to a project's vacancy rate. The Department also seeks comment on whether the measure should be improved or another measure added to encompass all vacancies, both approved and non-approved. Presently, the non-approved vacancies are less than 4 percent, but all vacancies are around 9 percent. A measure of all vacancies could provide a broader focus for efforts to maximize the number of decent, safe, and sanitary units available for tenants. The ''approved'' vacancies are defined under 24 CFR 990.145.

Resident satisfaction surveys. As indicated, the Department believes that the on-site management review is a better vehicle than the current resident survey to measure both project performance and resident satisfaction, consistent with the norms in HUD's own multifamily housing programs. However, the Department is particularly interested in views on practical methods for providing feedback to the PHA and assessing resident satisfaction, through surveys or other means.

Unrestricted program balances and reserves. Presently, PHAs have on the order of $2.7 billion in public housing program reserves (also known as ''unrestricted current net assets''). The Department is concerned with high program balances in light of industry concerns over the backlog of capital and maintenance needs. On the other hand, the Department wants adequate cash balances at PHAs to cope with potential unexpected events, such as a downturn in tenant rental payments. The Department has decided to make this trade-off in favor of high cash balances. For example, the Department proposes a very conservative quick ratio standard of $1 of cash/cash equivalents for $1 of current liabilities. The Department seeks comment as to whether the PHAS scoring system should encourage the use of these reserves and suggested ways to do that.

Capital Fund Indicator. As previously indicated, the proposed rule only includes scoring on Capital Fund obligations and expenditures. It does not include scoring related to other areas of Capital Fund program management, *e.g.*, quality of contract administration or effective capital planning. The Department believes that such issues are best addressed through on-site program assessments. The Department, however, seeks comment as to whether other items should be added to the Capital Fund indicator.

Verification of Tenant Income. The Department is strongly committed to the proper reporting of tenant income for eligibility and rent determinations and has developed various tools to assist PHAs in this process. The Department has chosen not to include any scoring related to the income verification process. Although important, income verification would be one of many ''compliance'' areas to which PHAs are subject. As with other similar areas, the Department has chosen not to score, for PHAS purposes, areas of compliance. Instead, performance is measured on more traditional real estate management indicators. Compliance items are considered separately and could be a source of corrective action; however, they are not scored. The Department seeks comment on this approach, specifically, to income verifications and, more broadly, on matters of compliance.

IV. Findings and Certifications

Information Collection Requirements

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

The burden of the information collections in this proposed rule is estimated as follows:

REPORTING AND RECORDKEEPING BURDEN

Section reference	Number of respondents	Number of responses per respondent	Estimated average time for requirement (in hours)	Estimated annual burden (in hours)
24 CFR 902.24 Database adjustment	125	1	5.2	650
24 CFR 902.68 Technical review	167	1	5.2	868
24 CFR 902.69 Appeals	53	1	5.2	276
Totals	345			1,794

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this 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.

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Comments must refer to the proposal by name and docket number (FR–5094–P–01) and must be sent to:

HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax number: 202–395–6947,

and

Mary Schulhof, Reports Liaison Officer, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4116, Washington, DC 20410–8000.

Regulatory Planning and Review

OMB reviewed this rule under Executive Order 12866, *Regulatory*

Planning and Review. OMB determined that this rule is a ''significant regulatory action'' as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–402–3055 (this is not a toll-free number).

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule will not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of UMRA.

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding is available for public inspection during regular business hours in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the Finding by calling the Regulations Division at 202–402–3055 (this is not a toll-free number).

Impact on Small Entities

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule revises HUD's existing PHAS regulations for the assessment of public housing at 24 CFR part 902, to revise the PHAS regulations to elaborate upon certain procedures, to conform the PHAS regulations to current public housing operations, and to conform to certain statutory changes. These revisions impose no significant economic impact on a substantial number of small entities. Therefore, the undersigned certifies that this rule will not have a significant impact on a substantial number of small entities.

Notwithstanding HUD's belief that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Executive Order.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for Public Housing is 14.850.

List of Subjects

24 CFR Part 901

Administrative practice and procedures, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 902

Administrative practice and procedures, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 907

Administrative practice and procedures, Public housing, Reporting and recordkeeping requirements.

Accordingly, under the authority of 42 U.S.C. 3535d, HUD proposes to remove 24 CFR part 901, revise part 902, and add a new part 907, as follows:

PART 901—[REMOVED]

1. Remove and reserve 24 CFR part 901.

2. Revise 24 CFR part 902 to read as follows:

PART 902—PUBLIC HOUSING ASSESSMENT SYSTEM

Subpart A—General Provisions

Sec.

902.1 Purpose, scope, and general matters.
902.3 Definitions.
902.5 Applicability.
902.9 PHAS scoring.
902.11 PHAS performance designation.
902.13 Frequency of PHAS assessments.

Subpart B—Physical Condition Indicator

902.20 Physical condition assessment.
902.21 Physical condition standards for public housing—decent, safe, and sanitary housing in good repair (DSS/GR).
902.22 Physical inspection of PHA projects.
902.24 Database adjustment.
902.25 Physical condition scoring and thresholds.
902.26 Physical Inspection Report.

Subpart C—Financial Condition Indicator

902.30 Financial condition assessment.
902.33 Financial reporting requirements.
902.35 Financial condition scoring and thresholds.

Subpart D—Management Operations Indicator

902.40 Management operations assessment.
902.43 Management operations performance standards.
902.44 Adjustment for physical condition and neighborhood environment.
902.45 Management operations scoring and thresholds.

Subpart E—Capital Fund Program Indicator

902.50 Capital Fund program assessment.
902.53 Capital Fund program scoring and thresholds.

Subpart F—PHAS Scoring

902.60 Data collection.
902.62 Failure to submit data.
902.64 PHAS scoring and audit reviews.
902.66 Withholding, denying and rescinding designation.
902.68 Technical review of results of PHAS physical condition indicator.
902.69 PHA right of petition and appeal.

Subpart G—PHAS Incentives and Remedies

902.71 Incentives for high performers.
902.73 PHAs with deficiencies.
902.75 Troubled performers.
902.79 Verification and records.
902.81 Resident petitions for remedial action.
902.83 Sanctions for troubled performer PHAs.

Appendix A to Part 902—Physical Condition Scoring.

Appendix B to Part 902—Financial Condition Scoring.

Appendix C to Part 902—Management Operations Scoring.

Appendix D to Part 902—Capital Fund Scoring.

Authority: 42 U.S.C. 1437d(j), 42 U.S.C. 3535(d).

Subpart A—General Provisions

§ 902.1 Purpose, scope, and general matters.

(a) *Purpose.* The purpose of the Public Housing Assessment System (PHAS) is

to improve the delivery of services in public housing and enhance trust in the public housing system among public housing agencies (PHAs), public housing residents, and the general public, by providing a management tool for effectively and fairly measuring the performance of a PHA in essential housing operations of projects, on a program-wide basis and individual project basis, and providing rewards for high performers and remedial requirements for poor performers.

(b) *Scope.* PHAS is a strategic measure of the essential housing operations of projects and PHAs. PHAS does not evaluate the compliance of a project or PHA with every HUD-wide or program-specific requirement or objective. Although not specifically evaluated through PHAS, PHAs remain responsible for complying with such requirements as fair housing and equal opportunity requirements, requirements under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and requirements of other federal programs under which the PHA is receiving assistance. A PHA's adherence to these requirements will be monitored in accordance with the applicable program regulations and the PHA's Annual Contributions Contract (ACC).

(c) *PHAS indicators.* HUD will assess and score the performance of projects and PHAs based on the indicators, which are more fully addressed in § 902.9: Physical condition, financial condition, management operations, and Capital Fund.

(d) *Assessment tools.* HUD will make use of uniform and objective criteria for the physical inspection of projects and PHAs and the financial assessment of projects and PHAs, and will use data from appropriate agency data systems and project management reviews to assess management operations. For the Capital Fund program indicator, HUD will use information provided in the electronic Line of Credit Control System (e-LOCCS) (or its successor) system. On the basis of this data, HUD will assess and score the results, advise PHAs of their scores, and identify low-scoring and poor-performing projects and PHAs so that these projects and PHAs will receive the appropriate attention and assistance.

(e) *Small PHAs.* A PHA with fewer than 250 units that does not convert to asset management will be considered as one project by HUD.

§ 902.3 Definitions.

As used in this part:

Act means the U.S. Housing Act of 1937 (42 U.S.C. 1437 *et seq.*)

Alternative management entity (AME) is a receiver, private contractor, private manager, or any other entity that is under contract with a PHA, under a management agreement with a PHA, or that is otherwise duly appointed or contracted (for example, by court order or agency action), to manage all or part of a PHA's operations.

Assessed fiscal year is the PHA fiscal year that has been assessed under PHAS, the most recent assessment of record, or the period of time, as defined in each management operations subindicator or component.

Assistant Secretary means the Assistant Secretary for Public and Indian Housing.

Corrective Action Plan means a plan, as provided in § 902.73(a), that is developed by a PHA that specifies the actions to be taken, including timetables, that shall be required to correct deficiencies identified under any of the PHAS subindicators, and identified as a result of a PHAS assessment, when a memorandum of agreement (MOA) is not required.

Criticality means one of five levels that reflect the relative importance of the deficiencies for an inspectable item.

(1) Based on the importance of the deficiency, reflected in its criticality value, points are deducted from the score for an inspectable area.

Criticality	Level
Critical	5
Very Important	4
Important	3
Contributes	2
Slight Contribution	1

(2) The Item Weights and Criticality Levels document lists all deficiencies with their designated levels, which vary from 1 to 5, with 5 as the most critical, and the point values assigned to them.

Days mean calendar days, unless otherwise specified.

Decent, safe, sanitary housing and in good repair (DSS/GR) is HUD's standard for acceptable basic housing conditions and the level to which a PHA is required to maintain its public housing.

Deficiency means any finding or determination that requires corrective action, or any score below 60 percent of the available points in any indicator or subindicator. In the context of physical condition and physical inspection in subpart B of this part, ''deficiency'' means a specific problem, as described in the Dictionary of Deficiency Definitions, such as a hole in a wall or a damaged refrigerator in the kitchen that can be recorded for inspectable items.

Dictionary of Deficiency Definitions means the Dictionary of Deficiency Definitions document that contains specific definitions of each severity level for deficiencies under this subpart. The Dictionary of Deficiency Definitions that is currently in effect can be found at HUD's Web site at *http://www.hud.gov/offices/reac/pdf/pass_dict2.3.pdf* or a hard copy may be obtained from HUD by calling 888–245–4860 (this is a toll-free number).

Direct Funded RMC means a Resident Management Corporation to which HUD directly provides operating and capital assistance under the provisions of 24 CFR 964.225(h).

Inspectable areas (or area) mean any of the five major components of public housing that are inspected, which are: Site, building exteriors, building systems, dwelling units, and common areas.

Inspectable item means the individual parts, such as walls, kitchens, bathrooms, and other things, to be inspected in an inspectable area. The number of inspectable items varies for each area. Weights are assigned to each item as shown in the Item Weights and Criticality Levels document.

Item Weights and Criticality Levels document means the Item Weights and Criticality Levels document that contains a listing of the inspectable items, item weights, observable deficiencies, criticality levels and values, and severity levels and values that apply to this subpart. The Item Weights and Criticality Levels document that is currently in effect can be found at HUD's Web site at *http://www.hud.gov/offices/reac/library/documents/fr-notice20011126.pdf* or a hard copy may be obtained from HUD by calling 888–245–4860 (this is a toll-free number).

Memorandum of Agreement (MOA) is defined in § 902.75(b) of this part.

Normalized weights mean weights adjusted to reflect the inspectable items or areas that are present to be inspected.

Resident Management Corporation (RMC) is defined in 24 CFR 964.7.

Score for a project means a number on a scale of 0 to 100 that reflects the physical condition of a project, inspectable area, or subarea. To record a health or safety deficiency, a specific designation (such as a letter—a, b, or c) is added to the project score that highlights that a health or safety deficiency (or deficiencies) exists. If smoke detectors are noted as inoperable or missing, another designation (such as an asterisk (*)) is added to the project score. Although inoperable or missing smoke detectors do not reduce the score, they are fire safety hazards and are

included in the Notification of Exigent and Fire Safety Hazards Observed Deficiency list that the inspector gives the PHA's project representative.

Severity means one of three levels, level 1 (minor), level 2 (major), and level 3 (severe), that reflect the extent of the damage or problem associated with each deficiency. The Item Weights and Criticality Levels document shows the severity levels for each deficiency. Based on the severity of each deficiency, the score is reduced. Points deducted are calculated as the product of the item weight and the values for criticality and severity. Specific definitions of each severity level are found in the Dictionary of Deficiency Definitions.

Subarea means an inspectable area for one building. For example, if a project has more than one building, each inspectable area for each building in the project is treated as a subarea.

Unit-weighted average means the average of the PHA's individual indicator scores, weighted by the number of units in each project, divided by the total number of units in all of the projects of the PHA. In order to compute a unit-weighted average, an individual project score for a particular indicator is multiplied by the number of units in each project to determine a ''weighted value.'' For example, for a PHA with two projects, one with 200 units and a score of 90, and the other with 100 units and a score of 60, the unit-weighted average score for the indicator would be $(200 \times 90 + 100 \times 60)/300 = 80$.

§ 902.5 Applicability.

(a) *PHAs, RMCs, AMEs.* This part applies to PHAs, Resident Management Corporations (RMCs), and AMEs. This part is also applicable to RMCs that receive direct funding (DF–RMCs) from HUD in accordance with section 20 of the Act.

(1) *Scoring of RMCs and AMEs.* (i) RMCs and DF–RMCs will be assessed and issued their own numeric scores under PHAS based on the public housing or portions of public housing that they manage and the responsibilities they assume that can be scored under PHAS. References in this part to PHAs include RMCs, unless stated otherwise. References in this part to RMCs include DF–RMCs, unless stated otherwise.

(ii) AMEs are not issued PHAS scores. The performance of the AME contributes to the PHAS score of the project(s)/PHA(s) for which they assumed management responsibilities.

(2) *ACC.* The ACC makes a PHA legally responsible for all public housing operations, except where DF–RMC assumes management operations.

(i) Because the PHA and not the RMC or AME is ultimately responsible to HUD under the ACC, the PHAS score of a PHA will be based on all of the projects covered by the ACC, including those with management operations assumed by an RMC or AME (including a court-ordered or administrative receivership agreement, if applicable).

(ii) A PHA's PHAS score will not be based on projects managed by a DF–RMC.

(3) This rule does not apply to Moving-to-Work (MTW) agencies that are specifically exempted in their grant agreement.

(b) Implementation of PHAS. The regulations in this part are applicable to PHAs with fiscal years ending on and after June 30, 2009.

§ 902.9 PHAS scoring.

(a) *Indicators and subindicators.* Each PHA will receive an overall PHAS score, rounded to the nearest whole number, based on the four indicators: physical condition, financial condition, management operations, and Capital Fund program. Each of these indicators contains subindicators, and the scores for the subindicators are used to determine a single score for each of these PHAS indicators. Individual project scores are used to determine a single score for the physical condition, financial condition, and management operations indicators. The Capital Fund program indicator score is entity-wide.

(b) *Overall PHAS score and indicators.* The overall PHAS score is derived from a weighted average of score values for the four indicators, as follows:

(1) The physical condition indicator is weighted 30 percent (30 points) of the overall PHAS score. The score for this indicator is obtained as indicated in subpart B of this part.

(2) The financial condition indicator is weighted 20 percent (20 points) of the overall PHAS score. The score for this indicator is obtained as indicated in subpart C of this part.

(3) The management operations indicator is weighted 40 percent (40 points) of the overall PHAS score. The score for this indicator is obtained as indicated in subpart D of this part.

(4) The Capital Fund program indicator is weighted 10 percent (10 points) of the overall PHAS score for all Capital Fund program grants for which fund balances remain during the assessed fiscal year. The score for this indicator is obtained as indicated in subpart E of this part.

(c) *Scoring procedures.* (1) The scores for each PHAS indicator will be calculated in accordance with the scoring procedures described in appendices A–D.

(2) HUD will publish for public comment any significant proposed amendments to these scoring procedures. After comments have been considered, HUD will publish final documents.

§ 902.11 PHAS performance designation.

All PHAs that receive a PHAS assessment shall receive a performance designation. The performance designation is based on the overall PHAS score and the four indicator scores, as set forth below.

(a) *High performer.* (1) A PHA that achieves an overall PHAS score of 90 percent or greater shall be designated a high performer, except that such a PHA shall not be designated a high performer if more than 10 percent of its total units are in projects that fail the physical, financial, or management operations indicator.

(2) High performers will be afforded incentives that include relief from reporting and other requirements, as described in § 902.71 of this part.

(b) *Standard performer.* (1) A PHA that is not a high performer shall be designated a standard performer if the PHA achieves an overall PHAS score of at least 60 percent and at least 60 percent under each of the four PHAS indicators.

(2) At HUD's discretion, a standard performer may be required by the regional/field office to submit and operate under a Corrective Action Plan.

(c) *Substandard performer.* A PHA will be designated a substandard performer if a PHA achieves a total PHAS score of at least 60 percent and achieves a score of less than 60 percent under one or more of the physical condition, financial condition, or management operations indicators. The PHA will be designated as substandard physical, substandard financial, or substandard management, respectively. The HUD office with jurisdiction over the PHA may require a Corrective Action Plan if the deficiencies have not already been addressed in a current Corrective Action Plan.

(d) *Troubled performer.* (1) A PHA that achieves an overall PHAS score of less than 60 percent shall be designated as a troubled performer.

(2) In accordance with section 6(j)(2)(A)(i) of the Act (42 U.S.C. 1437d(j)(2)(A)(i)), a PHA that receives less than 60 percent under the Capital Fund program indicator under subpart E of this part will be designated as a troubled performer and subject to the sanctions provided in section 6(j)(4) of the Act (42 U.S.C. 1437(d)(j)(4)).

§ 902.13 Frequency of PHAS assessments.

The frequency of a PHA's PHAS assessments is determined by the size of the PHA's Low-Rent program and its PHAS designation.

(a) *Small PHAs.* HUD will assess and score the performance of a PHA with fewer than 250 public housing units every other PHA fiscal year, unless the PHA is designated as troubled, in accordance with § 902.75 of this part.

(b) *Frequency of scoring for PHAs with 250 units or more.*

(1) All PHAs, other than stated in paragraph (a) of this section, may be assessed on an annual basis.

(2) The physical condition score for each project will determine the frequency of inspections of each project. For projects with a physical condition score of 80 points or higher, physical inspections will be conducted every 2 years at the project. The physical condition score of 80 points or higher will be carried over to the next assessment year and averaged with the other project physical condition score(s) for the next assessment year for an overall PHAS physical condition indicator score. For projects whose physical condition score for a project is less than 80 points, physical inspections will be conducted annually at the project.

(c) *Financial submissions.* HUD shall not issue a PHAS score for the unaudited and audited financial information in the years that a PHA is not being assessed under PHAS. Although HUD shall not issue a PHAS score under such circumstances, a PHA shall comply with the requirements for submission of annual unaudited and audited financial statements in accordance with subpart C of this part and 24 CFR 5.801.

Subpart B—Physical Condition Indicator

§ 902.20 Physical condition assessment.

(a) *Objective.* The objective of the physical condition indicator is to determine whether a PHA is meeting the standard of decent, safe, sanitary housing in good repair (DSS/GR), as this standard is defined in 24 CFR 5.703.

(b) *Method of assessment.* The physical condition assessment is based on an independent physical inspection of a PHA's projects provided by HUD and performed by contract inspectors, and conducted using HUD's Uniform Physical Condition Standards (UPCS) under 24 CFR part 5, subpart G.

(c) *Method of transmission.* After the inspection is completed, the inspector transmits the results to HUD, where the results are verified for accuracy and then scored in accordance with the procedures in this subpart B.

(d) *PHA physical inspection requirements.* The physical inspections conducted under this part do not relieve the PHA of the responsibility to inspect public housing units, as provided in section 6(f)(3) of the Act (42 U.S.C. 1437d(f)(3)).

(e) *Compliance with state and local codes.* The physical condition standards in this part do not supersede or preempt state and local building and maintenance codes with which the PHA's public housing must comply. PHAs must continue to adhere to these codes.

(f) *HUD access to PHA projects.* All PHAs are required by the ACC to provide HUD or its representative with full and free access to all facilities in its projects. All PHAs are required to provide HUD or its representative with access to its projects and to all units and appurtenances in order to permit physical inspections, monitoring reviews, and quality assurance reviews under this part. Access to the units shall be provided whether or not the resident is home or has installed additional locks for which the PHA did not obtain keys. In the event that the PHA fails to provide access as required by HUD or its representative, the PHA shall be given a physical condition score of zero for the project or projects involved. This score of zero shall be used to calculate the physical condition indicator score and the overall PHAS score.

§ 902.21 Physical condition standards for public housing—decent, safe, and sanitary housing in good repair (DSS/GR).

(a) *General.* Public housing must be maintained in a manner that meets the physical condition standards set forth in this part in order to be considered DSS/GR (standards that constitute acceptable basic housing conditions). These standards address the major physical areas of public housing: Site, building exterior, building systems, dwelling units, and common areas (see paragraph (b) of this section). These standards also identify health and safety considerations (see paragraph (c) of this section). These standards address acceptable basic housing conditions, not the adornment, décor, or other cosmetic appearance of the housing.

(b) *Major inspectable areas.* (1) *Site.* The site includes the components and must meet the requirements of 24 CFR 5.703(a).

(2) *Building exterior.* The building exterior includes the components and must meet the standards stated in 24 CFR 5.703(b).

(3) *Building systems.* The building's systems include components such as domestic water, electrical system, elevators, emergency power, fire protection, heating/ventilation/air conditioning (HVAC), and sanitary system. Each building's systems must meet the standards of 24 CFR 5.703(c).

(4) *Dwelling units.* Each dwelling unit within a building must meet the standards of 24 CFR 5.703(d).

(5) *Common areas.* Each common area must meet the standards of 24 CFR 5.703(e).

(c) *Health and safety concerns.* All areas and components of the housing must be free of health and safety hazards, as provided in 24 CFR 5.703(f).

§ 902.22 Physical inspection of PHA projects.

(a) *The inspection, generally.* The PHA's score for the physical condition indicator is based on an independent physical inspection of a PHA's project(s) provided by HUD and using HUD's UPCS inspection protocols to ensure projects meet DSS/GR standards that constitute acceptable basic housing conditions.

(b) *Physical inspection under the PHAS physical condition indicator.* (1) To achieve the objective of paragraph (a) of this section, HUD will provide for an independent physical inspection of a PHA's project(s) that includes, at a minimum, a statistically valid sample of the units in the PHA's projects to determine the extent of compliance with the DSS/GR standard.

(2) Only occupied units will be inspected as dwelling units (except units approved by HUD for nondwelling purposes, *e.g.*, daycare or meeting rooms, which are inspected as common areas). Vacant units that are not under lease at the time of the physical inspection will not be inspected, but vacant units are assessed under the management operations indicator. The categories of vacant units not under lease that are exempted from physical inspection are as follows:

(i) Units undergoing vacant unit turnaround—vacant units that are in the routine process of turnover; *i.e.*, the period between which one resident has vacated a unit and a new lease takes effect;

(ii) Units undergoing rehabilitation—vacant units that have substantial rehabilitation needs already identified, and there is an approved implementation plan to address the identified rehabilitation needs and the plan is fully funded;

(iii) Off-line units—vacant units that have repair requirements such that the units cannot be occupied in a normal

period of time (considered to be between 5 and 7 days) and which are not included under an approved rehabilitation plan.

(c) *Observed deficiencies.* During the physical inspection of a project, an inspector looks for deficiencies for each inspectable item within the inspectable areas, such as holes (deficiencies) in the walls (item) of a dwelling unit (area). The dwelling units inspected in a project are a randomly selected, statistically valid sample of the units in the project, excluding vacant units not under lease at the time of the physical inspection, as provided in paragraph (b)(2) of this section.

(d) *Exigent health and safety (EHS) deficiencies and health and safety (H&S) deficiencies*—(1) *EHS deficiencies.* To ensure prompt correction of EHS deficiencies, before leaving the site the inspector gives the project representative a Notification of Exigent and Fire Safety Hazards Observed Deficiency form that calls for immediate attention or remedy. The project representative acknowledges receipt of the deficiency report by signature. The project or PHA shall correct or remedy all EHS deficiencies cited in the deficiency report within 24 contiguous hours of the project representative's receipt of the Notification of Exigent and Fire Safety Hazards Observed Deficiency form. In addition, the project or PHA must certify to HUD within 3 business days of the project representative's receipt of the Notification of Exigent and Fire Safety Hazards Observed Deficiency form, that all EHS deficiencies were corrected or remedied within 24 contiguous hours.

(2) *H&S deficiencies.* The project or the PHA, or both, as appropriate, is required to correct all H&S deficiencies within 72 contiguous hours of the project representative's receipt of the Notification of Exigent and Fire Safety Hazards Observed Deficiency form.

(e) *Compliance with civil rights/nondiscrimination requirements.* Elements related to accessibility will be reviewed during the physical inspection to determine possible indications of noncompliance with the Fair Housing Act (42 U.S.C. 3601–19) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). A PHA will not be scored on those elements. Any indication of possible noncompliance will be referred to HUD's Office of Fair Housing and Equal Opportunity.

§ 902.24 Database adjustment.

(a) *Adjustments for factors not reflected or inappropriately reflected in physical condition score.* Under circumstances described in this section, HUD may determine it is appropriate to review the results of a project's physical inspection that are unusual or incorrect due to facts and circumstances affecting the PHA's project that are not reflected in the inspection or that are reflected inappropriately in the inspection.

(1) The circumstances described in this section are not the circumstances that may be addressed by the technical review process described in § 902.68 of this part. The circumstances addressed in this paragraph (a)(1) may include inconsistencies between local code requirements and the HUD physical inspection protocol; conditions that are permitted by local variance or license or which are preexisting physical features that do not conform to, or are inconsistent with, HUD's physical condition protocol; or the project or PHA having been scored for elements (*e.g.*, roads, sidewalks, mail boxes, resident-owned appliances, etc.) that it does not own and is not responsible for maintaining. To qualify for an adjustment on this basis, the project or PHA must have notified the proper authorities regarding the deficient element.

(2) An adjustment due to these circumstances may be initiated by a project or PHA's notification to the applicable HUD regional or field office, and such notification shall include appropriate proof of the reasons for the unusual or incorrect result. Projects and PHAs may submit the request for this adjustment either prior to or after the physical inspection has been concluded. If the request is made after the conclusion of the physical inspection, the request must be made within 30 days of issuance of the project's or PHA's physical condition score. Based on the recommendation of the applicable HUD office following its review of the project evidence or documentation submitted by the project or PHA, HUD may determine that a reinspection and rescoring of the project or PHA is necessary.

(b) *Adjustments for adverse conditions beyond the control of the PHA.* Under certain circumstances, HUD may determine that certain deficiencies that adversely and significantly affect the physical condition score of the project were caused by circumstances beyond the control of the PHA. The correction of these conditions, however, remains the responsibility of the PHA.

(1) The circumstances addressed by this paragraph (b)(1) may include, but are not limited to, damage caused by third parties (such as a private entity or public entity undertaking work near a public housing project that results in damage to the project) or natural disasters. (The circumstances addressed in paragraph (b)(1) are not those addressed by the technical review process in § 902.68.)

(2) To adjust a physical condition score based on circumstances addressed in this paragraph, the PHA must submit a request to the applicable HUD regional/field office requesting a reinspection of the PHA's project(s). The request must be submitted within 30 days of the issuance of the physical condition score to the PHA and must be accompanied by a certification that all deficiencies identified in the original report have been corrected. Based on the recommendation of the applicable HUD office following its review of the project's or PHA's evidence or documentation, HUD may determine that a reinspection and rescoring of the PHA's project(s) is necessary.

(c) *Adjustments for modernization work in progress.* HUD may determine that an occupied dwelling unit or other areas of a PHA's project, subject to physical inspection under this subpart, and are undergoing modernization work, requires an adjustment to the physical condition score.

(1) An occupied dwelling unit or other areas of a PHA's project undergoing modernization are subject to physical inspection; the unit(s) and other areas of the PHA's project are not exempt from physical inspection. All elements of the unit or of the other areas of the PHA's project that are subject to inspection and are not undergoing modernization at the time of the inspection (even if modernization is planned) will be subject to HUD's physical inspection protocol without adjustment. For those elements of the unit or of the project that are undergoing modernization, deficiencies will be noted in accordance with HUD's physical inspection protocol, but the project or PHA may request adjustment of the physical condition score as a result of modernization work in progress.

(2) An adjustment due to modernization work in progress may be initiated by a project's or PHA's notification to the applicable HUD office, and the notification shall include supporting documentation of the modernization work under way at the time of the physical inspection. A project or PHA may submit the request for this adjustment either prior to or after the physical inspection has been concluded. If the request is made after the conclusion of the physical inspection, the request must be made within 30 days of issuance of the

physical condition score. Based on the recommendation of the applicable HUD office, HUD may determine that a reinspection and rescoring of the PHA's project(s) are necessary.

§ 902.25 Physical condition scoring and thresholds.

(a) *Scoring.* Under the physical condition indicator, a score will be calculated for the overall condition of a PHA's public housing portfolio, as well as for individual projects, following the procedures described in the separate scoring document.

(b) *Overall PHA physical condition indicator score.* The overall physical condition indicator score is a unit-weighted average of project scores. The sum of the unit-weighted values is divided by the total number of units in the PHA's portfolio to derive the overall physical condition indicator score.

(c) *Thresholds.* (1) The project(s) 100-point physical condition score is converted to a 30-point basis for the overall physical condition indicator score. The project scores on the 100-point basis are multiplied by 30 in order to derive a 30-point equivalent score to compute the overall physical condition score and overall PHAS score.

(2) In order to receive a passing score under the physical condition indicator, the PHA must achieve a score of at least 18 points, or 60 percent.

(3) A PHA that receives fewer than 18 points will be categorized as a substandard physical condition agency.

§ 902.26 Physical Inspection Report.

(a) Following the physical inspection of each project and the computation of the score(s) under this subpart, the PHA receives a Physical Inspection Report. The Physical Inspection Report allows the PHA to see the magnitude of the points lost by inspectable area, and the impact on the score of the H&S and EHS deficiencies.

(1) If EHS items are identified in the report and were not corrected under the provisions of § 902.22(d), the PHA shall correct all EHS deficiencies within 24 contiguous hours and may request a reinspection.

(2) The request for reinspection must be made within 30 days of the PHA's receipt of the Physical Inspection Report. The request for reinspection must be accompanied by the PHA's identification of the EHS deficiencies that have been corrected, and by the PHA's certification that all such deficiencies identified in the report have been corrected.

(3) If HUD determines that a reinspection is appropriate, it will arrange for a complete reinspection of the project(s) in question, not just the deficiencies previously identified. The reinspection will constitute the final physical inspection for the project, and HUD will issue a new inspection report (the final inspection report).

(4) If any of the previously identified EHS deficiencies that the PHA certified were corrected are found during the reinspection not to have been corrected, the score in the final inspection report will reflect a point deduction of triple the value of the original deduction, up to the maximum possible points for the unit or area, and the PHA must reimburse HUD for the cost of the reinspection.

(5) If a request for reinspection is not made within 30 days after the date that the PHA receives the Physical Inspection Report, the Physical Inspection Report issued to the PHA will be the final Physical Inspection Report.

(b) A Physical Inspection Report includes the following items:

(1) Normalized weights as the ''possible points'' by area;

(2) The area scores, taking into account the points deducted for observed deficiencies;

(3) The H&S (nonlife threatening) and EHS (life threatening) deductions for each of the five inspectable areas; a listing of all observed smoke detector deficiencies; and a projection of the total number of H&S and EHS problems that the inspector potentially would see in an inspection of all buildings and all units; and

(4) The overall project score.

Subpart C—Financial Condition Indicator

§ 902.30 Financial condition assessment.

(a) *Objective.* The objective of the financial condition indicator is to measure the financial condition of each public housing project within a PHA's public housing portfolio for the purpose of evaluating whether there are sufficient financial resources to support the provision of housing that is DSS/GR. Individual project scores for financial condition, as well as overall financial condition scores, will be issued.

(b) *Financial reporting standards.* A PHA's financial condition will be assessed under this indicator by measuring the combined performance of all public housing projects in each of the subindicators listed in § 902.35, on the basis of the annual financial report provided in accordance with § 902.33.

§ 902.33 Financial reporting requirements.

(a) *Annual financial report.* All PHAs must submit their unaudited and audited financial data to HUD on an annual basis. The financial information must be:

(1) Prepared in accordance with Generally Accepted Accounting Principles (GAAP), as further defined by HUD in supplementary guidance; and

(2) Submitted electronically in the format prescribed by HUD using the Financial Data Schedule (FDS).

(b) *Annual unaudited financial information report filing dates.* The unaudited financial information to be submitted to HUD in accordance with paragraph (a) of this section must be submitted to HUD annually, no later than 2 months after the PHA's fiscal year end, with no penalty applying until the 16th day of the 3rd month after the PHA's fiscal year end, in accordance with § 902.62.

(c) *Annual audited financial information compliance dates.* Audited financial statements will be required no later than 9 months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133 (see 24 CFR 85.26).

(d) *Year-end audited financial information.* All PHAs that meet the federal assistance threshold stated in the Single Audit Act and OMB Circular A–133 must also submit year-end audited financial information.

(e) *Submission of information.* In addition to the submission of information required by paragraph (a) of this section, a PHA shall provide one copy of the completed audit report package and the Management Letter issued by the Independent Auditor to the local HUD regional/field office having jurisdiction over the PHA.

§ 902.35 Financial condition scoring and thresholds.

(a) *Scoring.* (1) Under the financial condition indicator, a score will be calculated for each project based on the values of financial condition subindicators and an overall financial condition score, as well as audit and internal control flags. Each financial condition subindicator has several levels of performance, with different point values for each level.

(2) The financial condition score for projects and PHAs will be based on the Low-Rent and Capital Fund program information, consistent with § 990.280(a) of the Public Housing Operating Fund program regulation.

(3) Under the financial condition indicator, a score will be calculated following the procedures described in appendix B.

(b) *Subindicators of the financial condition indicator.* The subindicators of financial condition indicator are:

(1) *Quick Ratio (QR).* The QR compares quick assets to current liabilities. Quick assets are cash and assets that are easily convertible to cash and do not include inventory. Current liabilities are those liabilities that are due within the next 12 months. A QR of less than one indicates that the project's ability to make payments on a timely basis may be at risk.

(2) *Months Expendable Net Assets Ratio (MENAR).* The MENAR measures a project's ability to operate using its net available, unrestricted resources without relying on additional funding. In particular, this ratio compares the net available unrestricted resources to the average monthly operating expenses. The result of this calculation shows how many months of operating expenses can be covered with currently available, unrestricted resources.

(3) *Debt Service Coverage Ratio (DSCR).* The DSCR is a measure of net operating income available to make debt payments to the amount of the debt payments. This subindicator is used if the PHA has taken on long-term obligations. A DSCR of less than one would indicate that the project would have difficulty generating sufficient cash flow to cover both its expenses and its debt obligations.

(c) *Overall PHA financial condition indicator score.* The overall financial condition indicator score is a unit-weighted average of project scores. The sum of the weighted values is then divided by the total number of units in the PHA's portfolio to derive the overall financial condition indicator score.

(d) *Thresholds.* (1) The PHA's financial condition score is based on a maximum of 20 points.

(2) In order for a PHA to receive a passing score under the financial condition indicator, the PHA must achieve a score of at least 12 points, or 60 percent of the available points under this indicator.

(3) A PHA that receives fewer than 12 points available under this indicator will be categorized as a substandard financial condition agency.

Subpart D—Management Operations Indicator

§ 902.40 Management operations assessment.

(a) *Objective.* The objective of the management operations indicator is to measure the PHA's performance of management operations through the management performance of each project.

(b) *Management assessment.* The management operations indicator incorporates the majority of the statutory indicators of section 6(j) of the Act (42 U.S.C. 1437d(j)). (The remaining statutory indicators are addressed under the other PHAS indicators.)

§ 902.43 Management operations performance standards.

(a) *Management operations component.* The following statutory subindicators listed in this section, as well as the project management review, will be used to assess the management operations of projects and PHAs, consistent with section 6(j)(1) of the Act (42 U.S.C. 1437d(j)(1)). Individual project scores for management operations, as well as overall PHA management operations scores, will be issued. The components and scoring for each subindicator and the project management review are in appendix C.

(1) *Vacancy rate and percentage.* This component measures the adjusted vacancy rate and the progress that a project has made within the previous 3 fiscal years to reduce such vacancies. Implicit in this component is that the project has an adequate system for tracking vacancy days.

(2) *Rent collection.* This component measures the percentage of rent collected by a project against the rent charged.

Implicit in this component is that a project has an adequate system to track and document total rents charged and total rents collected.

(3) *Utility consumption.* This component examines a project's energy conservation/utility consumption.

(4) *Turnaround time.* This component examines the amount of time it takes a project to turn around the units that were released within the assessment period. Implicit in this component is that the project has an adequate system for tracking vacant unit turnaround time.

(5) *Work orders.* This component measures the average number of days that tenant-generated work orders are outstanding, and any progress a project has made during the preceding 3 fiscal years to reduce the period of time tenant-generated work orders are outstanding. Implicit in this component is the adequacy of the project's system for tracking work orders and ensuring the thoroughness and quality of the project's needed repairs.

(6) *Unit inspection.* This component measures the percentage of units that a project inspected during the assessment period. Projects are required to inspect their property in accordance with the HUD-prescribed physical inspection procedures as set forth in 24 CFR part 5, subpart G.

(i) *Adequacy of inspection program.* This component requires that projects adequately track inspections, ensuring the thoroughness and quality of the project's inspections.

(ii) *Units to be inspected.* All occupied units and units available for occupancy are required to be inspected annually, consistent with section 6(f)(3) of the Act (42 U.S.C. 1437d(f)(3)). This includes units used for nondwelling purposes, those occupied by an employee, and those used for resident services.

(7) *Security.* This component evaluates a project's performance in tracking crime-related problems in the project; the adoption and implementation of applicant screening and resident eviction policies and procedures, and other anticrime strategies; and coordination with local government officials and residents in the project and PHA on implementation of such strategies.

(8) *Economic self-sufficiency.* This component evaluates the self-sufficiency opportunities provided for adult residents.

(9) *Resident involvement in project administration.* This component evaluates the opportunities for resident involvement in project administration.

(b) *Assessment under the management operations indicator.* Projects will be assessed under this indicator through management operations information that is electronically submitted to HUD, such management data as is available through the FDS, project management reviews conducted by HUD, and other HUD data systems, such as the Subsidy and Grant Information System.

§ 902.44 Adjustment for physical condition and neighborhood environment.

(a) *General.* In accordance with section 6(j)(1)(I)(2) of the Act (42 U.S.C. 1437d(j)(1)(I)(2)), the overall management operations score for a project will be adjusted upward to the extent that negative conditions are caused by situations outside the control of the project. These situations are related to the poor physical condition of the project or the overall depressed condition of the major census tract in which a project is located. The intent of this adjustment is to avoid penalizing such projects, through appropriate application of the adjustment.

(b) *Definitions.* Definitions and application of physical condition and neighborhood environment factors are:

(1) Physical condition adjustment applies to projects at least 28 years old, based on the unit-weighted average Date of Full Availability (DOFA) date.

(2) Neighborhood environment adjustment applies to projects located in census tracts where at least 40 percent of the families have an income below the poverty rate, as documented by the most recent census data. If a project is located in more than one census tract, the census data for the census tract where the majority of the project's units are located shall be used.

(c) *Adjustment for physical condition and neighborhood environment.* HUD will adjust the management operations score of a project subject to one or both of the physical condition and neighborhood environment conditions. The adjustments will be made to the overall management operations score for each project so as to reflect the difficulty in managing the projects. In each instance where the actual management operations score is rated below the maximum score of 40 points, one point each will be added for physical condition and neighborhood environment, but not to exceed the maximum number of 40 points available for the management operations indicator.

(d) *Application of adjustment.* The adjustment for physical condition and neighborhood environment will be calculated by HUD and applied to all eligible projects.

§ 902.45 Management operations scoring and thresholds.

(a) *Scoring.* Under the management operations indicator, a score will be calculated for each project, as well as for the overall management operations of a PHA, that reflects weights based on the relative importance of the individual management subindicators. Under the management operations indicator, HUD will calculate a score following the procedures described in the separate PHAS Management Operations Scoring document.

(b) *Overall PHA management operations indicator score.* The overall management operations indicator score is a unit-weighted average of project scores. The sum of the weighted values is divided by the total number of units in the PHA's portfolio to derive the overall management operations indicator score.

(c) *Thresholds.* (1) The PHA's management operations score is based on a maximum of 40 points.

(2) In order to receive a passing score under the management operations indicator, a PHA must achieve a score of at least 24 points or 60 percent.

(3) A PHA that receives fewer than 24 points will be categorized as a substandard management operations agency.

Subpart E—Capital Fund Program Indicator

§ 902.50 Capital Fund program assessment.

(a) *Objective.* The Capital Fund program indicator examines the period of time taken by a PHA to obligate funds and expend funds in relation to statutory deadlines for obligation and expenditure for all Capital Fund program grants for which fund balances remain during the assessed fiscal year. Funds from the Capital Fund program under section 9(d) of the Act (42 U.S.C. 1437g(d)) do not include HOPE VI program funds.

(b) *Applicability.* This indicator is applicable on a PHA-wide basis, and not to individual projects. This indicator is not applicable to PHAs that choose not to participate in the Capital Fund program under section 9(d) of the Act.

(c) *Method of assessment.* The assessment required under the Capital Fund program indicator will be performed through analysis of obligated and expended amounts in HUD's e-LOCCS (or its successor) for all Capital Fund program grants that were open during the assessed fiscal year. This indicator measures the statutory requirements for the Capital Fund program. Other aspects of the Capital Fund program will be monitored by HUD through other types of reviews.

(1) PHAs are responsible to ensure that their Capital Fund program information is submitted to e-LOCCS by the submission due date.

(2) A PHA may not appeal its PHAS score, Capital Fund program score, or both, based on the fact that it did not submit its Capital Fund program information to e-LOCCS by the submission due date.

§ 902.53 Capital Fund program scoring and thresholds.

(a) *Scoring.* The Capital Fund program indicator score provides an assessment of a PHA's ability to obligate and expend Capital Fund program grants in a timely manner. Under the Capital Fund program indicator, a score will be calculated following the procedures described in the separate PHAS Capital Fund program Scoring document.

(b) *Thresholds.* (1) The PHA's Capital Fund program score is based on a maximum of 10 points.

(2) In order to receive a passing score under the Capital Fund program indicator, a PHA must achieve a score of at least 6 points, or 60 percent.

Subpart F—PHAS Scoring

§ 902.60 Data collection.

(a) *Fiscal year reporting period—limitation on changes after PHAS effective date.* To allow for a period of consistent assessments to refine and make necessary adjustments to PHAS, a PHA is not permitted to change its fiscal year for the first 3 full fiscal years following June 30, 2009, unless such change is approved by HUD for good cause.

(b) *Request for extension of time to submit unaudited financial information.* In the event of extenuating circumstances, a PHA may request extensions of time to submit its unaudited financial information. To receive an extension, a PHA must ensure that HUD receives the extension request electronically 15 days before the submission due date. The PHA's electronic extension request must include an objectively verifiable justification as to why the PHA cannot submit the information by the submission due date. PHAs shall submit their requests for extensions of time for the submission of unaudited financial information through the FASS Secure Systems Web site. HUD shall forward its determination electronically to the requesting PHA.

(c) *Request for waiver of due date for PHA submission of audited financial information.* (1) HUD, for good cause, may grant PHAs a waiver of the due date of the submission of audited financial information to HUD. HUD shall consider written requests from PHAs for a waiver of the report submission due date (established by OMB as no later than 9 months after the end of the fiscal year). The PHA's written request for a waiver of the due date of the submission of audited financial information must include an objectively verifiable justification as to why the PHA cannot submit the information by the submission due date. A PHA shall submit its written request for such a waiver, 30 days prior to the submission due date, to the Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–2135. HUD shall forward its written determination of the waiver request to the PHA and, if appropriate, establish a new submission due date for the audited financial information.

(2) A waiver of the due date for the submission of audited financial information to HUD does not relieve a PHA of its responsibility to submit its audited information to the Federal Audit Clearinghouse, as established by

OMB no later than 9 months after the end of its fiscal year.

(d) *Rejected unaudited financial submissions.* When HUD rejects a PHA's year-end unaudited financial information after the due date, a PHA shall have 15 days from the date of the rejection to resubmit the information without a penalty being applied, in accordance with § 902.62.

§ 902.62 Failure to submit data.

(a) *Failure to submit data by due date.* (1) If a PHA without a finding of good cause by HUD does not submit its year-end financial information, required by this part, or submits its unaudited year-end financial information more than 15 days past the due date, appropriate sanctions may be imposed, including a reduction of one point in the total PHAS score for each 15-day period past the due date.

(2) If the unaudited year-end financial information is not received within 3 months past the due date, or extended due date, the PHA will receive a presumptive rating of failure for its unaudited information and shall receive zero points for its unaudited financial information and the final financial condition indicator score. The subsequent timely submission of audited information does not negate the score of zero received for the unaudited year-end financial information submission.

(3) The PHA's audited financial statement must be received no later than 9 months after the PHA's fiscal year-end, in accordance with OMB Circular A–133 (see § 902.33(c)). If the audited financial statement is not received by that date, the PHA will receive a presumptive rating of failure for the financial condition indicator.

(b) *Verification of information submitted.* (1) A PHA's year-end financial information and any supporting documentation are subject to review by an independent auditor, as authorized by section 6(j)(6) of the Act (42 U.S.C. 1437(d)(j)(6)). Appropriate sanctions for intentional false certification will be imposed, including civil penalties, suspension or debarment of the signatories, the loss of high performer designation, a lower score under the financial condition indicator, and a lower overall PHAS score.

(2) A PHA that cannot provide justifying documentation to HUD for the assessment under any indicator(s), subindicator(s), or component(s) shall receive a score of zero for the relevant indicator(s), subindicator(s), or component(s), and its overall PHAS score shall be lowered accordingly.

§ 902.64 PHAS scoring and audit reviews.

(a) *Adjustments to PHAS score.* (1) Adjustments to the score may be made after a PHA's audit report for the year being assessed is transmitted to HUD. If significant differences (as defined in GAAP guidance materials provided to PHAs) are noted between unaudited and audited results, a PHA's PHAS score will be adjusted (*e.g.*, reduced in points) in accordance with the audited results.

(2) A PHA's PHAS score under individual indicators, subindicators, or components, or its overall PHAS score, may be changed by HUD in accordance with data included in the audit report, or obtained through such sources as HUD project management and other reviews, investigations by HUD's Office of Fair Housing and Equal Opportunity, investigations or audits by HUD's Office of Inspector General, or reinspection by HUD, as applicable.

(b) *Issuance of a score by HUD.* An overall PHAS score will be issued for each PHA after the later of one month after the submission due date for financial data or one month after submission by the PHA of its financial data. The overall PHAS score becomes the PHA's final PHAS score after any adjustments requested by the PHA and determined necessary under the processes provided in §§ 902.25(d), 902.35(a), and 902.68; any adjustments resulting from the appeal process provided in § 902.69; and any adjustments determined necessary as a result of the independent public accountant (IPA) audit.

(c) *Review of audit*—(1) *Quality control review.* HUD may undertake a quality control review of the audit work papers or as part of the Department's ongoing quality assurance process.

(2) *Determination of deficiency.* If HUD determines that the PHA's financial statements, electronic financial submission, or audit are deficient, it shall notify the PHA of such determination in writing. The PHA will have 30 days in which to respond to the notice of deficiency and to establish that the determination is erroneous. Following consideration of any PHA response, HUD will issue a final determination in writing to the PHA.

(i) *Deficient financial statements.* Deficient financial statements are statements that are not presented, in some material respect, in accordance with accounting principles generally accepted in the United States, as set forth by the Government Accounting Standards Board, or if applicable, the Financial Accounting Standards Board.

(ii) *Deficient electronic submission.* A deficient electronic financial submission is a filing that was not made, in some material respect, in accordance with HUD requirements or attested to in accordance with the Standards for Attestation Engagements issued by the American Institute of Certified Public Accountants or Generally Accepted Government Auditing Standards.

(iii) *Deficient audit.* A deficient audit is one that was not performed, in some material respect, in compliance with Generally Accepted Government Auditing Standards; Generally Accepted Auditing Standards; OMB Circular A–133, when applicable; or HUD requirements.

(3) *HUD actions.* If HUD determines that the financial statements, electronic financial submission, or audit are deficient, HUD may adjust the financial indicator score to zero and/or reduce the overall PHAS score in accordance with the provisions of this section. Additionally, if HUD determines that the audit is deficient, HUD may, at its discretion, elect to serve as the audit committee for the PHA for the next fiscal year and select the audit firm that will perform the audit in question.

§ 902.66 Withholding, denying, and rescinding designation.

(a) *Withholding designation.* In exceptional circumstances, even though a PHA has satisfied all of the PHAS indicators for high performer or standard performer designation, HUD may conduct any review as it may determine necessary, and may deny or rescind incentives or high performer designation or standard performer designation, in the case of a PHA that:

(1) Is operating under a special agreement with HUD (*e.g.*, a civil rights compliance agreement);

(2) Is involved in litigation that bears directly upon the physical, financial, or management performance of a PHA;

(3) Is operating under a court order;

(4) Demonstrates substantial evidence of fraud or misconduct, including evidence that the PHA's certifications, submitted in accordance with this part, are not supported by the facts, as evidenced by such sources as a HUD review, routine reports, an Office of Inspector General investigation/audit, an independent auditor's audit, or an investigation by any appropriate legal authority; or

(5) Demonstrates substantial noncompliance in one or more areas of a PHA's required compliance with applicable laws and regulations, including areas not assessed under PHAS. Areas of substantial noncompliance include, but are not limited to, noncompliance with civil rights, nondiscrimination and fair

housing laws and regulations, or the ACC. Substantial noncompliance casts doubt on the capacity of a PHA to preserve and protect its public housing projects and operate them consistent with federal laws and regulations.

(b) *High performer designation.* If a high performer designation is denied or rescinded, the PHA shall be designated either a standard performer, substandard performer, or troubled performer, depending on the nature and seriousness of the matter or matters constituting the basis for HUD's action. If a standard performer designation is denied or rescinded, the PHA shall be designated as a substandard performer or troubled performer.

(c) *Effect on score.* The denial or rescission of a designation of high performer or standard performer shall not affect the PHA's numerical PHAS score, except where the denial or rescission is under paragraph (a)(4) of this section.

§ 902.68 Technical review of PHAS physical condition indicator.

(a) *Request for technical reviews.* This section describes the process for requesting and granting technical reviews of physical inspection results.

(1) For these reviews, the burden of proof is on the PHA to show that an error occurred.

(2) A request for technical review must be submitted in writing to the Real Estate Assessment Center, Attention: Technical Review, and must be received by HUD no later than 30 days following the issuance of the applicable results to the PHA.

(b) *Technical review of results of physical inspection results.* (1) For each project inspected, the results of the physical inspection and a score for that project will be provided to the PHA. If the PHA believes that an objectively verifiable and material error(s) occurred in the inspection of an individual project, the PHA may request a technical review of the inspection results for that project. Material errors are the only grounds for technical review of physical inspection results.

(2) A PHA's request for a technical review must be accompanied by the PHA's evidence that an objectively verifiable and material error(s) has occurred. The documentation submitted by the PHA may be photographic evidence; written material from an objective source, such as a local fire marshal or building code official; or other similar evidence. The evidence must be more than a disagreement with the inspector's observations, or the inspector's finding regarding the severity of the deficiency.

(3) A technical review of a project's physical inspection will not be conducted based on conditions that were corrected subsequent to the inspection, nor will a request for a technical review be considered if the request is based on a challenge to the inspector's findings as to the severity of the deficiency (*i.e.*, minor, major, or severe).

(4) Upon receipt of a PHA's request for technical review of a project's inspection results, the PHA's file will be reviewed, including any objectively verifiable evidence produced by the PHA. If HUD's review determines that an objectively verifiable and material error(s) has been documented, then one or a combination of the following actions may be taken by HUD:

(i) Undertake a new inspection;

(ii) Correct the physical inspection report;

(iii) Issue a corrected physical condition score; and

(iv) Issue a corrected PHAS score.

(5) In determining whether a new inspection of the project is warranted and a new PHAS score must be issued, the PHA's file will be reviewed, including any evidence submitted, to determine whether the evidence supports that there may have been a material contractor error in the inspection that results in a significant change from the project's original physical condition score and the PHAS designation assigned to the PHA (*i.e.*, high performer, standard performer, substandard performer, or troubled performer). If HUD determines that a new inspection is warranted, and the new inspection results in a significant change from the original physical condition score, and from the PHA's PHAS score and PHAS designation, the PHA shall be issued a new PHAS score.

(6) Material errors are those that exhibit specific characteristics and meet specific thresholds. The three types of material errors are:

(i) *Building data error.* A building data error occurs if the inspection includes the wrong building or a building that was not owned by the PHA, including common or site areas that were not a part of the project. Incorrect building data that does not affect the score, such as the address, building name, year built, etc., would not be considered material, but will nonetheless be corrected upon notice to HUD.

(ii) *Unit count error.* A unit count error occurs if the total number of public housing units considered in scoring is incorrect. Since scoring uses total public housing units, HUD will examine instances where the participant can provide evidence that the total units used is incorrect.

(iii) *Nonexistent deficiency error.* A nonexistent deficiency error occurs if the inspection cites a deficiency that does not exist.

(7) HUD's decision on a request for technical review is final and may not be further appealed under the administrative process in § 902.69.

§ 902.69 PHA right of petition and appeal.

(a) *Appeal of troubled performer designation and petition for removal of troubled performer designation.* A PHA may take any of the following actions:

(1) Appeal its troubled performer designation (including Capital Fund program troubled performer designation);

(2) Appeal its final overall PHAS score;

(3) Petition for removal of troubled performer designation;

(4) Appeal any refusal of a petition to remove troubled performer designation; and

(5) Appeal actions under § 902.66.

(b) *Appeal of PHAS score.* (1) If a PHA believes that an objectively verifiable and material error(s) exists in any of the scores for its PHAS indicators, which, if corrected, will result in a significant change in the PHA's PHAS score and its designation (*i.e.*, as troubled performer, substandard performer, standard performer, or high performer), the PHA may appeal its PHAS score in accordance with the procedures of paragraphs (c), (d), and (e) of this section. A significant change in a PHAS score is a change that would cause the PHA's PHAS score to increase, resulting in a higher PHAS designation for the PHA (*i.e.*, from troubled performer to substandard performer or standard performer, or from standard performer to high performer).

(2) A PHA may not appeal its PHAS score, physical condition score, or both, based on the subsequent correction of deficiencies identified as a result of a project's physical inspection or the denial of a technical review request.

(3) A PHA may not appeal its PHAS score, Capital Fund program score, or both, based on the fact that it did not submit its Capital Fund program information to e-LOCCS by the submission due date.

(c) *Appeal and petition procedures.* (1) To appeal a troubled performer designation or a final overall PHAS score, a PHA must submit a request in writing to the Deputy Assistant Secretary of the Real Estate Assessment Center, which must be received by HUD no later than 30 days following the issuance of the overall PHAS score to

the PHA. To petition the removal of a troubled performer designation, a PHA must submit its request in writing to the Deputy Assistant Secretary of the Real Estate Assessment Center.

(2) To appeal the denial of a petition to remove a troubled performer designation, a PHA must submit a written request to the Deputy Assistant Secretary of the Real Estate Assessment Center, which must be received by HUD no later than 30 days after HUD's decision to refuse to remove the PHA's troubled performer designation.

(3) To appeal the petition for the removal of a troubled performer designation, or appeal the denial of a petition to remove a troubled performer designation, a PHA shall submit its request in writing to the Deputy Assistant Secretary of the Real Estate Assessment Center.

(4) An appeal of a troubled performer designation, the petition for removal of a troubled performer designation, or the appeal of a refusal of a petition to remove a troubled performer designation must include the PHA's supporting documentation and reasons for the appeal or petition. An appeal of a PHAS score must be accompanied by the PHA's evidence that a material error occurred. An appeal or petition submitted to HUD without supporting documentation will not be considered and will be returned to the PHA.

(d) *Denial, withholding, or rescission.* A PHA that disagrees with the basis for denial, withholding, or rescission of its designation under § 902.66 may make a written request for reinstatement within 30 days of notification by HUD of the denial or rescission of the designation to the Assistant Secretary, and the request shall include reasons for the reinstatement.

(e) *Consideration of petitions and appeals.* (1) Consideration of a petition or the appeal of a final overall PHAS score, of a troubled performer designation, or of a petition to remove troubled performer designation. Upon receipt of such an appeal or a petition from a PHA, HUD will evaluate the appeal and its merits for purposes of determining whether a reassessment of the PHA is warranted. HUD will review the PHA's file and the evidence submitted by the PHA to determine whether an error occurred.

(2) Consideration of an appeal of refusal to remove a troubled performer designation. Upon receipt of an appeal of refusal to remove a troubled performer designation, HUD will evaluate the appeal and its merits for the purposes of determining whether a reassessment of the PHA is warranted. The officials evaluating an appeal of refusal to remove a troubled performer designation will not be the same officials who evaluated the PHA's petition to remove the troubled performer designation.

(f) *Notice and finality of decisions.* (1) If HUD determines that one or more objectively verifiable and material error has occurred, HUD will undertake a new inspection of the project, arrange for audit services, adjust the PHA's score, or perform other reexamination of the financial, management, or Capital Fund program information, as appropriate in light of the nature of the error that occurred. A new score will be issued and an appropriate performance designation made by HUD. HUD's decision on appeal of a PHAS score, issuance of a troubled performer designation, or refusal to remove a troubled performer designation will be final agency action. No reconsideration will be given by HUD of such decisions.

(2) HUD will issue a written decision on all appeals and petitions made under this section.

Subpart G—PHAS Incentives and Remedies

§ 902.71 Incentives for high performers.

(a) *Incentives for high performer PHAs.* A PHA that is designated a high performer will be eligible for the following incentives, and such other incentives that HUD may determine appropriate and permissible under program statutes or regulations.

(1) *Relief from specific HUD requirements.* A PHA that is designated a high performer will be relieved of specific HUD requirements (*e.g.*, will receive fewer reviews and less monitoring), effective upon notification of a high performer designation.

(2) *Public recognition.* High performer PHAs and RMCs that receive a score of at least 60 percent of the points available under each of the four PHAS Indicators and achieve an overall PHAS score of 90 percent, and no more than 10 percent of the total units are in projects that fail any physical, financial, or management indicator, will receive a Certificate of Commendation from HUD, as well as special public recognition, as provided by the regional/field office.

(3) *Bonus points in funding competitions.* A high performer PHA may be eligible for bonus points in HUD's funding competitions, where such bonus points are not restricted by statute or regulation governing the funding program and are provided in the relevant notice of funding availability.

(b) *Compliance with applicable federal laws and regulations.* Relief from any standard procedural requirement that may be provided under this section does not mean that a PHA is relieved from compliance with the provisions of federal law and regulations or other handbook requirements. For example, although a high performer or standard performer may be relieved of requirements for prior HUD approval for certain types of contracts for services, the PHA must still comply with all other federal and state requirements that remain in effect, such as those for competitive bidding or competitive negotiation (see 24 CFR 85.36).

(c) *Audits and reviews not relieved by designation.* A PHA designated as a high performer or standard performer remains subject to:

(1) Regular independent auditor audits;

(2) Office of Inspector General audits or investigations as circumstances may warrant; and

(3) Reviews identified by the regional or field office in its current Risk Assessment of PHAs and projects.

§ 902.73 PHAs with deficiencies.

(a) *Oversight and action.* Standard and substandard performers will be referred to the regional/field office for appropriate oversight and action.

(1) A standard performer that receives a total score of at least 60 percent shall be required to correct the deficiencies in performance within the time period for correction, as stated in § 902.73(c). If the PHA fails to correct the deficiencies, HUD may either require the PHA to enter into a Corrective Action Plan, or HUD may take other action, as appropriate.

(2) A substandard performer, *i.e.*, a PHA that achieves a score of less than 60 percent of the total points available under one or more of the physical condition, management, or financial condition PHAS indicators, shall be required to correct the deficiencies in performance within the time period for correction. If the PHA fails to correct the deficiencies, HUD may require the PHA to enter into a Corrective Action Plan, or take other action, as appropriate.

(3) A PHA with a project(s) that receives less than 60 percent of the points available for any indicator or subindicator shall be required to correct the deficiencies in performance within the time period for correction, as stated in § 902.73(b). If the PHA fails to correct the deficiencies within the time period allowed, HUD may either require the PHA to enter into a Corrective Action Plan, or take other action, as appropriate.

(b) *Correction of deficiencies*—(1) *Time period for correction.* After a

PHA's (or DF–RMC's) receipt of its final overall PHAS score and designation as: A standard performer, within the range described in § 902.73(a)(1); or substandard performer, within the range described in § 902.73(a)(2), or, in the case of an RMC, after notification of its score from a PHA, a PHA or RMC shall correct any deficiency indicated in its assessment within 90 days, or within such period as provided in the HUD-executed Corrective Action Plan, if required.

(2) *Notification and report to regional or field office.* A PHA shall notify the regional or field office of its action to correct a deficiency. A PHA shall also forward to the regional or field office an RMC's report of its action to correct a deficiency. A DF–RMC shall forward directly to the regional or field office its report of its action to correct a deficiency.

(c) *Failure to correct deficiencies.* (1) If a PHA (or DF–RMC or RMC) fails to correct deficiencies within the time period noted in paragraph (b) of this section, or to correct deficiencies within the time specified in a Corrective Action Plan, or within such extensions as may be granted by HUD, the regional/field office will notify the PHA of its noncompliance.

(2) The PHA (or DF–RMC or RMC) will provide the regional/field office with its reasons for lack of progress in negotiating, executing, or carrying out the Corrective Action Plan, within 30 days of the PHA's receipt of the noncompliance notification. HUD will advise the PHA as to the acceptability of its reasons for lack of progress.

(3) If HUD finds the PHA's (or DF–RMC or RMC) reasons for lack of progress unacceptable, HUD will notify the PHA (or DF–RMC or RMC) that it will take such actions as it may determine appropriate in accordance with the provisions of the 1937 Act and other statutes, the ACC, this part, and other HUD regulations, including, but not limited to, the remedies available for substantial default.

§ 902.75 Troubled performers.

(a) *General.* Upon a PHA's designation as a troubled performer, in accordance with the requirements of section 6(j)(2)(B) of the Act (42 U.S.C. 1437d(j)(2)(B) and in accordance with this part, HUD must notify the PHA and shall refer each troubled performer PHA to the PHA's regional/field office, or other designated office(s) at HUD, for remedial action, oversight, and monitoring. The actions to be taken by HUD and the PHA will include actions statutorily required, and such other actions as may be determined appropriate by HUD.

(b) *Memorandum of agreement (MOA).* Within 30 days of notification of a PHA's designation as a troubled performer, HUD will initiate activities to negotiate and develop an MOA. An MOA is required for a troubled performer. The final MOA is a binding contractual agreement between HUD and a PHA. The scope of the MOA may vary depending upon the extent of the problems present in the PHA. It shall include, but not be limited to:

(1) Baseline data, which should be data without adjustments or weighting but may be the PHA's score in each of the PHAS indicators, subindicators, components identified as a deficiency;

(2) Performance targets for such periods specified by HUD (*e.g.*, annual, semiannual, quarterly, monthly), which may be the attainment of a higher score within an indicator, subindicator, or component that is a problem, or the description of a goal to be achieved;

(3) Strategies to be used by the PHA in achieving the performance targets within the time period of the MOA, including the identification of the party responsible for the completion of each task and for reporting progress;

(4) Technical assistance to the PHA provided or facilitated by HUD; for example, the training of PHA employees in specific management areas or assistance in the resolution of outstanding HUD monitoring findings;

(5) The PHA's commitment to take all actions within its control to achieve the targets;

(6) Incentives for meeting such targets, such as the removal of a troubled performer designation or troubled with respect to the program for assistance from the Capital Fund program under section 9(d) of the Act (42 U.S.C. 1437g(d)) and HUD recognition for the most-improved PHAs;

(7) The consequences of failing to meet the targets, which include, but are not limited to, the interventions stated in 24 CFR part 907 and in section 6(j)(3) of the Act (42 U.S.C. 1437d(j)(3)); and

(8) A description of the involvement of local public and private entities, including PHA resident leaders, in carrying out the agreement and rectifying the PHA's problems. A PHA shall have primary responsibility for obtaining active local public and private entity participation, including the involvement of public housing resident leaders, in assisting PHA improvement efforts. Local public and private entity participation should be premised upon the participant's knowledge of the PHA, ability to contribute technical expertise with regard to the PHA's specific problem areas, and authority to make preliminary commitments of support, financial or otherwise.

(c) *PHA review of MOA.* The PHA will have 10 days to review the MOA. During this 10-day period, the PHA shall resolve any claimed discrepancies in the MOA with HUD, and discuss any recommended changes and target dates for improvement to be incorporated in the final MOA. Unless the time period is extended by HUD, the MOA is to be executed 15 days following issuance of the draft MOA.

(d) *Maximum recovery period*—(1) *Expiration of the first-year improvement period.* Upon the expiration of the one-year period that started on the date on which the PHA receives initial notice of a troubled performer designation, the PHA shall, by the next PHAS assessment that is at least 12 months after the initial notice of the troubled performer designation, improve its performance by at least 50 percent of the difference between the initial PHAS assessment score that led to the troubled performer status and the score necessary to remove the PHA's designation as a troubled performer.

(2) *Expiration of 2-year recovery period.* Upon the expiration of the 2-year period that started on the date on which the PHA received the initial notice of a troubled performer designation, the PHA shall, by the next PHAS assessment that is at least 24 months after the initial notice of the troubled performer designation, improve its performance and achieve an overall PHAS score of at least 60 percent of the total points available.

(e) *Parties to the MOA.* An MOA shall be executed by:

(1) The PHA Board Chairperson (supported by a Board resolution), or a receiver (pursuant to a court-ordered receivership agreement, if applicable) or other AME acting in lieu of the PHA Board;

(2) The PHA Executive Director, or a designated receiver (pursuant to a court-ordered receivership agreement, if applicable), or other AME-designated Chief Executive Officer;

(3) The regional or field office Public Housing Director; and

(4) The appointing authorities of the Board of Commissioners, if required by the regional/field office Public Housing Director.

(f) *Involvement of resident leadership in the MOA.* HUD encourages the inclusion of the resident leadership in the execution of the MOA.

(g) *Failure to execute MOA or make substantial improvement under MOA.* (1) If a troubled performer PHA fails or

refuses to execute an MOA within the period provided in paragraph (c) of this section, or a troubled performer PHA operating under an executed MOA does not show a substantial improvement, as provided in paragraph (d) of this section, toward a passing PHAS score following the issuance of the failing PHAS score by HUD, the regional/field office Public Housing Director shall refer the PHA to the Assistant Secretary to determine such remedial actions, consistent with the provisions of the ACC and other HUD regulations, including, but not limited to, remedies available for substantial default.

(2) For purposes of paragraph (g) of this section, substantial improvement is defined as the improvement required by paragraph (d) of this section. The maximum period of time for remaining in troubled performer status before being referred to the Assistant Secretary is 2 years after the initial notification of the troubled performer designation. Therefore, the PHA must make substantial improvement in each year of this 2-year period.

(3) The following example illustrates the provisions of paragraph (g)(1) of this section:

Example: A PHA receives a score of 50 points; 60 points is a passing score. Upon the expiration of the one-year period that started on the date on which the PHA received the initial notification of the troubled performer designation, the PHA must achieve at least 55 points (50 percent of the 10 points necessary to achieve a passing score of 60 points) to continue recovery efforts. In the second year, the PHA must achieve a minimum score of 60 points (a passing score). If, in the first year that started on the date on which the PHA received the initial notification of the troubled designation, the PHA fails to achieve the 5-point increase, or if the PHA achieves the 5-point increase within the first year that started on the date on which the PHA received the initial notification of the troubled designation, but fails to achieve the minimum passing score of 60 points after the second year after the initial notification, HUD will notify the PHA that it will take such actions as it may determine appropriate in accordance with the provisions of the ACC and other HUD regulations, including, but not limited to, the remedies available for substantial default.

(h) *Audit review.* For a PHA designated as a troubled performer, HUD may perform an audit review and may, at its discretion, select the audit firm that will perform the audit of the PHA; and HUD may, at its discretion, serve as the audit committee for the audit in question.

(i) *Continuation of services to residents.* To the extent feasible, while a PHA is in a troubled performer status, all services to residents will continue uninterrupted.

§ 902.79 Verification and records.

All project and PHA certifications, year-end financial information, and supporting documentation are subject to HUD verification at any time, including review by an independent auditor. All PHAs must retain supporting documents for any certifications and for asset management reviews for at least 3 years. Failure to maintain and provide supporting documentation for a period of 3 years for any indicator(s), subindicator(s), or other methods used to assess performance shall result in a score of zero for the indicator(s) or subindicator(s), and a lower overall PHAS score for the applicable assessment period.

§ 902.81 Resident petitions for remedial action.

Residents of a PHA designated as troubled pursuant to section 6(j)(2)(A) of the Act (42 U.S.C. 1437d(j)(2)(A)), may petition HUD in writing to take one or more of the actions referred to in section 6(j)(3)(A) of the Act (42 U.S.C. 1437d(j)(3)(A)). HUD will consider any petition from a group of residents totaling at least 20 percent of the PHA's residents, or from an organization or organizations of residents whose membership equals at least 20 percent of the PHA's residents. HUD shall respond to such petitions in a timely manner with a written description of the actions, if any, HUD plans to take and, where applicable, the reasons why such actions differ from the course proposed by the residents. Nothing in this section shall limit HUD's discretion to determine whether a substantial default has occurred or to select the appropriate intervention upon such determination.

§ 902.83 Sanctions for troubled performer PHAs.

(a) If a troubled performer PHA fails to make substantial improvement, as set forth in § 902.75(d), HUD shall:

(1) In the case of a troubled performer PHA with 1,250 or more units, declare substantial default in accordance with § 907.3(b)(3) and petition for the appointment of a receiver pursuant to section 6(j)(3)(A)(ii) of the Act (42 U.S.C. 1437d(j)(3)(A)(ii)); or

(2) In the case of a troubled performer PHA with fewer than 1,250 units, declare substantial default in accordance with § 907.3(b)(3) and either petition for the appointment of a receiver pursuant to section 6(j)(3)(A)(ii) of the Act (42 U.S.C. 1437d(j)(3)(A)(ii)), or take possession of the PHA (including all or part of any project or program of the PHA) pursuant to section 6(j)(3)(A)(iv) of the Act (42 U.S.C. 1437d(j)(3)(A)(iv)), and appoint, on a competitive or noncompetitive basis, an individual or entity as an administrative receiver to assume the responsibilities of HUD for the administration of all or part of the PHA (including all or part of any project or program of the PHA).

(3) In the case of substantial default by a troubled performer PHA, nothing in this section shall be construed to limit the courses of action available to HUD under this part, 24 CFR part 907, or section 6(j)(3)(A) of the Act (42 U.S.C. 1437d(j)(3)(A)) for any other substantial default by a PHA.

(b) If a troubled performer PHA fails to execute or meet the requirements of an MOA in accordance with § 902.75, other than as specified in paragraph (a) of this section, the PHA may be deemed to be in substantial default by HUD and any remedy available therefore may be invoked in the discretion of HUD.

Appendix A to Part 902—Physical Condition Scoring

I. Purpose of This Appendix

This appendix describes the physical condition scoring process under the proposed revisions to the PHAS regulation and prescribes the frequency of individual project inspections.

II. Purpose of the PHAS Physical Condition Assessment

The purpose of the PHAS physical condition assessment is to ensure that public housing units are decent, safe, sanitary and in good repair, as determined by an inspection conducted in accordance with HUD's Uniform Physical Condition Standards (UPCS) codified at 24 CFR part 5, subpart G. The physical condition assessment under the PHAS utilizes uniform physical inspection procedures to determine compliance with uniform standards and is an important indicator of performance for a project and a PHA. All projects will be assessed under the Physical Condition Indicator, even if a PHA has not converted to asset management.

The Physical Condition Indicator score is based on a maximum of 30 points. In order to receive a passing score under this indicator, a project must achieve at least 18 points or 60 percent of the points available under this indicator. Under the PHAS Physical Condition Indicator, REAC will calculate a score for each project, as well as for the overall physical condition of a PHA. The physical condition score, based on a 30-point scale, is included in each PHA's aggregate PHAS score.

III. Transition to Asset Management and Frequency of Inspections

The number of units in a PHA's Low-Rent program and the PHAS designation for small PHAs will determine the frequency of physical inspections during and after the transition to asset management. Deregulation of small PHAs provides that PHAs with less than 250 public housing units are assessed and scored every other year, unless

designated a PHAS troubled performer. PHAs with less than 250 units that are designed troubled will be assessed every year. The score of a project in a PHA with less than 250 units will not affect the frequency of inspections for either that project or the associated PHA, unless the PHA has a single project resulting in the project score equating to the overall physical inspection indicator score. The frequency of physical inspections for small PHAs will be determined based upon the PHAS designation.

For PHAs with 250 or more units of any PHAS designation, the inspection score of each project (not the overall physical indicator score) will determine the frequency of inspections for that project. Projects that score 80 points or higher based on a possible 100-point project score will be inspected every other year. Projects that score less than 80 points based on the possible 100-point project score will be inspected annually. The performance incentive, to be inspected every other year, will change from PHA-based to project-based. A troubled physical PHAS designation will not affect the frequency of project inspections for such PHAs. Project inspections for PHAs with 250 or more units will be based on the project's prior year inspection score.

Projects of overall troubled PHAs with 250 or more units that score 80 points or higher based on a possible 100-point project score will be inspected every other year. Projects that score less than 80 points based on the possible 100-point project score will then be inspected annually. PHAs with 249 or less units, inspected and designated as troubled, will be inspected again the next year. PHAs of 250 units or more with unit-weighted project scores from 2 different years will have all their prior year scores of 80 and above (and current year scores for each project that was inspected), multiplied by 30 percent, totaled together, and rounded to produce an overall physical indicator score.

IV. Item Weights and Criticality Levels and Dictionary of Deficiency Definitions

The Item Weights and Criticality Levels tables and the Dictionary of Deficiency Definitions currently in use are available in HUD's REAC Physical Inspection Library Internet site at: *http://www.hud.gov/offices/reac/library/lib_phyi.cfm#FEDERAL.*

V. Validity and Reliability of the Physical Inspection Protocols

The Conference Report (H.R. Conf. Rep. 106–988; October 18, 2000) accompanying HUD's FY 2001 Appropriations Act (Pub. L. 106–377, approved October 27, 2000) directed HUD to continue to assess the accuracy and effectiveness of the PHAS system, in particular the physical condition inspection protocol. HUD was also directed to perform a statistically valid test of PHAS, conduct a thorough analysis of the results, and have the methodology and results reviewed by an independent expert before taking any adverse action against a PHA based solely on its PHAS score. HUD retained the Louis Berger Group (the contractor) to conduct the review of the methodology and results of the statistically valid test.

The findings of the contractor's study concluded that the physical condition inspection protocol is repeatable and reliable. A report addressing the issues raised in the Conference Report, entitled the Review and Assessment of the REAC Study of the Physical Assessment Sub-System (PASS) Process, was provided to the House and Senate Committees on Appropriations on March 1, 2001.

VI. The Physical Inspection Scoring Process

The PHAS physical inspection generates comprehensive results, including physical inspection scores reported at the project level, area level scores for each of the five physical inspection areas, as applicable, and observations of deficiencies recorded electronically by the inspector at the time of the inspection.

1. Definitions

The following are the definitions of the terms used in the physical condition scoring process:

Criticality means one of five levels that reflect the relative importance of the deficiencies for an inspectable item. Appendix 1 lists all deficiencies with their designated criticality levels, which vary from 1 to 5, with 5 being the most critical. Based on the criticality level, each deficiency has an assigned value that is used in scoring. Those values are as follows:

Criticality	Level	Value
Critical	5	5.00
Very Important	4	3.00
Important	3	2.25
Contributes	2	1.25
Slight Contribution	1	0.50

Based on the importance of the deficiency as reflected by its criticality value, points are deducted from the project score. For example, a clogged drain in the kitchen is more critical than a damaged surface on a counter top. Therefore, more points will be deducted for a clogged drain than for a damaged surface.

Deficiencies refer to specific problems that are recorded for inspectable items, such as a hole in a wall or a damaged refrigerator in the kitchen.

Inspectable area means any of the five major components of the project: Site, building exteriors, building systems, common areas, and dwelling units.

Inspectable items refer to walls, kitchens, bathrooms, and other features that are inspected in an inspectable area. The number of inspectable items varies for each inspectable area from 8 to 17. Weights are assigned to each item to reflect their relative importance and are shown in the Item Weights and Criticality Levels tables. The tables refer to the weight of each item as the nominal item weight, which is also known as the amenity weight.

Normalized area weight represents weights used with area scores to calculate project-level scores. The weights are adjusted to reflect the inspectable items actually present at the time of the inspection. These weights are proportional, as follows:

- For dwelling units, the area score is the weighted average of sub-area scores for each unit, weighted by the total of item weights present for inspection in each unit, which is referred to as the amenity weight.
- For common areas, the area score is the weighted average of sub-area common area scores weighted by the total weights for items available for inspection (or amenity weight) in each residential building common area or common building. Common buildings refer to any inspectable building that contains no dwelling units. All common buildings are inspected.
- For building exteriors or building systems, the area scores are weighted averages of sub-area scores.
- For sites, the area score is calculated as follows: (1) The amenity weights found on a site, (2) minus deductions for deficiencies, and (3) normalized to a 100-point scale.

Normalized sub-area weight means the weight used with sub-area scores to compute an inspectable area score. These weights are proportional:

- For dwelling units, the item weight of amenities available in the unit at the time of inspection is the amenity weight.
- For common areas, the common area amenity weight is divided by a building's probability of being selected for inspection. All residential buildings with common areas may not be selected for inspection; however, all buildings with common areas are selected to determine the amenity weight.
- For building exterior and building systems, the building exterior or building system amenity weight is multiplied by the building's size (number of units) and then divided by its probability of being selected for inspection.
- For the site, there is no sub-area score. For each project, there is a single site.

Note that dividing by a building's probability of being selected for inspection is the same as multiplying by the probability weight, since the probability weight is 1 divided by the probability of being selected for inspection.

Project is used synonymously with the term ''property.''

Severity means one of three levels that reflect the extent of damage associated with each deficiency, with values assigned as follows:

Severity level	Value
3	1.00
2	0.50
1	0.25

The Item Weights and Criticality Levels tables show the severity levels that are possible for each deficiency. Based on the severity of each deficiency, the score is reduced. Points deducted are calculated by multiplying the item weight by the values for criticality and severity, as described below. For specific definitions of each severity level, see the Dictionary of Deficiency Definitions, which is available from REAC's Physical Inspection Library Internet site at: *http://www.hud.gov/offices/reac/library/lib_phyi.cfm#FEDERAL.*

Score means a number between 0 and one hundred (100) that reflects the physical

condition of a project, inspectable area, dwelling area, or sub-area. A property score includes both an alphabetical and a numerical component. The number represents an overall score for the basic physical condition of a property, including points deducted for health and safety deficiencies other than those associated with smoke detectors. The letter code specifically indicates whether health and safety deficiencies were detected, as shown in the chart below:

Physical inspection score alphanumeric codes	No health and safety deficiencies	Health and safety deficiencies			
		Non-life threatening (NLT)	Life threatening (LT)/exigent health and safety (EHS)	Fire safety	
				No smoke detector problems	Smoke detector problems
a	X			X	
a*	X				X
b		X		X	
b*		X			X
c			X	X	
c*			X		X

To record a health or safety problem, a letter is added to the project score (a, b, or c); and to note that one or more smoke detectors are inoperable or missing, an asterisk (*) is added to the project score.

Sub-area means an area that will be inspected for all inspectable areas except the site. For example, the building exterior for building ''2'' is a sub-area of the building exterior area. Likewise, unit ''5'' would be a sub-area of the dwelling units area. Each inspectable area for each building in a property is treated as a sub-area.

2. Scoring Protocol

To generate accurate scores, the inspection protocol includes a determination of the appropriate relative weights of the various components of the inspection; that is, which components are the most important, the next most important, and so on. For example, in the building exterior area, a blocked or damaged fire escape is more important than a cracked window, which is more important than a broken light fixture. The Item Weights and Criticality Levels tables provide the nominal weight of observable deficiencies by inspectable item for each area/sub-area. The Dictionary of Deficiency Definitions provides a definition for the severity of each deficiency in each area/sub-area.

3. Equity Principles

In addition to determining the appropriate relative weights, consideration is also given to several issues concerning equity between properties so that scores fairly assess all types of properties:

Proportionality. The scoring methodology includes an important control that does not allow any sub-area scores to be negative. If a sub-area, such as the building exterior for a given building, has so many deficiencies that the sub-area score would be negative, the score is set to zero. This control mechanism ensures that no single building or dwelling unit can affect the overall score more than its proportionate share of the whole.

Configuration of project. The scoring methodology takes into account different numbers of units in buildings. To fairly score projects with different numbers of units in buildings, the area scores are calculated for building exteriors and systems by using weighted averages of the sub-area scores, where the weights are based on the number of units in each building and on the building's probability of being selected for inspection. In addition, the calculation for common areas includes the amenities existing in the residential common areas and common buildings at the time of inspection.

Differences between projects. The scoring methodology also takes into account that projects have different features and amenities. To ensure that the overall score reflects only items that are present to be inspected, weights to calculate area and project scores are adjusted depending on how many items are actually there to be inspected.

4. Deficiency Definitions

During a physical inspection of a project, the inspector looks for deficiencies for each inspectable item within the inspectable areas, such as the walls (the inspectable item) of a dwelling unit (the inspectable area). Based on the observed condition, the Dictionary of Deficiency Definitions defines up to the three levels of severity for each deficiency: Level 1 (minor), Level 2 (major), and Level 3 (severe). The associated values were shown earlier in the first chart of Section VI. A specific criticality level, with associated values as shown in that chart, is also assigned to each deficiency. The criticality level reflects the importance of the deficiency relative to all other possible observable deficiencies for the inspectable area.

5. Health and Safety Deficiencies

The UPCS physical inspection emphasizes health and safety (H&S) deficiencies because of their crucial impact on the well-being of residents. A subset of H&S deficiencies is exigent health and safety (EHS) deficiencies. These are life threatening (LT) and require immediate action or remedy. EHS deficiencies can substantially reduce the overall project score. As noted in the definition for the word ''score'' in the Definitions section, all H&S deficiencies are highlighted by the addition of a letter to the numeric score. The Item Weights and Criticality Levels tables list all H&S deficiencies with an LT designation for those that are EHS deficiencies and an NLT designation for those that are non-life threatening. The LT and NLT designations apply only to severity level 3 deficiencies.

To ensure prompt correction of H&S deficiencies, the inspector gives the project representative a deficiency report identifying every observed EHS deficiency before the inspector leaves the site. The project representative acknowledges receipt of the deficiency report by signature. The inspector also transmits the deficiency report to HUD no later than the morning of the first business day after completing the inspection. HUD makes available to all PHAs an inspection report that includes information about all of the H&S deficiencies recorded by the inspector. The report shows:

- The number of H&S deficiencies (EHS and NLT) that the inspector observed;
- All observed smoke detector deficiencies; and
- A projection of the total number of H&S problems that the inspector potentially would see in an inspection of all buildings and all units.

Problems with smoke detectors do not currently affect the overall score. When there is an asterisk indicating that the project has at least one smoke detector deficiency, that part of the score may be identified as ''risk;'' for example, ''93a, risk'' for 93a*, and ''71c, risk'' for 71c*. There are six distinct letter grade combinations based on the H&S deficiencies and smoke detector deficiencies observed: a, a*, b, b*, c, and c*. For example:

- A score of 90c* means that the project contains at least one EHS deficiency to be corrected, including at least one smoke detector deficiency, but is otherwise in excellent condition.
- A score of 40b* means the project is in poor condition, has at least one non-life threatening deficiency, and has at least one missing or inoperable smoke detector.
- A score of 55a means that the project is in poor condition, even though there are no H&S deficiencies.
- A project in excellent physical condition with no H&S deficiencies would have a score of 90a to 100a.

6. Scoring Process Elements

The physical condition scoring process is based on three elements within each project: (1) Five inspectable areas (site, exterior, systems, common areas, and dwelling units); (2) inspectable items in each inspectable area; and (3) observed deficiencies. In broad

terms, the score for a property is the weighted average of the five inspectable area scores, where area weights are adjusted to account for all of the inspectable items that are actually present to be inspected. In turn, area scores are calculated by using weighted averages of sub-area scores (*e.g.*, building area scores for a single building or unit scores for a single unit) for all sub-areas within an area.

7. Scoring Using Weighted Averages

For all areas except the site, normalized sub-area weights are determined using the size of sub-areas, the items available for inspection, and the sub-area's probability of selection for inspection. Sub-area scores are determined by deducting points for deficiencies based on the importance (weight) of the item, the criticality of the deficiency, and the severity of the deficiency. The maximum deduction for a single deficiency will not calculate a score of less than zero. Points will be deducted only for one deficiency of the same kind within a sub-area. For example, if multiple deficiencies for broken windows are recorded, only the most severe deficiency observed (or one of the most severe, if there are multiple deficiencies with the same level of severity) will result in a point deduction.

8. Essential Weights and Levels

The process of scoring a project's physical condition depends on the weights, levels, and associated values of the following quantities:

- Weights for the 5 inspectable areas (site, building exteriors, building systems, common areas, and dwelling units).
- Weights for inspectable items within inspectable areas (8 to 17 per area).
- Criticality levels (critical, very important, important, contributes, and slight contribution) plus their associated values for deficiencies within areas inspected.
- Severity levels (3, 2, and 1) and their associated values for deficiencies.
- Health and safety deductions (exigent/fire safety and non-life threatening for all inspectable areas).

9. Area Weights

Area weights are used to obtain a weighted average of area scores. A project's overall physical condition score is a weighted average of all inspectable area scores. The approximate relative weights are:

Inspectable area	Weight (percent)
Site	15
Building Exterior	15
Building Systems	20
Common Areas	15
Dwelling Units	35

These weights are assigned for all inspections when all inspectable items are present for each area and for each building and unit. All of the inspectable items may not be present in every inspectable area. When items are missing in an area, the area weights are modified to reflect the missing items so that within that area they will add up to 100 percent. Area weights are recalculated when some inspectable items are missing in one or more area(s).

Although rare, it is possible that an inspectable area could have no inspectable items available; for example, there could be no common areas in the inspected residential buildings and no common buildings. In this case, the weight of the ''common areas'' would be 0 percent and its original 15 percent weight would be equitably redistributed to the other inspectable areas, as shown in the example below:

Inspectable area	Normal weight (percent)	Missing common areas (percent)	Adjustment	Adjusted weight (percent)
Site	15	15	.15/.85 =	18
Building Exterior	15	15	.15/.85 =	18
Building Systems	20	20	.20/.85 =	23
Common Areas	15	0		0
Dwelling Units	35	35	.35/.85 =	41
Total	100	85		100

The original 15 percent weight for the common areas is redistributed by totaling the weights of other inspectable areas (100 percent minus 15 percent = 85 percent) and dividing the weights of each other area by that amount (0.85). The modified weights would then be 18 percent for site, 18 percent for building exterior, 23 percent for building systems, 0 percent for common areas, 41 percent for dwelling units, and again be equal to (be normalized to) 100 percent.

10. Area and Sub-Area Scores

For inspectable areas with sub-areas (all areas except sites), the inspectable area score is a weighted average of the sub-area scores within that area. The scoring protocol determines the amenity weight for the site and each sub-area as noted in Section VI.1 under the definition for normalized sub-area weight. For example, a property with no fencing or gates in the inspectable area of the site would have an amenity weight of 90 percent or 0.9 (100 percent minus 10 percent for lack of fencing and gates), and a single dwelling unit with all items available for inspection except a call-for-aid would have an amenity weight of 0.98 or 98 percent (100 percent minus 2 percent for lack of call-for-aid).

The amenity weight excludes all health and safety items. Each deficiency as weighted and normalized are subtracted from the sub-area or site-weighted amenity score. Sub-area and site area scores are further reduced for any observed health and safety deficiencies. These deductions are taken at the site, building, or unit level. At this point, a control is applied to prevent a negative site, building, or unit score. The control ensures that no single building or unit can affect an area score more than its weighted share.

11. Overall Project Score

The overall project score is the weighted average of the five inspectable area scores, with the five areas weighted by their normalized weights. Normalized area weights reflect both the initial weights and the relative weights between areas of inspectable items actually present. For reporting purposes, the number of possible points is the normalized area weight adjusted by multiplying by 100 so that the possible points for the five areas add up to 100. In the Physical Inspection Report for each project that is sent to the PHA, the following items are listed:

- Normalized weights as the ''possible points'' by area;
- The area scores, taking into account the points deducted for observed deficiencies;
- The deductions for H&S for each inspectable area; and
- The overall project score.

The Physical Inspection Report allows the PHA and the project manager to see the magnitude of the points lost by inspectable area and the impact on the score of the H&S deficiencies.

12. Examples of Physical Condition Score Calculations

The physical inspection scoring is deficiency based. All projects start with 100 points. Each deficiency observed reduces the score by an amount dependent on the importance and severity of the deficiency, the number of buildings and units inspected, the inspectable items actually present to be inspected, and the relative weights between inspectable items and inspectable areas.

The calculation of a physical condition score is illustrated in the examples below. The examples go through a number of interim stages in calculating the score, illustrating how sub-area scores are calculated for a single project, how the sub-area scores are rolled up into area scores, and how area scores are combined to calculate the overall project score. One particular

deficiency is carried through the examples showing the end result.

As will be seen, the deduction starts out as a percent of the sub-area. Then the area score is considerably decreased in the final overall project score because the deduction is averaged across other sub-areas and then averaged across the five inspectable areas. Although interim results in the examples are rounded, only the final results are rounded for actual calculations.

To illustrate how physical condition scores are calculated, three examples are provided below. Following this section, another example is given specifically for public housing projects to show how project scores are rolled up into the PHAS physical indicator score for the PHA as a whole.

Example #1 illustrates how the score for a sub-area of building systems is calculated. Consider a 10-unit residential building in which the five inspectable areas are present. During the inspection, damaged vents in the roof are observed. This deficiency reflected a severity level of 1, which has a severity weight of 0.25; a criticality level of 4, which has a criticality weight of 3; and an item weight of 16.0. The amount of the points deducted is the item weight, multiplied by the criticality weight multiplied by the severity value. This is illustrated in the table below.

Area: Building Exterior.

Item: Roof.

Deficiency: Damaged Vents.

Criticality Level: 4, Severity Level: 1.

Element	Associated value
Item Weight	16
Criticality Weight	3.0
Severity Weight	0.25
Calculation of Points Deducted for Deficiency	$16 \times 3 \times 0.25 = 12$

If this building exterior has all inspectable items except for a fire escape, the amenity weight for the first building exterior adds up to 84 percent (100 percent starting point minus 16 percent for the lack of a fire escape, excluding H&S items). If the damaged roof vents were the only deficiency observed, then the initial proportionate score for this sub-area (Building Exterior #1) would be the amenity score minus the deficiency points and then normalized to a 100-point basis, as shown below. Additional deficiencies or H&S deficiencies (calculated in the same manner) would further decrease the sub-area score, and if the score dropped below zero, it would be set to zero.

Element	Associated value
Amenity Score	84
Deficiency Points	12
Calculation for the Initial Proportionate Score	$84 - 12 = 72$
Normalizing Factor	100
Calculation for the Initial Sub-Area Score	$(72/84) \times 100 = 85.7$
Building Exterior #1	

Example #2 illustrates how the area score is calculated. Consider a property with two buildings with the following characteristics:

- Building #1 (from Example #1, above):

—10 units

—84 percent amenity weight for items that are present to be inspected in the building exterior

—Building exterior score is 85.7 points

- Building #2:

—20 units

—100 percent amenity weight for items that are present to be inspected in the building exterior

—Building exterior score is 69.1 points

The building exterior score for the building exterior area is the weighted average of the individual scores for each building exterior. Each building exterior score is weighted by the number of units and the percent of the weight for items present to be inspected in the building exterior.

Building	Number of units	×	Amenity weight	=	Unit weighted average	/	Sum of the building weights	×	Initial proportionate score	=	Building exterior area score
#1	10		0.84		08.4		28.4		85.7		25.3
#2	20		1.00		20.0		28.4		69.1		48.7
Total	30				28.4						74.0

Example #3 illustrates how the overall weighted average for the building exterior area amenity weight is calculated. The separate amenity weights for buildings #1 and #2, above, are used in conjunction with the total units to calculate the building exterior area amenity weight. Each building amenity weight is multiplied by the number of units in that building and then divided by the total number of units for all buildings, as shown below. For purposes of the next example, the Overall Building Exterior Area Amenity Weight of 94.7 was rounded to 95.

Building exterior	Number of units	×	Amenity weight	=	Unit weighted average	/	Total units	×	Normalized to a 100 point basis	=	Overall building exterior area weighted average amenity weight
#1	10		0.84		08.4		30		100		28.0
#2	20		1.00		20.0		30		100		66.7

Building exterior	Number of units	×	Amenity weight	=	Unit weighted average	/	Total units	×	Normalized to a 100 point basis	=	Overall building exterior area weighted average amenity weight
Total	30				28.4						94.7

Example #4 illustrates how the score for a property is calculated. Consider a property with the following characteristics:

- Site:

—Score: 90 points
—100 percent amenity weight
—Nominal weight: 15 percent

- Building Exteriors (from example #2 and #3, above):

—Score: 74 points
—95 percent weighted average amenity weight
—Nominal weight: 15 percent

- Building Systems:

—Score: 70 points
—80 percent weighted average amenity weight
—Nominal weight: 20 percent

- Common Areas:

—Score: 60 points
—30 percent weighted average amenity weight
—Nominal weight: 15 percent

- Dwelling Units:

—Score: 80 points
—90 percent weighted average amenity weight
—Nominal weight: 35 percent

To continue the scoring protocol, the adjusted area weights for all five inspectable areas are determined. For purposes of this example, the adjusted weights and maximum possible points for each of the five inspectable areas are shown in the table below. All of the values in this table, except for the values for building exteriors, are presumed. The values for building exteriors were calculated as part of this ongoing example.

Inspectable area	Area weight	×	Amenity weight	=	Amenity weighted average	/	Total adjusted weight	×	Normalized to 100 point scale	=	Maximum possible points
Site	15		1.00		15.0		81.2		100		18.5
Building Exterior	15		0.95		14.2		81.2		100		17.5
Building Systems	20		0.80		16.0		81.2		100		19.7
Common Areas	15		0.30		04.5		81.2		100		05.5
Dwelling Units	35		0.90		31.5		81.2		100		38.8
Total					81.2						100.0

The nominal possible points for each inspectable area is multiplied by the amenity weight, divided by the total adjusted amenity weight, and normalized to a 100-point basis to produce the possible points for the inspectable area. The property score is the sum of all weighted area scores for that property. The sample shown below reflects how the deficiency from example #1 in the building exterior area impacts the overall property score. The property score of 77.8 is rounded to 78 for the final example.

Inspectable area	Area points	×	Area score	/	Normalized to a 100 point scale	=	Project #1 weighted area scores
Site	18.5		90		100		16.7
Building Exterior	17.5		74		100		13.0
Building Systems	19.7		70		100		13.8
Common Areas	05.5		60		100		03.3
Dwelling Units	38.8		80		100		31.0
Total	100.0						77.8

13. Computing the PHAS Physical Inspection Score

The overall physical inspection score for the PHAS for a PHA is the weighted average of the PHA's individual project physical inspection scores, where the weights are the number of units in each project divided by the total number of units in all projects for the PHA. For example, the project described in Example #1 from above has a score of 78 with 30 units. Using another project with a score of 92 and 650 units with project from Example #1 would calculate to an overall physical inspection score of 91. Note the impact on the overall physical inspection of a single property with a large number of units.

Project	Weighted average property score	×	Rescaling to the 30-point basis	=	×	Number of units in the property	/	Total PHA units	=	Project weighted area score
#1	78		.3	23.4		30		680		1.0
#2	92		.3	27.6		650		680		26.4
Total	100									27.4

The physical subsystem indicator score for this PHA provided to HUD's centralized scoring system would be 27.4, rounded to a score of 27. Weighted-average property scores are scaled to a 30-point basis by multiplying by 0.3. The total is then multiplied by the number of units within the property and divided by the total number of PHA units, to produce a unit-weighted average. All of the project's weighted area scores are totaled and rounded using a rounding policy of rounding up to the nearest whole number a score ending in 0.5 and above, and rounding down a score ending in 0.4 and below.

14. Examples of Sampling Weights for Buildings

As shown above, buildings with the most dwelling units have the greatest impact on the project's overall physical score. Buildings with the most dwelling units also have the greatest likelihood of being selected for inspection. The determination of which buildings will be inspected is a two-phase process. In Phase 1 of the process, all buildings that contain dwelling units are sorted by size and then the units are randomly sorted within each building. A computer program selects a random sample of units to be inspected.

All buildings in a project may not be selected in the building sample during Phase 1 sampling, because a building may have so few units such as a sole scattered-site single family unit. A Phase 2 sampling is used to increase the size of the number of buildings selected. In Phase 2, the additional buildings that are included in the sample are selected with equal probability so that the residential building sample size is the lesser of either the dwelling unit sample size or the number of all residential buildings. All common buildings are selected for inspection. To illustrate the process for sampling buildings, two examples are provided below:

Example #1. This first example uses a project with two buildings where both buildings are selected for inspection. Building A has 10 dwelling units and building B has 20 dwelling units, for a total of 30 dwelling units. The target dwelling unit sample size for a project with 30 dwelling units is 15 units. The sampling ratio for this project is two and is calculated by dividing the 15 target units by the total number of units (30/15=2). In this illustration, every second dwelling unit will be selected from the random sort of the units within each building. Since both buildings have at least 2 dwelling units, both buildings are certain to be selected for inspection in Phase 1. Since all buildings were selected in Phase 1 of sampling, Phase 2 is not required. Both buildings in this example have a selection probability of 1.00 and a sampling weight of 1.00.

Example #2. This example uses a project where only some of the buildings within the project are selected for inspection in Phase 1, so a Phase 2 sampling is required. For this example, a project is comprised of 22 residential buildings. Two buildings each have 10 dwelling units and 20 buildings are scattered-site single family dwelling units. The project has 40 total dwelling units (two buildings with 10 units each added to 20 single units (20+20)). The target sample size for a project with 40 dwelling units is 16 units, and the sampling ratio would be 2.5 (40 total dwelling units divided by 16 target dwelling units). Since the target sample size is the lesser of either the dwelling unit sample size (16) or the number of all residential buildings (22), 16 residential buildings would be inspected for this project.

In Phase 1 of sampling, the 2 buildings with 10 dwelling units are selected with certainty since they both have more than 2.5 dwelling units. Each of the scattered-site single family buildings then have a 40 percent probability of selection (100 percent or 1 divided by the 2.5 sampling ratio equals 0.40). Assume that both large buildings and 8 of the single family buildings (10 buildings in all) were selected in Phase 1. This leaves 12 single family buildings available for selection during Phase 2. Since 16 residential buildings need to be inspected, the sample of 10 buildings selected in Phase 1 falls 6 buildings short of a full sample. Therefore, the system will select 6 of the 12 previously unselected buildings during Phase 2 sampling. The chance of any single building, of the 12 remaining buildings, being selected during Phase 2 is 0.50 or 50 percent (6 target buildings divided by 12 previously unselected buildings). The overall probability of any one of the 20 single family units being selected during either Phase 1 or Phase 2 is calculated as follows:

Element	Protocol	Calculation
Phase 1 Single Family Unit Building Selection	8 of 20 buildings	8/20 = .40
Phase 2 Single Family Unit Building Selection	6 of 12 buildings	6/12 = .50
Overall Possibility of Single Family Unit Building Selection During Phase 2.	100% minus the 40% already selected during Phase 1 and multiplied by the 50% chance of being selected during Phase 2.	(1.00 − .40) × .50 = .30s
Overall Probability of a Single Family Unit Building Selection.	Probability from Phase 1 added to probability from Phase 2.	.40 + .30 = .70
Verification—Overall Single Family Unit Building Selection.	14 of 20 buildings	14/20 = .70
Probability Weight* of Selection for Single Family Unit Building Selection.	1 divided by the overall probability of Single Family Unit Building Selection.	1.00/.70 = 1.43

*See the note in Section VI.1 under the definition for normalized sub-area weight.

15. Accessibility Questions

HUD reviews particular elements during the physical inspection to determine possible indications of noncompliance with the Fair Housing Act (42 U.S.C. 3601–3619) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). More specifically, during the physical inspection, the inspector will record if: (1) There is a wheelchair-accessible route to and from the main ground floor entrance of the buildings inspected; (2) the main entrance for every building inspected is at least 32 inches wide, measured between the door and the opposite door jamb; (3) there is an accessible route to all exterior common areas; and (4) for multi-story buildings that are inspected, the interior hallways to all inspected units and common areas are at least 36 inches wide. These items are recorded, but do not affect the score.

Appendix B to Part 902—Financial Condition Scoring

I. Purpose of This Appendix

This appendix provides information about the scoring process for PHAS Indicator #2, Financial Condition. The purpose of the Financial Condition Indicator is limited to measuring the financial condition of the Low-Rent and Capital Fund programs of the project(s) and PHA.

II. Background

A. Financial Condition Indicator Regulatory Background

To reflect a shift from a PHA-wide based assessment to one that is property based, HUD is revising the Financial Assessment Sub-System for public housing (FASS–PH) Financial Data Schedule (FDS) and financial condition scoring process. Project-based management is defined in 24 CFR 990.115 as ''the provision of property management services that is tailored to the unique needs of each property.'' PHAs must also implement project-based budgeting and project-based accounting, which are essential components of asset management. Project-based accounting is critical to a property-based assessment of financial condition, because it mandates the submission of property-level financial data. Accordingly, PHAs will now be scored at a property level, using the already designated projects as the basis for assessment.

The condition of the Low-Rent program and Capital Fund program will be evaluated at the project level, producing individual project scores within the PHA. Project performance will be scored and averaged across the PHA, weighted according to unit count. The projects within a PHA will be

evaluated and scored based on the project's performance relative to industry standards.

B. Comparable Scoring Systems

The financial condition subindicators are not unique to public housing. The subindicators included in the Financial Condition Indicator scoring process are common measurements used throughout the multifamily industry to rank properties and identify the properties that require further attention.

III. Subindicators

A. Subindicators of the Financial Condition Indicator

There are three subindicators that examine the financial condition of each project. The values of the three subindicators, calculated from the project level data, comprise the overall financial assessment of a project. The three subindicators of the Financial Condition Indicator are:

- Quick Ratio (QR);
- Months Expendable Net Assets Ratio (MENAR); and
- Debt Service Coverage Ratio (DSCR).

B. Description of the Financial Condition Subindicators

The subindicators are described as follows:

Subindicator #1, QR. This subindicator is a liquidity measure of the project's ability to cover current liabilities. It is measured by dividing adjusted unrestricted current assets by current liabilities. The purpose of this ratio is to indicate whether a project could meet all current liabilities if they became immediately due and payable. A project should have available current resources equal to or greater than its current liabilities in order to be considered financially liquid. The QR is a commonly used liquidity measure across the industry. Maintaining sufficient liquidity is essential for the financial health of an individual project.

Subindicator #2, MENAR. This subindicator measures a project's ability to operate using net available, unrestricted resources without relying on additional funding. In particular, it is computed as the ratio of net available unrestricted resources to average monthly operating expenses. The result of this calculation shows how many months of operating expenses can be covered with currently available, unrestricted resources.

Subindicator #3, DSCR. This subindicator is a measure of a project's ability to meet regular debt obligations. This subindicator is calculated by dividing adjusted operating income by a project's annual debt service. It indicates whether the project has generated enough income from operations to meet annual interest and principal payment on long-term debt service obligations.

IV. GAAP-Based Scoring Process and Elements of Scoring

A. Points and Threshold

The Financial Condition Indicator is based on a maximum of 20 points. In order to receive a passing score under this indicator, a project must achieve at least 12 points, or 60 percent of the available points under this indicator.

B. Scoring Elements

The Financial Condition Indicator score provides an assessment of a project's financial condition. Under the PHAS Financial Condition Indicator, HUD will calculate a score for each project, as well as for the PHA overall financial condition, that reflects weights based on the relative importance of the individual financial subindicators. The overall Financial Condition Indicator score for a PHA is a unit-weighted average of the PHA's individual project financial condition scores. In order to compute an overall financial condition score, an individual project financial condition score is multiplied by the number of units in each project to determine a ''weighted value.'' The sum of the weighted values is then divided by the total number of units in a PHA's portfolio to derive the overall PHAS Financial Condition Indicator score. The three subindicator scores are produced using GAAP-based financial data contained in the FDS. The minimum number of points (zero) and the maximum number of points (twenty) can be achieved over a range of values.

Subindicators	Measurement of	Points
QR	Liquidity	9.0
MENAR	Adequacy of reserves	9.0
DSCR	Capacity to cover debt	2.0
Total		20.0

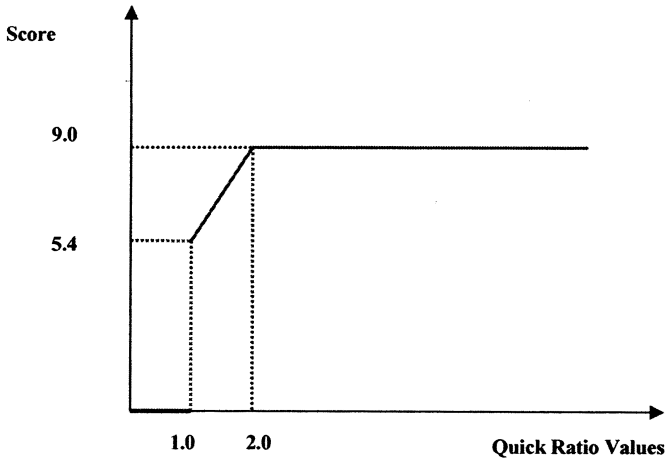
QR

A project will receive zero points when its QR is less than 1.0. If its QR equals 1.0, it will receive 5.4 points. If its QR is between 1.0 and 2.0, it will receive a score of between 5.4 and 9.0 points, on a proportional basis. A project will receive the maximum of 9.0 points when its QR is equal to or greater than 2.0.

QR value	Points
<1.0	0.0.
1.0	5.4.
≥1.0 but ≥2.0	>5.4 to <9.0.
≥2.0	9.0.

The following graph depicts the relationship between the QR and scores.

Graph 1: Financial Condition Subindicator #1: Quick Ratio (QR)



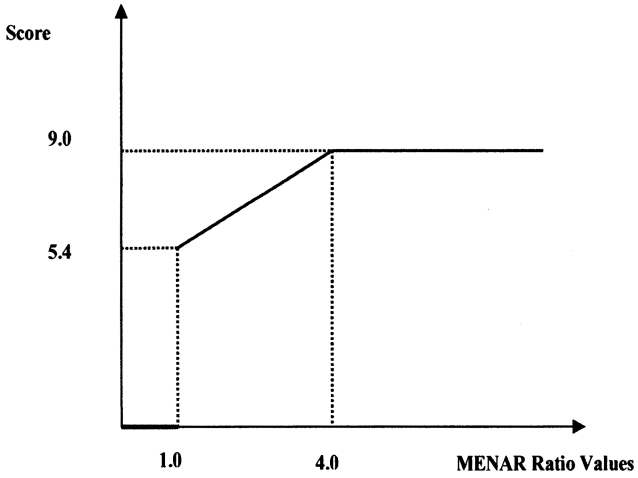
MENAR

A project will receive zero points when its MENAR is less than 1.0. If its MENAR equals 1.0, it will receive 5.4 points. If its MENAR is between 1.0 and 4.0, it will receive a score of between 5.4 and 9.0 points, on a proportional basis. A project will receive the maximum of 9 points when its MENAR is equal to or greater than 4.0.

MENAR value	Points
<1.0	0.0
1.0	5.4
≥1.0 but <4.0	>5.4 to <9.0
≥4.0	9.0

The following graph depicts the relationship between the MENAR and scores.

Graph 2: Financial Condition Subindicator #2: MENAR



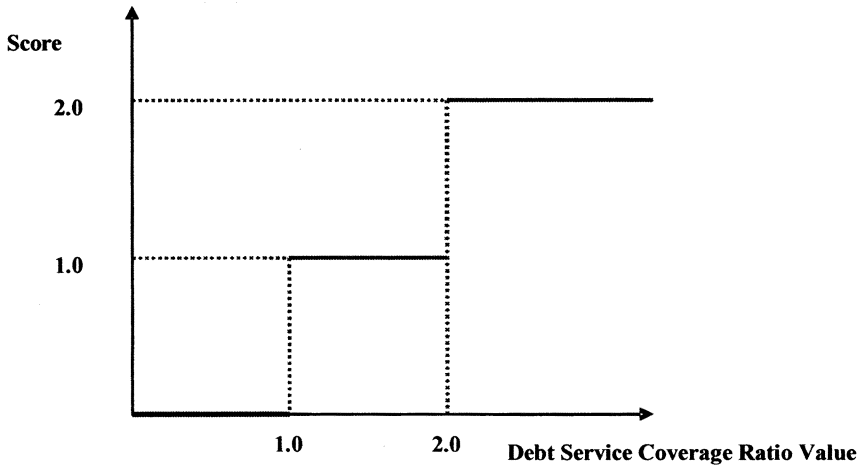
DSCR

A project will receive zero points when its DSCR ratio is less than 1.0. If its DSCR equals at least 1.0 but less than 2.0, it will receive 1 point. A project will receive the maximum of 2.0 points if its DSCR is equal to or greater than 2.0 or if it has no debt at all.

DSCR value	Points
<1.0	0.0
≥1.0 but <2.0	1.0
≥2.0	2.0
No Debt Service	2.0

The following graph depicts the relationship between the DSCR and scores.

Graph 3: Financial Condition Subindicator #3: DSCR



V. Audit Adjustment

Pursuant to 24 CFR 902.30, HUD calculates a revised financial condition score after it receives audited financial information. The revised financial condition score, which is based on the audited information, can increase or decrease the initial PHA-wide score that was based on the unaudited financial information. The audited score reflects two types of adjustments. The first type is based on audit flags and reports that result from the audit itself. Significant deficiencies and material weaknesses are considered to be audit flags, alerting the REAC to an internal control deficiency or an instance of noncompliance with laws and regulations. The second adjustment type addresses significant differences between the unaudited and audited financial information reported to HUD pursuant to § 902.30.

Audit Opinion and Flags

As part of the analysis of the financial health of a PHA, including assessment of the potential or actual waste, fraud, or abuse at a PHA, HUD will look to the Audit Report to provide an additional basis for accepting or adjusting the financial component scores. The information collected from the annual Audit Report pertains to the type of audit opinion; details of the audit opinion; and the presence of significant deficiencies, material weaknesses, and noncompliance.

If the auditor's opinions on the financial statements and major federal programs are anything other than unqualified, points could be deducted from the PHA's audited financial score. The REAC will review audit flags to determine their significance as it directly pertains to the assessment of the PHA's financial condition. If the flags have no effect on the financial components or the overall financial condition of the PHA as it relates to the PHAS assessment, the audited score will not be adjusted. However, if the flags have an impact on the PHA's financial condition, the PHA's audited score will be adjusted according to the seriousness of the reported finding.

These flags are collected on the Data Collection Form (OMB approval number 2535–0107). The PHA completes this form for audited submissions. If the Data Collection Form indicates that the auditor's opinion will be anything other than unqualified, points can be deducted from the financial condition score. The point deductions have been established using a three-tier system. The tiers give consideration to the seriousness of the audit qualification and limit the deducted points to a reasonable portion of the PHA's total score.

Audit Flag Tiers

Audit flags are assigned tiers, as stated in the following chart.

AUDIT FLAGS AND TIER CLASSIFICATIONS

Audit flags	Tier classification	Comments
Financial Statement Audit Opinion(s):		
1. Unqualified opinion(s)	None.	
2. Qualified opinion(s).		
• Departures from GAAP not significant enough to cause an adverse opinion(s).	Tier 2	Deduction only if the departure includes the Low Rent or Capital Fund programs.
• Limitations on the scope of the audit (regardless of cause) not significant enough to cause a disclaimer of opinion..		
3. Adverse opinion(s) regardless of reason(s)	Tier 1.	
4. Disclaimer of opinion(s) regardless of reason(s)	Tier 1.	
Opinion(s) on Supplemental Information (Statement of Auditing Standard (SAS) 29 "in relation to" type of opinion):		
1. Fairly stated	None	Applies to the FDS.
2. Fairly stated except for:	Tier 2.	
3. No opinion	Tier 1.	
4. Incomplete or missing	Tier 1.	
Report on Internal Control and Compliance and Other Matters Noted in an Audit of the Financial Statement performed in accordance with Government Auditing Standards (GAS) (Yellow Book):		
1. Control deficiencies	Tier 3.	
• Significant deficiencies;		
• Material weakness;		

AUDIT FLAGS AND TIER CLASSIFICATIONS—Continued

Audit flags	Tier classification	Comments
2. Material noncompliance	Tier 3	Deduction applies only if the internal control deficiency and/or noncompliance relates to the Low Rent or Capital Fund programs.
3. Fraud	Tier 3.	
4. Illegal acts	Tier 3.	
5. Abuse	Tier 3.	
Report on Compliance with Requirements Applicable to Major Federal Programs and Internal Control over Compliance with OMB Circular A–133—		
Opinion on compliance with each major federal program requirements:		
1. Unqualified opinion(s) on compliance with Low Rent program and Capital Fund program major federal requirements.	None.	
2. Qualified opinion(s) on compliance with Low Rent Program program and Capital Fund program major federal requirements (regardless of cause).	Tier 2.	
3. Adverse opinion(s) on compliance with Low Rent program and Capital Fund program major federal requirements (regardless of cause).	Tier 1.	
4. Disclaimer of opinion(s) on compliance with Low Rent Program and Capital Fund program major federal requirements (regardless of cause).	Tier 1.	
Internal Controls and Compliance:		
1. Control Deficiencies:	Tier 3.	
• Significant deficiencies in internal controls over compliance with Low Rent program and Capital Fund program requirements.		
• Material weakness in internal controls over compliance with Low Rent program and Capital Fund program requirements.		
2. Material noncompliance with Low Rent program and Capital Fund program requirements.	Tier 3.	
Other Consideration:		
1. Significant change penalty deduction applies only if the significant change(s) relate to the Low Rent or Capital Fund programs.	Tier 2.	
2. Ongoing concerns	Tier 1.	
3. Management Discussion and Analysis and other supplemental information omitted.	Tier 2.	
4. Financial statements using basis other than GAAP	Tier 1.	

Each tier assesses point deductions of varying severity. The following chart illustrates the point schedule:

Tier	PHAS points deducted
Tier 1	Any Tier 1 finding assesses a 100 percent deduction of the PHA's financial condition indicator score.
Tier 2	Any Tier 2 finding assesses a point deduction equal to 10 percent of the unadjusted financial condition indicator score.
Tier 3	Each Tier 3 finding assesses a 0.5 point deduction per occurrence, to a maximum of 4 points of the financial condition indicator score.

Review of Audited Versus Unaudited Submission

The purposes of comparing the ratios and scores from the unaudited FDS submission to the ratios and scores from the audited submission are to:

• Identify significant changes in ratio calculation results and/or scores from the unaudited submission to the audited submission;

• Identify PHAs that consistently provide significantly different data from their unaudited submission in their audited submission; and

• Assess or alleviate penalties associated with the inability to provide reasonably accurate unaudited data within the required time frame.

This review process will be performed only for the audited submissions.

Significant Change Penalty

HUD views the transmission of significantly inaccurate unaudited financial data as a serious condition. Therefore, projects are encouraged to assure that financial data is as reliable as possible for their unaudited submissions.

A significant change penalty will be assessed for significant differences between the unaudited and audited submissions. A significant difference is considered to be an overall financial condition score decrease of three or more points from the unaudited to the audited submission. A significant change penalty is considered a tier 2 flag and will result in a reduction of 10 percent of the total audited financial condition score.

For example: A PHA scores 30 points on its unaudited submission. The audited submission score is 26 points. Because the 10 percent reduction is 2.6 points, 2.6 is rounded to the next whole number, 3.0 points. Therefore, the PHA audited score is 23 points (26 points minus 3 points equals 23 points).

The PHAS system automatically deducts the significant change penalty from the audited score, and this reduction triggers the REAC analyst's review. REAC may waive the significant change penalty if the project provides reasonable documentation of the significant difference in its submission.

Appendix C to Part 902—Management Operations Scoring

I. Purpose of This Appendix

This appendix provides additional information about the scoring process for the PHAS Management Operations Indicator. The purpose of the management operations assessment is to assess the project's and PHA's management operations capabilities. All projects will be assessed under the Management Operations Indicator, even if a PHA has not converted to asset management.

This PHAS Management Operations Scoring document has been revised to reflect research HUD conducted through informal meetings with representatives of PHAs, residents, projects, and public housing industry groups, and to provide the basis for scoring projects on the management operations. This management operations scoring document is applicable to PHAs with fiscal years ending on and after June 30, 2009.

II. Definitions

As used in this appendix:

Adjusted vacancy rate is a project's vacancy rate excluding all exemptions. If a project qualifies for this adjustment, it shall retain justifying documentation for HUD review.

Assessment period is the 12-calendar-month period as of the end of the calendar month before the management review of public housing projects begins, or the period of time as defined in each component.

Average number of days tenant-generated work orders were open during the assessment period is the total number of days tenant-generated work orders were open divided by the total number of tenant-generated work orders.

Changing market conditions are when projects are in communities that are undergoing dramatic population loss or economic dislocations. Projects should maintain documentation of the specific condition, *i.e.*, population loss, business relocations, etc., along with evidence of the marketing and outreach approaches utilized by projects. Projects must demonstrate:

(1) Exhaustive marketing efforts;

(2) Efforts to modernize the units to make the units more closely match market demand in terms of size, type, or amenities; and

(3) Consideration given to deprogramming if the market does not respond to marketing or modernization efforts.

Invoices in dispute are invoices challenged by the project and the project has sent documentation to the vendor that explains why the invoices are challenged.

Management Review Form (Review Form), form HUD–5834, Management Review for Public Housing Projects, is the review form used by HUD when conducting a management review of public housing projects.

Preventive maintenance plan is a planned course of action for scheduled maintenance procedures that are systematically performed at regular intervals to prevent premature deterioration of buildings and systems. A preventive maintenance plan should include:

(1) The identification of:

(a) Critical systems, such as heating, ventilation and air conditioning (HVAC), and fire safety;

(b) Building elements, such as roofs and exterior walls; and

(c) Grounds care, such as parking lots and fencing.

(2) Appropriate strategies and protocols for performing preventive maintenance on each system and building element, and for grounds care; and

(3) A schedule for conducting preventive maintenance appropriate to each system and building element, and for grounds care.

Reduced average number of days tenant-generated work orders were open during the previous 3 years is a comparison of the average time tenant-generated work orders were open in the current assessment period to the average number of days tenant-generated work orders were open in the single calendar month that is 3 years prior to the current assessment period. It is calculated by subtracting the average number of days tenant work orders were open in the current assessment period from the average number of days tenant-generated work orders were open in the earlier assessment period. In order to receive credit for a reduction in the average time tenant-generated work orders were active during the previous 3 years, the project shall retain justifying documentation for HUD review.

Reduced vacancy rate during the previous 3 years is a comparison of the adjusted vacancy rate in the current assessment period to the adjusted vacancy rate in the single calendar month that is 3 years prior to the current assessment period. It is calculated by subtracting the adjusted vacancy rate in the current assessment period from the adjusted vacancy rate in the earlier assessment period.

Vacancy days associated with a vacant unit receiving section 9(d) funds in accordance with 24 CFR 990.145. Neither vacancy days associated with a vacant unit prior to that unit meeting the condition of being a unit receiving section 9(d) fund nor vacancy days associated with a vacant unit after construction work has been completed or after the time frame for placing the vacant unit under construction has expired shall be exempted. The following apply when computing time frames for a vacant unit receiving section 9(d) funds:

(1) The calculation of turnaround time for newly modernized units starts when the unit is turned over to the PHA from the contractor and ends when the lease goes into effect for the new or returning resident. The total vacancy time would be the sum of the pre-modernization vacancy time (vacancy days that had accumulated prior to the unit being included in the section 9(d) budget), and the post-modernization vacancy time (from the time the unit is turned over to the PHA from the contractor).

(2) Unit-by-unit documentation, showing the date a vacant unit was included in a HUD-approved section 9(d) budget, the date it was released to the PHA by the contractor, and the date a new lease is effective for the new or returning resident, or the date the time period for placing the vacant unit under construction expired.

III. Subindicators

A. Subindicators of Management Assessment Indicator

The criteria (subindicators and components) of the management review of projects are included in form HUD–5834, Management Review for Public Housing Projects. The Management Operations Indicator consists of 5 management subindicators and 12 components that are scored. The remaining 2 subindicators and 9 components are compliance areas and are not scored. Table 1 lists the subindicators and components.

TABLE 1—MANAGEMENT OPERATIONS INDICATOR

Subindicator	Component
1. General Appearance and Security	1.1 Appearance and Market Appeal.
	1.2 Security.
2. Follow-Up and Monitoring of Project Inspections (Not Scored)	2.1 Exigent Health and Safety (EHS) Deficiencies (Not Scored).
	2.2 Lead-Based Paint (LBP) Inspection Deficiencies (Not Scored).
3. Maintenance and Modernization	3.1 Unit Inspections.
	3.2 Work Orders.
	3.3 Preventive Maintenance.
	3.4 Energy Conservation/Utility Consumption.
	3.5 Modernization (Not Scored).
4. Financial Management	4.1 Percentage of Accounts Payable.
	4.2 Rent Collection.
	4.3 Budget Management (Not Scored).
	4.4 Procurement (Not Scored).
5. Leasing and Occupancy	5.1 Vacancy Rate.
	5.2 Turnaround Time.
	5.3 Occupancy Review (Not Scored).
6. Tenant/Management Relations	6.1 Economic Self-Sufficiency.
	6.2 Resident Involvement in Project Administration.
7. General Management Practices (Not Scored)	7.1 Management Review Findings (Not Scored).
	7.2 Other Prior Review Findings (Not Scored).
	7.3 Insurance (Not Scored).

The areas that are not scored are included in the management review of public housing projects, because the information they provide is integral to supporting good management operations.

B. Grades for Management Assessment Subindicators and Components

Subindicator #1, General Appearance and Security. This subindicator evaluates the appearance of a project, and the level of security, including level of crime, screening of applicants, eviction of residents for crime and crime-related activities, and coordination with local officials and residents to implement anti-crime strategies.

Component #1.1, Appearance and Market Appeal. This component evaluates, at the time of the review, the appearance of a project's exterior and common areas, including the degree to which the project is attractive, appealing, and clean, and that it demonstrates market appeal. The project's evaluation will be based on either ''Superior,'' ''Satisfactory,'' or ''Unsatisfactory'' ratings in 12 areas. If any area does not apply to the project, the area's points will not be included in the total points for this component, to avoid penalizing a project. The 12 areas are as follows:

Superior Performance:

(1) Attractive project entrance with appropriate signage and plantings.

(2) Attractive, well-maintained landscaping—trees, shrubs, grass not overgrown.

(3) Building exteriors including paint, siding, and masonry are in good repair.

(4) No graffiti.

(5) Paved surfaces—parking lots, streets, and walks are in good repair.

(6) Public spaces and amenities are well maintained.

(7) Fencing, railing, porches, overhangs, and ramps are in good condition and enhance project appearance.

(8) Windows have no torn or damaged window treatments, and blankets, bed sheets, or other materials not designed to be window treatments are not used for window coverings.

(9) Overall project appearance is not institutional (*i.e.*, building looks like an institution, dull, uniform, unimaginative) and exceeds the standards in the surrounding neighborhood.

(10) Project is clean and free of debris, trash, clutter, and/or abandoned vehicles.

(11) Dumpsters and trash cans are clean and properly enclosed.

(12) No evidence of damaged and/or boarded-up units.

Satisfactory Performance:

(1) Moderately attractive project entrance with signage and plantings.

(2) Landscaping is average—trees, shrubs, grass not overgrown.

(3) Building exteriors including paint, siding, and masonry are at least in fair repair.

(4) Limited graffiti in no more than 5 places.

(5) Paved surfaces—parking lots, streets, and walks are at least in moderate repair.

(6) Public spaces and amenities are at least moderately maintained.

(7) Fencing, railing, porches, overhangs, and ramps are at least in moderate condition and do not detract from project appearance.

(8) Windows have no more than 5 torn or damaged window treatments and blankets, bed sheets, or other materials not designed to be window treatments are not used for window coverings.

(9) Overall project appearance is somewhat institutional and is at least equivalent to surrounding neighborhood.

(10) Project is at least moderately clean, with minimal debris, trash, clutter, and/or abandoned vehicles.

(11) Dumpsters and trash cans are at least moderately clean and usually enclosed.

(12) No more than 5 damaged and/or boarded-up units.

Unsatisfactory Performance:

(1) Project entrance is not attractive, with no signage and limited plantings.

(2) Landscaping is below average—trees, shrubs and/or grass are overgrown.

(3) Building exteriors including paint, siding, and masonry are in poor repair.

(4) Excessive graffiti in 6 or more places.

(5) Paved surfaces—parking lots, streets, and walks are in poor repair.

(6) Public spaces and amenities are not maintained.

(7) Fencing, railing, porches, overhangs, and ramps are in poor condition and detract from project appearance.

(8) Windows have 6 or more torn or damaged window treatments and blankets, bed sheets, or other materials not designed to be window treatments are used for curtains.

(9) Overall project appearance is institutional and is worse than the surrounding neighborhood.

(10) Project is not clean because of significant debris, trash, clutter and/or abandoned vehicles.

(11) Dumpsters and/or trash cans are not clean and generally unenclosed.

(12) Six or more damaged and/or boarded-up units.

Grade A: The project:

(1) Achieves 80 percent or greater of the points possible for all of the criteria for which the project is assessed; and

(2) Has zero unsatisfactory ratings.

Grade C: The project achieves less than 80 percent but greater than or equal to 50 percent of the points possible for all of the criteria for which the project is assessed.

Grade F: The project achieves less than 50 percent of the points possible for all of the criteria for which the project is assessed.

Component #1.2, Security. This component evaluates, at the time of the review, a project's performance in tracking crime-related problems on project property, the adoption and implementation, consistent with section 9 of the Housing Opportunity Program Extension Act of 1996 (42 U.S.C. 1437d(r)) and the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105–276, October 21, 1998), of applicant screening and resident eviction policies and procedures, and the coordination with local officials and residents to implement anti-crime strategies.

Grade A: The project can meet the criteria for the three following items:

(1) There is no evidence of a crime problem at the project or the crime rate at the project is equal to or less than the crime rate for the surrounding neighborhood;

(2) The project has formally adopted effective applicant screening policies and procedures that deny admissions to applicants on the basis of the following, as stated in 24 CFR 960.204:

- The applicant was evicted because of drug-related activity from assisted housing within the last 3 years, unless the applicant has successfully completed a rehabilitation program approved by the project;
- The project has reason to believe the applicant is illegally using a controlled substance, or engages in any drug-related activity on or off the project;
- The project has reason to believe the applicant is abusing alcohol, which interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents;
- The applicant or any household member of the applicant has been convicted of drug-related criminal activity for the manufacture or production of methamphetamine on the premises of federally assisted housing; or
- The applicant or any member of the applicant's household is subject to a lifetime registration requirement under a state sex offender registration program.

(3) The project has formally adopted effective policies and procedures to evict residents who the project has reasonable cause to believe, as follows:

- Engage in criminal activity that threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or project personnel;
- Engage in any drug-related criminal activity on or off the project premises; or
- Abuse alcohol in a way that interferes with the health, safety, and peaceful enjoyment of the premises by other residents or project personnel.

Grade C: The project:

(1) Can meet the criteria for items (2) and (3) in grade A of this component; and

(2) Cannot meet the criteria in item (1) in grade A of this component; and

(3) Has formally adopted an effective security plan developed in coordination with local police officials and residents to implement anti-crime strategies.

Grade F: The project:

(1) Cannot meet the criteria for items (2) and (3) in grade A, above; or

(2) Cannot meet the criteria in item (1) in grade A of this component; and

(3) Has not formally adopted an effective security plan developed in coordination with local police officials and residents to implement anti-crime strategies.

Subindicator #2, Follow-Up and Monitoring of Project Inspections. This subindicator examines a project's performance, at the time of the review, in correcting or abating exigent health and safety (EHS) deficiencies and lead-based paint (LBP) abatement. This subindicator is not scored.

Component #2.1, Exigent Health and Safety (EHS) Deficiencies. This component examines a project's performance, at the time of the review, in correcting or abating EHS deficiencies identified during its most recent HUD physical condition inspection. This component is not scored.

Component #2.2, Lead-Based Paint (LBP) Inspection Deficiencies. This component examines a project's performance, at the time of the review, in maintaining current LBP certifications for projects built before 1978, and performing risk assessments and hazard reduction, if necessary, for reported elevated intervention blood lead levels (EIBLLs). This component is not scored.

Subindicator #3, Maintenance and Modernization. This subindicator measures a project's performance in conducting unit inspections, responding to tenant-generated work orders, performing preventive maintenance, managing utility consumption/energy conservation, and managing modernization activities.

Component #3.1, Unit Inspections. This component measures the percentage of units that a project inspected for the 12-calendar-month period as of the end of the calendar month before the management review of public housing projects begins in order to determine short-term maintenance needs and long-term modernization needs. The project is required to conduct unit inspections using the HUD inspection protocol that is based on the Uniform Physical Condition Standards (UPCS) set forth in 24 CFR part 5, subpart G. HUD will consider the following:

• Adequacy of the inspection program. The project must have an adequate inspection program in terms of tracking inspections, and in ensuring the thoroughness and quality of the project's inspections.

• Units to be inspected. All occupied units and/or units available for occupancy are required to be inspected. This includes units used for non-dwelling purposes, those occupied by employees, and those used for resident services.

• Units exempted. Units in the following categories are exempted and not included in the calculation of the total number of units, and the percentage of units inspected for the assessed period.

(1) Occupied units for which a project has documented two attempts to inspect the unit during the assessment period, but only if the project can document that appropriate legal action (up to and including eviction of the legal or illegal occupant(s)) has been taken under the lease to ensure that the unit can be subsequently inspected.

(2) Units vacant during the assessment period for the following reasons:

(a) Vacant units that are receiving section 9(d) Capital Funds; or

(b) Vacant units that are documented to be uninhabitable for reasons beyond a project's control due to:

(i) High/unsafe levels of hazardous/toxic materials;

(ii) An order of the local health department or state agency or a directive of the Environmental Protection Agency;

(iii) Natural disasters; or

(iv) Units that are kept vacant because they are structurally unsound.

• Supporting documentation for vacant units that are uninhabitable for reasons beyond project's control. A project shall maintain information to support its determination of vacant units that are uninhabitable due to circumstances and actions beyond the project's control. This supporting information is subject to review and may be requested for verification purposes at any time by HUD. The project shall, at a minimum, maintain:

(1) The date on which the unit met the conditions of being a vacant unit that is uninhabitable due to circumstances and actions beyond a project's control;

(2) Documentation identifying the specific conditions that distinguish the unit as a unit vacant due to circumstances and actions beyond a project's control;

(3) A description or list of the actions taken by a project to eliminate or mitigate these conditions; and

(4) The date on which the unit ceased to meet such conditions and became an available unit.

Grade A: The project:

(1) Scores 90 percent or more on a 100-point scale on HUD's physical condition inspection; or

(2) Inspects 99 percent or more of the units; and

(3) Has an adequate system for tracking unit inspections.

Grade C: The project:

(1) Inspects at least 95 percent but less than 99 percent of the units; and

(2) Has an adequate system for tracking dwelling unit inspections.

Grade F: The project:

(1) Inspects less than 95 percent of the units; or

(2) Does not have an adequate system for tracking dwelling unit inspections.

Component #3.2, Work Orders. This component measures the average number of days that tenant-generated maintenance work orders are outstanding. A project may choose either to be assessed: (1) for the most recent one-month period where the required information is available; or (2) for the 12-calendar-month period as of the end of the calendar month before the management review of public housing projects begins. For grade C(3), the assessment comparison is the completion performance in the single calendar month that is 3 years prior to the single calendar month being used in the assessment. The assessment of this component includes only those work orders that were closed during the period of time being assessed, even if the work order was opened prior to the period of time being assessed. It does not assess those work orders that were not closed during the period of time being assessed.

• Adequacy of the system to track work orders. It is implicit in this component that the project has an adequate system for tracking work orders, and ensuring the thoroughness and quality of the project's needed repairs.

Grade A: The project has:

(1) Scored 90 percent or more on a 100-point scale on HUD's physical condition inspection; or

(2) Completed tenant-generated work orders in less than an average of 3 days; and

(3) An adequate system for tracking work orders.

Grade C: The project has:

(1) Completed tenant-generated work orders in an average of at least 3 days but less than 10 days; and

(2) An adequate system for tracking work orders; or

(3) Completed tenant-generated work orders within an average of between 10 and 20 days; and

(a) Reduced the average time it takes to complete tenant-generated work orders by at least 10 days during the past 3 years; and

(b) An adequate system for tracking work orders.

Grade F: The project:

(1) Completed all tenant-generated work orders in an average of 10 or more days; or

(2) Does not have an adequate system for tracking work orders.

Component #3.3, Preventive Maintenance. This component evaluates a project's implementation of a written preventive maintenance plan, including but not limited to the identification of critical systems, building elements, grounds care and equipment, appropriate strategies and protocols for performing preventive maintenance on all plan items, and a schedule for conducting preventive maintenance for each item in the plan.

Grade A: The project:

(1) Conducts annual inspections of buildings, grounds, common areas, non-dwelling space, and major systems; and

(2) Has a sufficient preventive maintenance plan; and

(3) All of the elements in the project's preventive maintenance plan have been implemented.

Grade C: The project:

(1) Conducts annual inspections of buildings, grounds, common areas, non-dwelling space, and major systems; and

(2) Has a sufficient preventive maintenance plan; and

(3) At least 70 percent of the elements in the project's preventive maintenance plan have been implemented.

Grade F: The project:

(1) Does not conduct annual inspections of buildings, grounds, common areas, non-dwelling space, and major systems; or

(2) Does not have a sufficient preventive maintenance plan; or

(3) Less than 70 percent of the elements in the project's preventive maintenance plan have not been implemented.

Component #3.4, Energy Conservation/Utility Consumption. This component examines a project's energy conservation/utility consumption measures for projects that have had an energy audit within the past 5 years.

Grade A: The project:

(1) Has completed or updated its energy audit within the past 5 years and the project has implemented all of the recommendations that were cost-effective; or

(2) Is doing the maximum feasible to reduce energy consumption such that no energy audit conducted within the past 5 years has made cost-effective recommendations.

Grade C: The project:

(1) Has completed or updated its energy audit within the past 5 years and the energy audit is less than one-year old; or

(2) Has completed or updated its energy audit within the past 5 years, the energy audit is as least one-year old, and the project

has developed an implementation plan for all cost-effective recommendations and is on schedule with the implementation plan, based on available funds. The implementation plan identifies, at a minimum, the cost-effective items from the audit, the estimated cost, the planned funding source, and the anticipated date of completion for each item.

Grade F: The project did not complete or update its energy audit within the past 5 years, or the project has not developed an implementation plan for all cost-effective recommendations, or is not on schedule with its implementation plan based on available funds, or has not implemented all of the recommendations that were cost-effective.

Component #3.5, Modernization. This component examines the project's management of modernization and non-routine maintenance through the physical needs assessment, and examines project plans and budgets for modernization activities. This component is not scored.

Subindicator #4, Financial Management. This subindicator examines a project's timeliness in paying invoices that are not in dispute, the percentage of rents collected, the adequacy of a project's budget management, and the project's ability to plan and implement procurement actions.

Component #4.1, Percentage of Accounts Payable. This component examines, at the end of the most recent one-month period where the required information is available, a project's timeliness in paying invoices that are not in dispute.

• Adequacy of the system to track accounts payable. It is implicit in this component that the project has an adequate system for tracking accounts payable.

Grade A:

(1) All of the invoices that are not in dispute are 30 days or less outstanding; and

(2) The project has an adequate system for tracking accounts payable.

Grade C:

(1) One or more of the invoices that are not in dispute are greater than 30 days but no more than 60 days outstanding; and

(2) The project has an adequate system for tracking accounts payable.

Grade F:

(1) One or more of the invoices that are not in dispute are greater than 60 days outstanding; or

(2) The project does not have an adequate system for tracking accounts payable.

Component #4.2, Rent Collection. This component measures the percentage of rents collected, which is determined by dividing the total rents collected by the total rents charged to tenants. A project may choose to be assessed for either: (1) the most recent one-month period for which the required information is available, or (2) the 12-calendar-month period as of the end of the most recent calendar month where the required information is available. Rents include rental charges only and would not include other charges to tenants, such as court costs, maintenance costs, etc.

• Adequacy of the system to track rents collected. Implicit in this component is that the project has an adequate system to track and document total rents charged and total rents collected.

Grade A:

(1) The percentage of rents collected is at least 97 percent of the total rent to be collected; and

(2) The project has an adequate system to track and document total rents charged and total rents collected.

Grade C:

(1) The percentage of rents collected is at least 93 percent but less than 97 percent of the total rent to be collected; and

(2) The project has an adequate system to track and document total rents charged and total rents collected.

Grade F:

(1) The percentage of rents collected is less than 93 percent of the total rent to be collected; or

(2) The project does not have an adequate system to track and document total rents charged and total rents collected.

Component #4.3, Budget Management. This component examines the project's budgeting revenue and expenditure performance, as well as actual year-to-date revenue and expenditure performance, for the current fiscal year (or the prior fiscal year if the management review of public housing projects is conducted within the first quarter of the project's current fiscal year). This component is not scored.

Component #4.4, Procurement. This component examines a project's ability to plan for and implement procurement actions for the project in accordance with 24 CFR 85.36 and all other applicable laws and regulations. This component is not scored.

Subindicator #5, Leasing and Occupancy. This subindicator measures the average adjusted vacancy rate and unit turnaround time. The following categories of units that are not considered available for occupancy are exempted from the computation of adjusted vacancy rate and unit turnaround time.

(1) Units approved for special use. Units approved for special use that are exempt during the assessment period are HUD-approved units used to promote self-sufficiency and anti-drug and anti-crime activities, or for non-dwelling purposes, including but not limited to resident services, resident organization offices, police substations, day care centers, public safety activities, or resident job training.

(2) Employee occupied units. Employee occupied units that are exempt during the assessment period are units occupied by employees whose occupancy is contingent upon their continued employment by a project. However, units that are occupied by residents who meet the project's eligibility criteria and are also employed by the project shall not be exempted from the computation of adjusted vacancy rate and unit turnaround time.

(3) Vacant units approved for deprogramming. Vacant units approved for deprogramming that are exempt during the assessment period are HUD-approved units for demolition and/or disposition, vacant units that have been approved for conversion/reprogramming, or units vacated for vacancy consolidation.

(4) Vacancy days associated with vacant units receiving section 9(d) Capital Funds during the assessment period. Vacancies resulting from project modernization or unit modernization, provided that one of the following conditions are met:

(a) The unit is undergoing modernization (*i.e.*, the modernization contract has been awarded or force account work has started) and must be vacant to perform the work, and the construction is on schedule according to a HUD-approved PHA Annual Plan; or

(b) The unit must be vacated to perform the work and the treatment of the vacant unit is included in a HUD-approved PHA Annual Plan, but the time period for placing the vacant unit under construction has not yet expired. The PHA shall place the vacant unit under construction within 2 federal fiscal years (FFYs) after the FFY in which the capital funds are approved.

(c) Vacancy days associated with a vacant unit prior to the time the unit meets the conditions of being a unit receiving section 9(d) Capital Funds, and vacancy days associated with a vacant unit after construction work has been completed or after the time period for placing the vacant unit under construction has expired, shall not be exempted from the computation of adjusted vacancy rate and unit turnaround time.

(5) Vacancy days associated with units vacant during the assessment period due to circumstances and actions beyond a project's control. Circumstances and actions beyond a project's control may include, but are not limited to:

(a) Litigation. Units that are vacant due to litigation, such as a court order or settlement agreement that is legally enforceable; units that are vacant in order to meet regulatory and statutory requirements to avoid potential litigation (as covered in a HUD-approved PHA Annual Plan); and units under voluntary compliance agreements with HUD or other voluntary agreements acceptable to HUD (*e.g.*, units that are being held vacant as part of a court-order, HUD-approved desegregation plan, or as part of a voluntary compliance agreement requiring modifications to the units to make them accessible pursuant to 24 CFR part 8);

(b) Changing market conditions;

(c) Disasters. Units that are vacant due to a federally declared, state-declared, or other declared disaster; or

(d) Casualty losses. Damaged units that have sustained casualty damage and remain vacant due to delays in settling insurance claims, but only until the insurance claims are settled.

• Supporting documentation for section 9 Capital Fund program units. A project shall maintain information to support its determination of vacancy days associated with a vacant unit that meets the conditions of being a unit receiving section 9(d) Capital Funds under paragraph (4) of this section. The project shall, at a minimum, maintain:

(1) The date on which the unit met the conditions of being a vacant unit receiving section 9(d) Capital Funds; and

(2) The date on which construction work was completed or the time period for placing the vacant unit under construction expired.

• Supporting documents for vacancies beyond a project's control. A project shall

maintain information to support its determination of vacancy days associated with units vacant due to circumstances and actions beyond the project's control. This supporting information is subject to review and may be requested for verification purposes at any time by HUD. The project shall, at a minimum, maintain:

(1) The date on which the unit met the conditions of being a unit vacant due to circumstances and actions beyond a project's control;

(2) Documentation identifying the specific conditions that distinguish the unit as a unit vacant due to circumstances and actions beyond a project's control;

(3) A description or list of the actions taken by a project to eliminate or mitigate these conditions; and

(4) The date on which the unit ceased to meet such conditions and became an available unit.

Component #5.1, Vacancy Rate. This component measures the average adjusted vacancy rate for the 12-calendar-month period as of the end of the calendar month before the management review of public housing projects begins (except as noted in grades C(3) and D(3)), and the project's progress in reducing vacancies.

• Adequacy of the system to track vacancy rate. It is implicit in this component that the project has an adequate system for tracking vacancy rate.

Grade A: The project has:

(1) An adjusted vacancy rate of 2 percent or less; or

(2) For a project with fewer than 100 units, not more than the number of unit days for 2 units vacant for the entire year; and

(3) An adequate system for tracking vacancy days.

Grade B: The project has:

(1) An adjusted vacancy rate of greater than 2 percent and less than or equal to 4 percent; and

(2) An adequate system for tracking vacancy days.

Grade C: The project:

(1) Has an adjusted vacancy rate of greater than 4 percent and less than or equal to 6 percent; and

(2) Has an adequate system for tracking vacancy days; or

(3) Has:

(A) An adjusted vacancy rate of greater than 6 percent and less than or equal to 10 percent; and

(B) For the same calendar month 3 years prior, the adjusted vacancy rate was 16 percent or greater; and

(C) An adequate system for tracking vacancy days.

Grade D: The project:

(1) Has an adjusted vacancy rate of greater than 6 percent and less than or equal to 10 percent; and

(2) Has an adequate system for tracking vacancy days; or

(3) Has:

(A) An adjusted vacancy rate of greater than 10 percent and less than or equal to 14 percent;

(B) An adjusted vacancy rate of 20 percent or greater for the same calendar month 3 years prior; and

(C) An adequate system for tracking vacancy days.

Grade F: The project:

(1) Has an adjusted vacancy rate greater than 10 percent; or

(2) Does not have an adequate system for tracking vacancy days.

Component #5.2, Turnaround Time. This component examines the amount of time it takes a project to turn around units that were leased within the 12-calendar-month period as of the end of the calendar month before the management review of public housing projects begins.

• Adequacy of the system to track vacant unit turnaround time. It is implicit in this component that the project has an adequate system for tracking vacant unit turnaround time.

Grade A: The project has:

(1) Achieved a grade of A under component 5.1, vacancy rate; or

(2) Turned around vacant units in an average of less than 15 calendar days; and

(3) An adequate system for tracking vacant unit turnaround days.

Grade B: The project has:

(1) Turned around vacant units in an average of at least 15 calendar days but less than 20 calendar days; and

(2) An adequate system for tracking vacant unit turnaround days.

Grade C: The project has:

(1) Turned around vacant units in an average of at least 20 calendar days but less than 25 calendar days; and

(2) An adequate system for tracking vacant unit turnaround days.

Grade D: The project has:

(1) Turned around vacant units in an average of at least 25 calendar days but less than 30 calendar days; and

(2) An adequate system for tracking vacant unit turnaround days.

Grade F: The project:

(1) Has turned around vacant units in an average of 30 calendar days or more; or

(2) Does not have an adequate system for tracking vacant unit turnaround days.

Component #5.3, Occupancy Review. This component addresses all of the activities and procedures necessary to house and retain occupancy eligible low-income families, including accepting and processing applications, selecting families for assistance, minimizing vacancies and unit turnaround time in public housing, ensuring that public housing families comply with program requirements, and properly computing income and rent. This component is not scored.

Subindicator #6, Tenant/Management Relations. This subindicator evaluates the economic self-sufficiency opportunities provided for residents and the degree of resident involvement in the project's administration.

Component #6.1, Economic Self-Sufficiency. This component evaluates—for the calendar month ending before the management review of public housing projects begins—employment, self-sufficiency participation, and self-sufficiency opportunities provided for adult residents.

This component excludes any adult who:

(1) Is 62 years or older;

(2)(i) Is a blind or disabled individual, as defined under 216(i)(1) or 1614 of the Social Security Act (42 U.S.C. 416(i)(1); 1382c), or

(ii) Is a primary caretaker of such an individual;

(3) Meets the requirements for being exempted from having to engage in a work activity under the state program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*) or under any other welfare program of the state in which the PHA is located, including a state-administered welfare-to-work program; or

(4) Is a member of a family receiving assistance, benefits, or services under a state program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*) or under any other welfare program of the state in which the PHA is located, including a state administered welfare-to-work program, and has not been found by the state or other administering entity to be in noncompliance with such a program.

Grade A: The project has: (1) At least 85 percent of its households with a head, spouse, or sole member that is an elderly person or a disabled person; or

(2) At least 50 percent of its adult residents employed either full or part-time; or

(3) At least 10 percent of its adult residents participating in a self-sufficiency program.

Grade C: The project offers or coordinates with an outside agency to make available at least one economic self-sufficiency activity.

Grade F: The project does not offer or coordinate with an outside agency to make available at least one economic self-sufficiency activity.

Component #6.2, Resident Involvement in Project Administration. This component evaluates, for the calendar month ending before the management review of public housing projects begins, the opportunities for resident involvement in project administration.

Grade A: The project offers at least one opportunity for tenants to be involved in the administration of the project.

Grade F: The project does not offer at least one opportunity for tenants to be involved in the administration of the project.

Subindicator #7, General Management Practices. This subindicator tracks a project's ability to take appropriate actions to provide the information needed to close all findings resulting from any review of public housing projects. This subindicator is not scored.

An asterisk (*) will be used to indicate that a project has an outstanding finding(s) from a prior management review or from the current management review. An asterisk (*) will also be used to indicate that a PHA has an outstanding finding(s) under the Management Operations Indicator from any prior review or from the current management review.

Component #7.1, Management Review Findings. This component tracks a project's ability to take appropriate actions to provide the information needed to close all findings resulting from any prior HUD management review of public housing projects, by the due dates, and any finding(s) resulting from the current management review. For prior HUD management reviews, this component applies to reports with findings issued more than 75

days prior to the management review of public housing projects. This component is not scored.

Component #7.2, Other Prior Review Findings. This component tracks a project's ability to take appropriate actions to provide the information needed to close all findings resulting from any review, including, but not limited to independent public accountant audits; Government Accountability Office reviews; HUD Inspector General reviews; and reviews based on the Guidance for the On-Site Limited Monitoring Review of Civil Rights Related Program Requirements (CRRPR) for Low-Rent Public Housing (LR) Program and Housing Choice Voucher (HCV) Program and based on the On-Site Limited Monitoring Review—Section 504 (OMB approval number 2577–0251, expires May 31, 2010), by the due dates for closing the findings. This information will be used for civil rights and fair housing purposes to determine compliance with 24 CFR 5.105(a) and 24 CFR 903.7(p). This component applies to reports with findings issued more than 75 days prior to the management review of public housing projects. This component is not scored.

Component #7.3, Insurance. This component assesses whether a project has sufficient insurance coverage as applicable to the project. This component is not scored.

Elements of Scoring

A. Points and Threshold

The Management Operations Indicator score is based on a maximum of 40 points. In order to receive a passing score under this indicator, a project must achieve at least 24 points or 60 percent of the available points available under this indicator.

B. Scoring Elements

The Management Operations Indicator score provides an assessment of a project's management effectiveness. Under the PHAS Management Operations Indicator, HUD will calculate a score for each project, as well as for the overall management operations of a PHA, that reflects weights based on the relative importance of the individual management subindicators and components. The overall Management Operations Indicator score for a PHA is a unit-weighted average of the PHA's individual project management operations scores. In order to compute the score, an individual project management operations score is multiplied by the number of units in each project to determine a ''weighted value.'' The sum of the weighted values is then divided by the total number of units in a PHA's portfolio to derive the overall PHAS Management Operations Indicator score.

The computation of the score under this PHAS indicator utilizes data obtained through a management review of public housing projects by HUD and requires four main calculations for the subindicators and components, which are:

- Scores are first calculated for each component, where applicable.
- Scores are then calculated for each subindicator, where applicable.
- A score is calculated for form HUD–5834, Management Review for Public Housing Projects, which is the project score.
- A score is calculated for the overall indicator score, which is a unit-weighted average of the individual project management operations scores.

The calculations are performed on the basis of the following:

- The point value and/or grades of the subindicators and components that are listed in Table 2; and
- The point equivalent to the grades assigned for each component that are listed in Table 3.

TABLE 2—MANAGEMENT OPERATIONS INDICATOR

Subindicator/component	Grades	Points
#1, General Appearance and Security		6.0
1.1 Appearance and Market Appeal	A, C, F	5.0
1.2 Security	A, C, F	1.0
#2, Follow-Up and Monitoring of Project Inspections	Not Scored	
2.1 Exigent Health and Safety (EHS) Deficiencies	Not Scored	N/S
2.2 Lead-Based Paint (LBP) Inspection Deficiencies	Not Scored	N/S
#3, Maintenance and Modernization		6.0
3.1 Unit Inspections	A, C, F	1.0
3.2 Work Orders	A, C, F	3.0
3.3 Preventive Maintenance	A, C, F	1.0
3.4 Energy Conservation/Utility Consumption	A, C, F	1.0
3.5 Modernization	Not Scored	N/S
#4, Financial Management		8.0
4.1 Percentage of Accounts Payable	A, C, F	4.0
4.2 Rent Collection	A, C, F	4.0
4.3 Budget Management	Not Scored	N/S
4.4 Procurement	Not Scored	N/S
#5, Leasing and Occupancy		18.0
5.1 Vacancy Rate	A, B, C, D, F	16.0
5.2 Turnaround Time	A, B, C, D, F	2.0
5.3 Occupancy Review	Not Scored	N/S
#6, Tenant/Management Relations		2.0
6.1 Economic Self-Sufficiency	A, C, F	1.0
6.2 Resident Involvement in Project Administration	A, F	1.0
#7, General Management Practices	Not Scored	N/S
7.1 Management Review Findings	Not Scored	N/S
7.2 Other Prior Review Findings	Not Scored	N/S
7.3 Insurance	Not Scored	N/S
Total		40.0

The grades for each component are assigned values to indicate the percentage of the component points that will be awarded in the calculation. The assigned values for the grades, which are listed in Table 3, are the same for each component. For example, a project with a grade of C for vacancy rate will receive 70 percent of the component points of 16, for a score of 11.20 for the component.

TABLE 3—POSSIBLE GRADES

Grade	Points
A	1.00
B	0.85
C	0.70
D	0.50

TABLE 3—POSSIBLE GRADES—Continued

Grade	Points
F	0.00

C. Scoring of Component #1.1, Appearance and Market Appeal

The scoring for component #1.1 has a base calculation different from the other components. The project is assessed in the following 12 categories:

(1) Project entrance;
(2) Landscaping;
(3) Building exterior;
(4) Graffiti;
(5) Paved surfaces;
(6) Public spaces and amenities;
(7) Fencing, railing, porches, overhangs, and ramps;
(8) Windows;
(9) Overall project appearance;
(10) Debris;
(11) Trash receptacles; and
(12) Units.

A Superior Performance in a category is valued at two points; a Satisfactory Performance in a category is valued at one point; and an Unsatisfactory Performance in a category is valued at zero points.

A project's score in appearance and market appeal may be a single project-wide assessment, or may be a compilation of multiple assessments of one or more of the individual sites that comprise the project.

Project-wide assessment: For a project-wide assessment, the project as a whole receives a single assessment in each of the 12 categories listed above. For any given assessment, one or more of these categories may be excluded if they do not apply to a particular project. The total points earned for all of the categories for which a PHA is assessed is divided by the maximum points possible to determine the grade equivalent for this component. The maximum points possible are determined by identifying the total number of criteria that were not excluded and multiplying that number by two points.

Example 1: A project is assessed in all 12 categories for a maximum of 24 possible points. If the project achieves a total of 22 points, the 22 points are divided by 24 points, which equals 91.67 percent, or a grade of A.

Example 2: A project is not assessed under public spaces and amenities for a total of 11 categories and a maximum of 22 possible points. If the project achieves a total of 15 points, the 15 points are divided by 22 points, which equals 68.18 percent, or a grade of C.

Multiple site assessment: A project may be comprised of two or more discreet, individual sites. HUD may elect to assess one or more of these sites individually. If so, each site assessed will be assessed in each of the 12 categories listed above. For any given reason, one or more of these categories may be excluded if they do not apply to a particular site. The total points earned for all of the categories for which a site is assessed is divided by the maximum points possible to determine the overall score for each site. The maximum points possible are determined by identifying the total number of criteria that were not excluded and by multiplying the number by two points, as described above.

All individual site assessments will be combined to produce a single project-wide assessment score in each of the 12 categories, as follows:

(1) The site-specific scores for each category will be averaged to determine a unit-weighted average project-wide score for each category. Any category that is excluded from the assessment at all sites will also be excluded from the project-wide assessment.

(2) All average project-wide scores in all categories will be summed to determine the unit-weighted overall project-wide total points. These points will be divided by the maximum points possible to determine the grade equivalent for this component. The maximum points possible are determined by identifying the total number of non-excluded criteria from all site assessments and by multiplying that number by 2 points.

D. Scoring of Component #5.3, Occupancy Review

The questions listed under this component on form HUD–5834, Management Review for Public Housing Projects, cannot be completed unless form HUD–5834–A, Tenant File Review, and form HUD–5834–B, Upfront Income Verification Review, have been completed. This component is not scored, and forms HUD–5834–A and HUD–5834–B are not scored.

E. Example of Score Computations

The indicator score equals the sum of the subindicator scores, as shown in Table 4. The indicator score for a project is rounded to two decimal places. The indicator score for a PHA is rounded to the nearest whole number. The subindicator scores equal the sum of the component scores.

TABLE 4—EXAMPLE ASSESSMENT OF THE MANAGEMENT OPERATIONS INDICATOR

Subindicator/Component	Points	Grade	Value	Calculations	Score
#1, General Appearance and Security	6.0				4.50
1.1 Appearance and Market Appeal	5.0	C	.70	(5.0) × (.70) = 3.50	3.50
1.2 Security	1.0	A	1.00	(1.0) × (1.0) = 1.00	1.00
#2, Follow-Up and Monitoring of Project Inspections	0.0	Not Scored			N/S
2.1 Exigent Health and Safety (EHS) Deficiencies	0.0	Not Scored			N/S
2.2 Lead-Based Paint (LBP) Inspection Deficiencies	0.0	Not Scored			N/S
#3, Maintenance and Modernization	6.0				5.10
3.1 Unit Inspections	1.0	C	.70	(1.0) × (.70) = .70	.70
3.2 Work Orders	3.0	A	1.00	(3.0) × (1.0) = 3.00	3.00
3.3 Preventive Maintenance	1.0	C	.70	(1.0) × (.70) = .70	.70
3.4 Energy Conservation/Utility Consumption	1.0	C	.70	(1.0) × (.70) = .70	.70
3.5 Modernization	0.0	Not Scored			N/S
#4, Financial Management	8.0				5.60
4.1 Percentage of Accounts Payable	4.0	C	.70	(4.0) × (.70) = 2.80	2.80
4.2 Rent Collection	4.0	C	.70	(4.0) × (.70) = 2.80	2.80

TABLE 4—EXAMPLE ASSESSMENT OF THE MANAGEMENT OPERATIONS INDICATOR—Continued

Subindicator/Component	Points	Grade	Value	Calculations	Score
4.3 Budget Management	0.0	Not Scored			N/S
4.4 Procurement	0.0	Not Scored			N/S
#5, Leasing and Occupancy	18.0				9.40
5.1 Vacancy Rate	16.0	D	.50	(16.0) × (.50) = 8.00	8.00
5.2 Turnaround Time	2.0	C	.70	(2.0) × (.70) = 1.40	1.40
5.3 Occupancy Review	0.0	Not Scored			NS
#6, Tenant/Management Relations	2.0				1.70
6.1 Economic Self-Sufficiency	1.0	C	.70	(1.0) × (.70) = .70	.70
6.2 Resident Involvement in Project Administration	1.0	A	1.00	(1.0) × (1.0) = 1.00	1.00
#7, General Management Practices	0.0	Not Scored			N/S
7.1 Finding Correction: Management Review Findings	0.0	Not Scored			N/S
7.2 Finding Correction: Other Prior Review Findings	0.0	Not Scored			N/S
7.3 Insurance	0.0	Not Scored			N/S
Total Points					26.30

F. Scoring Projects During the First Year and Subsequent Years of Implementation Under the New PHAS

During the first year of implementation under the new PHAS, a PHA's Management Operations Indicator score of record will be converted to the 40-point value if a project does not have a management review during the first year. Table 5 shows the conversion from a 30-point value to a 40-point value.

TABLE 5—CONVERSION FROM 30-POINT VALUE TO 40-POINT VALUE

30-Pt. Value	30	29	28	27	26	25	24	23	22	21	20	19	18	17	16
40-Pt. Value	40.0	38.7	37.3	36.0	34.7	33.3	32.0	30.7	29.3	28.0	26.7	25.3	24.0	22.7	21.3
30-Pt. Value	15	14	13	12	11	10	9	8	7	6	5	4	3	2	1
40-Pt. Value	20.0	18.7	17.3	16.0	14.7	13.3	12.0	10.7	9.3	8.0	6.7	5.3	4.0	2.7	1.3

The score that will be used is the PHA's most recent score of record. Table 6 includes an example of how scoring will be computed during the first year of implementation of the new PHAS, with each project having 100 units.

TABLE 6—FIRST YEAR OF IMPLEMENTATION SCORING

Project	Management review score	PHA's 30-point value score of record	Conversion to 40-point value	First year of implementation scoring
1	0.0	24.0	32.0	32.0
2	27.0	0.0	0.0	27.0
3	36.0	0.0	0.0	36.0
Overall Total: First Year of Implementation PHAS Scoring				31.7

During the second year of implementation under the new PHAS, a PHA's score of record will be converted to the 40-point value if a project does not have a management review during the first or second years. The score that will be used is the PHA's most recent score of record. Table 7 includes an example of how scoring will be computed during the second year of implementation of the new PHAS, with each project having 100 units. In this example, every project has received a management review.

TABLE 7—SECOND YEAR OF IMPLEMENTATION SCORING

Project	Management review score	PHA's 30-point value score of record	Conversion to 40-point value	Second year of implementation score
1	36.0	0.0	0.0	36.0
2	32.0	0.0	0.0	32.0
3	37.0	0.0	0.0	37.0
Overall Total: Second Year of Implementation PHAS Scoring				35.0

For subsequent years, the most recent management review score for a project will be used for a project's management operations score, or the most recent score of record will be used. The most recent management operations scores for all projects will be used to calculate a PHA's overall management operations score.

G. Examples of Score Computations for the Redistribution of Points

• An example of computing a subindicator score with a non-assessed component. When a non-assessed component exists, the value of the component shall be redistributed proportionally across the components that have been assessed within the same subindicator in order to maintain the same scoring ratios. To redistribute the points for a non-assessed component, each assessed component shall be multiplied by the total possible points for the subindicator and divided by the total points of the assessed components, as shown in Table 8.

TABLE 8—EXAMPLE OF A REDISTRIBUTION OF POINTS WITHIN THE MAINTENANCE AND MODERNIZATION SUBINDICATOR

Component	Total possible points	Assessed comp. points	Redistribution calculation	Redis. points	Grade	Grade value	Score calculation	Comp. score
3.1 Unit Inspections.	1.0	1.0	(1.0 × 6.0)/5.0	1.20	F	0.0	1.20 × 0.0	0.00
3.2 Work Orders	3.0	3.0	(3.0 × 6.0)/5.0	3.60	A	1.0	3.60 × 1.0	3.60
3.3 Prev. Maint.	1.0	1.0	(1.0 × 6.0)/5.0	1.20	C	0.7	1.20 × 0.7	0.84
3.4 Energy/Utility	1.0	N/A	N/A	N/A	N/A	N/A	N/A	N/A
3.5 Mod.	0.0	N/S	N/S	N/S	N/S	N/S	N/S	N/S
Total Points	6.0	5.0		6.0				4.44

In the example in Table 8, the energy/utility component under maintenance is not assessed. To redistribute the energy/utility points, each assessed component must be multiplied by the total possible points for the subindicator (6), and divided by the total possible points of the assessed components (5). The redistributed value of the total possible points for the preventive maintenance component is calculated to be 1.20 points. In the example, the project has received a grade of C for preventive maintenance and the project then receives 70 percent of the redistributed point value for preventive maintenance. As shown in Table 8, 70 percent of 1.20 equals 0.84 points. The maintenance subindicator score is then computed by summing the redistributed components, thus making the final score for the maintenance subindicator 4.44 points.

• An example of computing the Management Operations Indicator score for a project excluding the tenant/management relations subindicator. Table 9 provides an example for the calculation of the Management Operations Indicator score when the tenant/management relations subindicator has not been assessed. When a non-assessed subindicator exists, the value of the non-assessed subindicator shall be redistributed proportionally across the subindicators that have been assessed. To redistribute the tenant/management relations subindicator points, each assessed subindicator shall be multiplied by the total possible points for the Management Operations Indicator (40), and divided by the total possible points of the assessed subindicators (38). The final Management Operations Indicator score is derived by summing the redistributed subindicator points.

TABLE 9—EXAMPLE OF THE EXCLUSION OF A SUBINDICATOR

Subindicator	Total possible points	Total possible assessed points	Actual subindicator score	Redistributed calculation	Redistributed subindicator points
General Appearance and Security	6.0	6.0	3.00	(3.00 × 40)/38	3.16
Maintenance and Modernization	6.0	6.0	4.44	(4.44 × 40)/38	4.67
Financial Management	8.0	8.0	8.00	(8.00 × 40)/38	8.42
Leasing and Occupancy	18.0	18.0	18.00	(18.0 × 40)/38	18.95
Tenant/Management Relations	2.0	N/A	N/A	N/A	N/A
Total Points	40.0	38.0			35.20

• An example of rescaling components so that the sum of components equals a redistributed subindicator. In the previous example, the subindicator points were redistributed because the tenant/management relations subindicator was not assessed. After the subindicator points were redistributed, the component points comprising the subindicator no longer added up to the redistributed value of the subindicator. Therefore, a calculation must be performed to rescale the components of subindicators that were assessed so that those components add up to the redistributed subindicators. Table 10 contains an example of rescaling the maintenance subindicator components so that they add up to the redistributed maintenance subindicator. In Table 10, each

component is rescaled by multiplying by a factor of 40 (total possible points), divided by 38 (total assessed points). The rescaled component values add up to 4.67 points, which are the redistributed subindicator points for the maintenance subindicator.

TABLE 10—EXAMPLE OF RESCALING OF COMPONENTS

Component	Component value	Component rescaling calculation	Component values after rescaling
Unit Inspections	0.00	0.00 × (40/38)	0.00
Work Orders	3.60	3.60 × (40/38)	3.79
Preventive Maint	0.84	0.84 × (40/38)	.88
Energy/Utility	N/A	N/A	N/A
Modernization	N/S	N/S	N/S
Total Points	4.44		4.67

H. Physical Condition and/or Neighborhood Environment

The overall management operations score for a project will be adjusted upward to the extent that negative conditions are caused by situations outside the control of the project. These situations are related to the poor physical condition of the project or the overall depressed condition of the major census tract in which a project is located. The intent of this adjustment is to avoid penalizing projects through appropriate application of the adjustment. In addition, the overall PHA Management Operations Indicator score will be adjusted upward to reflect the individual project adjustments.

Definitions and application of physical condition and neighborhood environment factors are:

(1) A physical condition adjustment applicable to projects at least 28 years old, based on the unit-weighted average Date of Full Availability (DOFA) date.

(2) A neighborhood environment adjustment applicable to projects in census tracts in which at least 40 percent of the families have an income below the poverty rate, as documented by the most recent census data. If a project is in more than one census tract, the census data for the census tract where the majority of units are located shall be used. If there is no census tract data available for a project, the census data for that project will be based on the county's census data, and if county data is not available, then the state census data will be used.

• Adjustment for physical condition and neighborhood environment. HUD will adjust the overall management operations score of a project subject to one or both of the physical condition and neighborhood environment conditions. The adjustments will be made to the individual project scores, and then to the overall management operations score, so as to reflect the difficulty in managing the projects.

The adjustment for physical condition and neighborhood environment will be calculated by HUD and applied to all eligible projects. The data to determine if a project is eligible for either adjustment will be derived from the Public and Indian Housing Information Center databases.

In each instance where the actual management operations score for a project is rated below the maximum score of 40 points, one unit-weighted point each will be added for physical condition and/or neighborhood environment, but not to exceed the maximum number of 40 points available for the Management Operations Indicator for a project. Table 11 shows an example of the calculation of physical condition and/or neighborhood environment points for a hypothetical PHA with four projects. The adjustment for physical condition and/or neighborhood environment is a unit-weighted average of a PHA's individual project physical condition and/or neighborhood environment adjustments.

TABLE 11—CALCULATION OF PHYSICAL CONDITION AND/OR NEIGHBORHOOD ENVIRONMENT (PCNE) POINTS

Line	Project	Proj. #1	Proj. #2	Proj. #3	Proj. #4	Total PHA
1	Units	133	65	89	25	12
2	Weight	42.6%	20.8%	28.5%	8.0%	100.0%
3	Physical Condition Points	1	1	1	0	
4	Neighborhood Environment Points	1	1	0	0	
5	Total PCNE Points at Project Level	2	2	1	0	
6	Weighted Physical Condition Points	0.43	0.21	0.29	0.00	0.92
7	Weighted Neighborhood Environment Points	0.43	0.21	0.00	0.00	0.63
8	Weighted PCNE Points	0.85	0.42	0.29	0.00	1.55

This PHA has 312 total units in four projects (see line 1). The weight of each project is based on units and is calculated by dividing the project units into the total PHA units (see line 2). Project #1 and project #2 qualify for both points; project #3 qualifies for only physical condition; and project #4 does not qualify for any points (see lines 3 through 5). Each project contributes its physical condition and/or neighborhood environment points to the overall PHA Management Operations Indicator score based on its weight. For example, in project #1, the weighted physical condition and neighborhood environment point is 0.85 and is calculated by multiplying the project weight of 42.6 percent (line 2) by the physical condition and neighborhood environment point of 2 (see line 5). The overall physical condition and neighborhood environment adjustment at the PHA level is calculated at 1.55 points by adding the individual project weighted scores (see line 8 under the Total PHA column).

Appendix D to Part 902—Capital Fund Scoring

I. Purpose of This Appendix

This appendix provides information about the scoring process for PHAS Indicator #4, Capital Fund program. The purpose of the Capital Fund program assessment is to

examine the period of time it takes a PHA to obligate and expend the funds provided to a PHA from the Capital Fund program under section 9(j) of the Act (42 U.S.C. 1437g(9)(j)). Funds from the Capital Fund program under section 9(d) of the 1937 Act (42 U.S.C. 1437g(d)(2)) do not include HOPE VI program funds.

This indicator is not applicable for PHAs that choose not to participate in the Capital Fund program under section 9(d) of the 1937 Act. This indicator is applicable on a PHA-wide basis, and not to individual projects.

The assessment required under the PHAS Capital Fund program indicator will be performed through analysis of obligated and expended amounts in HUD's electronic Line of Credit Control System (e-LOCCS) (or its successor) for all Capital Fund program grants that were open during a PHA's assessed fiscal year. Of the total 100 points available for a PHAS score, a PHA may receive up to 10 points based on the Capital Fund program indicator. Scoring for this indicator will be dependent on the amount of time it takes a PHA to obligate and expend its capital funds. If a PHA has no obligation end dates or no expenditure end dates in the assessed fiscal year, and does not have any § 9(j) of the 1937 Act sanctions against it, the points for that subindicator will be redistributed to the remaining subindicator.

II. Subindicators

A. Subindicators of Capital Fund Program Indicator. The two subindicators of the Capital Fund program indicator are:

- Timeliness of fund obligation; and
- Timeliness of fund expenditure.

B. Grades for Capital Fund Program Indicator. This indicator measures the statutory requirements for the Capital Fund program.

Subindicator #1, Timeliness of Fund Obligation. This subindicator examines the period of time it takes for a PHA to obligate funds from the Capital Fund program under section 9(j)(1) of the 1937 Act (42 U.S.C. 1437g(9)(j)). HUD may extend the period of time for the obligation of funds in accordance with 24 CFR 905.120 and section 9(j)(2) of the 1937 Act.

Grade A: The PHA has obligated 90 percent or more of the grant amount for all of its grants on its obligation end date for all open Capital Fund program grants that have obligation end dates during the assessed fiscal year and does not have any grants that have been sanctioned pursuant to § 9(j) of the 1937 Act during the assessed fiscal year.

Grade F: The PHA has obligated less than 90 percent of the grant amount for any of its open grants on the obligation end date during the assessed fiscal year or is undergoing sanctions as per Section III of this appendix D.

Subindicator #2, Timeliness of Fund Expenditure. This subindicator examines the period of time it takes for a PHA to expend funds from the Capital Fund program under section 9(j)(5) of the 1937 Act.

Grade A: The PHA has:

(1) Expended 100 percent of the grant amount for all of its grants on the expenditure end date for all Capital Fund program grants that have an expenditure end date within a PHA's assessed fiscal year; or

(2) A remaining balance of one percent or less of the grant amount or $1,000 or less of the grant amount (whichever is smaller) for all Capital Fund program grants that have an expenditure end date within a PHA's assessed fiscal year.

Grade F: The PHA has a remaining balance of greater than one percent of the grant amount or more than $1,000 of the grant amount (whichever is smaller) for all Capital Fund program grants that have an expenditure end date within a PHA's assessed fiscal year.

III. Sanctions

Sanctions for the obligation and expenditure of funds, and HUD's right to recapture funds are in accordance with 24 CFR 905.120. If a PHA has been sanctioned during the assessment period, the PHA will receive an automatic grade of ''F'' for the timeliness of fund obligation, the timeliness of fund expenditure, or both, as appropriate.

IV. Elements of Scoring

A. Points and Threshold. The Capital Fund program indicator is based on a maximum of 10 points. In order to receive a passing score under this indicator, a PHA must achieve at least 6 points or 60 percent of the available points under this indicator.

B. Scoring Elements. The Capital Fund program indicator score provides an assessment of a PHA's ability to obligate and expend Capital Fund program funds in a timely manner. The computation of the score under this PHAS indicator utilizes data obtained through analysis of obligated and expended amounts in HUD's e-LOCCS (or its successor) for all Capital Fund program grants that were open during the assessed fiscal year and requires two main calculations, which are:

- Scores are first calculated for each subindicator.
- From the two subindicator scores, an indicator score is then calculated.

The two calculations are performed based on:

- The point value of the two subindicators, which are listed in Table 1; and
- The point equivalent to the grades assigned for each subindicator, which are listed in Table 2.

TABLE 1—CAPITAL FUND PROGRAM SUBINDICATOR AND POINTS

Subindicator	Points
Timeliness of Fund Obligation	5
Timeliness of Fund Expenditure ...	5

The grades for each subindicator are assigned point equivalent values to indicate the percentage of the subindicator points that will be awarded in the calculation. The assigned point equivalent values for the grades, which are listed in Table 2, are the same for each subindicator. For example, a PHA with a grade of A for timeliness of fund obligation will receive all of the subindicator points of 5, for a score of 5.0 for the subindicator.

TABLE 2—POSSIBLE GRADES

Grade	Point value
A	1.00
F	0.00

C. Example of Score Computations. The indicator score equals the sum of the subindicator scores, as shown in Table 3.

TABLE 3—EXAMPLE ASSESSMENT OF THE CAPITAL FUND PROGRAM INDICATOR

Subindicator	Points	Grade	Point value	Calculations	Score
Timeliness of Fund Obligation	5	A	1.00	(5.0) × (1.0) = 5.0	5.0
Timeliness of Fund Expenditure	5	A	1.00	(5.0) × (1.0) = 5.0	5.0
Total Points					10.0

D. PHA Responsibility. PHAs are responsible for ensuring that their Capital Fund program information is submitted to e-LOCCS by the submission due date. A PHA may not appeal its PHAS and/or Capital Fund program score based on the fact that it did not submit its Capital Fund program information to e-LOCCS by the submission due date. PHAs shall retain supporting documentation for the Capital Fund program for at least 3 years.

3. Part 907 is added to read as follows:

PART 907—SUBSTANTIAL DEFAULT BY A PUBLIC HOUSING AGENCY

Sec.

907.1 Purpose and scope.

907.3 Bases for substantial default.

907.5 Procedures for declaring substantial default.

907.7 Remedies for substantial default.

Authority: 42 U.S.C. 1437d(j), 42 U.S.C. 3535(d).

§ 907.1 Purpose and scope.

This part provides the criteria and procedures for determining and declaring substantial default by a public housing agency (PHA) and the actions available to HUD to address and remedy substantial default by a PHA. Nothing in this part shall limit the discretion of HUD to take any action available under the provisions of section 6(j)(3)(A) of the 1937 Act (42 U.S.C. 1437d(j)(3)(A)), any applicable annual contributions contract (ACC), or any other law or regulation that may authorize HUD to take actions against a PHA that is in substantial default.

§ 907.3 Bases for substantial default.

(a) *Violations of laws and agreements.* A PHA may be declared in substantial default when the PHA:

(1) Violates a federal statute;

(2) Violates a federal regulation; or

(3) Violates one or more terms of an ACC, or other covenants or conditions to which the PHA is subject.

(b) *Failure to act.* In addition to the violations listed in paragraph (a) of this section, in the case where a PHA is designated as a troubled performer under PHAS, the PHA shall be in substantial default if the PHA:

(1) Fails to execute an MOA;

(2) Fails to comply with the terms of an MOA; or

(3) Fails to show substantial improvement, as provided in § 902.75(d).

§ 907.5 Procedures for declaring substantial default.

(a) *Notification of finding of substantial default.* If the PHA is found in substantial default, the PHA shall be notified of such determination in writing. Except in situations as described in paragraph (d) of this section, the PHA shall have an opportunity to respond to the written determination, and an opportunity to cure the default, if a cure of the default is determined appropriate by HUD. The determination of substantial default shall be transmitted to the Executive Director of the PHA, the Chairperson of the Board of the PHA, and the appointing authority(ies) of the PHA's Board of Commissioners, and shall:

(1) Identify the specific statute, regulation, covenants, conditions, or agreements of which the PHA is determined to be in violation;

(2) Identify the specific events, occurrences, or conditions that constitute the violation;

(3) Specify the time period, which shall be a period of 10 but not more than 30 days, during which the PHA shall have an opportunity to demonstrate that the determination or finding is not substantively accurate, if required;

(4) If determined by HUD to be appropriate, provide for an opportunity to cure and specify the time period for the cure; and

(5) Notify the PHA that, absent a satisfactory response in accordance with paragraph (b) of this section, action shall be taken as determined by HUD to be appropriate.

(b) *Receipt of notification and response.* Upon receipt of the notification described in paragraph (a) of this section, the PHA may submit a response, in writing and within the specified time period, demonstrating:

(1) The description of events, occurrences, or conditions described in the written determination of substantial default is in error, or establish that the events, occurrences, or conditions described in the written determination of substantial default do not constitute noncompliance with the statute, regulation, covenants, conditions, or agreements that are cited in the notification under paragraph (a) of this section; or

(2) If any opportunity to cure is provided, that the violations have been cured or will be cured in the time period specified by HUD.

(c) *Waiver of notification and the opportunity to respond.* A PHA may waive, in writing, receipt of written notification from HUD of a finding of substantial default and the opportunity to respond to such finding. HUD may then immediately proceed with the remedies as provided in § 907.7.

(d) *Emergency situations.* A PHA shall not be afforded the opportunity to respond to a written determination or to cure a substantial default in any case where:

(1) HUD determines that conditions exist that pose an imminent threat to the life, health, or safety of public housing residents or residents of the surrounding neighborhood; or

(2) The events or conditions precipitating the default are determined to be the result of criminal or fraudulent activity.

§ 907.7 Remedies for substantial default.

(a) Except as provided in § 907.7(c), upon determining that events have occurred or conditions exist that constitute a substantial default, HUD may:

(1) Take any action provided for in section 6(j)(3) of the Act (42 U.S.C. 1437d(j)(3));

(2) Provide technical assistance for existing PHA management staff; or

(3) Provide assistance deemed necessary, in the discretion of HUD, to remedy emergency conditions.

(b) HUD may take any of the actions described in paragraph (a) of this section sequentially or simultaneously in any combination.

(c) In the case of a substantial default by a troubled PHA pursuant to § 902.83(b):

(1) For a PHA with 1,250 or more units, HUD shall petition for the appointment of a receiver pursuant to section 6(j)(3)(A)(ii) of the 1937 Act (42 U.S.C. 1437d(j)(3)(A)(ii)); or

(2) For a PHA with fewer than 1,250 units, HUD shall either petition for the appointment of a receiver pursuant to section 6(j)(3)(A)(ii) of the Act (42 U.S.C. 1437d(j)(3)(A)(ii)), or take possession of the PHA (including all or part of any project or program of the PHA) pursuant to section 6(j)(3)(A)(iv) of the 1937 Act (42 U.S.C. 1437d(j)(3)(A)(iv)), and appoint, on a competitive or noncompetitive basis, an individual or entity as an administrative receiver to assume the responsibilities of HUD for the administration of all or part of the PHA (including all or part of any project or program of the PHA).

(d) To the extent feasible, while a PHA is operating under any of the actions that may have been taken by HUD, all services to residents will continue uninterrupted.

(e) HUD may limit remedies under this part to one or more of a PHA's specific operational areas (*e.g.*, maintenance, capital improvement, occupancy, or financial management), to a single program or group of programs, or to a single project or a group of projects. For example, HUD may select, or participate in the selection of, an AME to assume management responsibility for a specific project, a group of projects in a geographical area, or a specific operational area, while permitting the PHA to retain responsibility for all programs, operational areas, and projects not so designated.

Dated: July 14, 2008.

Paula O. Blunt,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. E8–18753 Filed 8–20–08; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5227–N–01]

Public Housing Assessment System (PHAS): Asset Management Transition Year Information and Uniform Financial Reporting Standards (UFRS) Information

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This notice provides certain information related to scoring and submission requirements for public housing agencies (PHAs) under the Public Housing Assessment System (PHAS) for PHA fiscal years ending June 30, 2008, September 30, 2008, December 31, 2008, and March 31, 2009. These fiscal years coincide with the first year of project-based budgeting and accounting under asset management, also known as the ''transition year.'' Much of the information contained in this **Federal Register** notice was presented in PIH Notice 2008–18, Information on Upcoming Rulemaking Associated with the Public Housing Assessment System as a Result of the Conversion to Asset Management, dated March 27, 2008. That information is reiterated in this notice in order to inform the broader public of these actions.

This notice also provides information related to the current Uniform Financial Reporting Standards (UFRS) for PHAs with fiscal years ending June 30, 2008, September 30, 2008, December 31, 2008, and March 31, 2009. This notice provides that HUD, on a one-time basis, will not enforce the regulatory 60-day deadline for reporting unaudited financial condition information for most PHAs.

FOR FURTHER INFORMATION CONTACT: Contact the Office of Public and Indian Housing, Real Estate Assessment Center (REAC), Attention: Wanda Funk, Department of Housing and Urban Development, Office of Public and Indian Housing, Real Estate Assessment Center (REAC), 550 12th Street, SW., Suite 100, Washington, DC 20410; telephone REAC Technical Assistance Center at 888–245–4860 (this is a toll free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. Background on PHAS

PHAS was established by a final rule published on September 1, 1998 (63 FR 46596). Prior to 1998, a PHA was evaluated by HUD with respect only to its management operations. PHAS expanded assessment of a PHA to four key areas of a PHA's operations: (1) The physical condition of the PHA's properties; (2) the PHA's financial condition; (3) the PHA's management operations submitted as a self-certification; and (4) the residents' service and satisfaction assessment (through a resident survey).

Under the current PHAS and on the basis of these four indicators, a PHA receives a composite score that represents a single score for a PHA's entire operation and a corresponding performance designation. PHAs that are designated high performers receive public recognition, relief from specific HUD requirements, and may qualify for bonus funding pursuant to applicable program regulations. PHAs that are designated standard and substandard performers may be required to take corrective action to remedy identified deficiencies. PHAs that are designated troubled performers are subject to remedial action.

By final rule published on January 11, 2000 (65 FR 1712), HUD amended the PHAS regulations and implemented certain statutory changes resulting from enactment of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105–276, October 21, 1998).

B. Public Housing Operating Fund Program

The regulations governing the Public Housing Operating Fund program are of key relevance to the proper operation of PHAs and consequently to PHAS. Operating funds are made available to a PHA for the operation and management of public housing, and therefore, the regulations applicable to a PHA's operation and management of public housing must be considered in any changes proposed to PHAS. The regulations for the Public Housing Operating Fund Program are found at 24 CFR part 990, and were published on September 19, 2005 (70 FR 54983), followed by a correction published on October 24, 2005 (70 FR 61366), and became effective on November 18, 2005.

Subpart H of the part 990 regulations (§§ 990.255 to 990.290), as revised by the September 2005 rule, establishes the requirements regarding asset management. Under § 990.260(a), PHAs that own and operate 250 or more dwelling rental units must operate using an asset management model consistent with the subpart H regulations. PHAs with fewer than 250 dwelling rental units may elect to transition to asset management, but are not required to do so, except for PHAs eligible for a discontinuation of reduction of operating subsidy, *i.e.*, ''stop-loss'' agencies (see PIH Notice 2007–16 dated June 18, 2007 for more information on stop-loss). In addition, section 225 of Title II of Division K of the Consolidated Appropriations Act, 2008, Public Law 110–161 (approved December 26, 2007), states that PHAs that own and operate 400 or fewer public housing units may elect to be exempt from any asset management requirement for Calendar Year (CY) 2008, with the exception of PHAs that are seeking a discontinuance of a reduction of operating subsidy, *i.e.*, stop-loss.

PHAs with more than 400 public housing units in CY 2008, PHAs with 250 or more public housing units thereafter, and PHAs that elect to transition to asset management are required to implement project-based management, project-based budgeting, and project-based accounting. All project-based components are defined in the regulations at 24 CFR part 990, subpart H, and are essential components of asset management.

II. Transition Year Changes to the Current PHAS

The transition year includes those PHAs with fiscal years ending June 30, 2008, September 30, 2008, December 31, 2008, and March 31, 2009. This notice also applies to Moving-to-Work PHAs that are not specifically exempted from a PHAS assessment in their grant agreements.

A. Overall PHAS Score

During the transition year, PHAs will not be issued a new overall PHAS score. HUD will not issue any overall PHAS scores under the proposed PHAS until a final rule is effective.

During the transition year, PHAs will not be required to submit their management operations information and will not be required to submit Resident Assessment Sub-System (RASS) information, including the implementation and follow-up plans. However, PHAs will be required to submit their unaudited financial condition information and audited financial information, if applicable, in accordance with 24 CFR part 5, subpart H.

A troubled PHA and/or Capital Fund Program troubled PHA that believes it would no longer be designated as troubled if a new PHAS assessment had

been completed may petition for the removal of troubled designation in accordance with 24 CFR 902.69 at any time after its fiscal year end.

B. Physical Condition Inspections

Physical condition inspections will be conducted for certain PHAs during the transition year in accordance with existing protocols. For PHAs that receive a passing score on the physical condition indicator under 24 CFR 902.25(e)(2), the score will be considered advisory. However, for PHAs that score less than a passing physical condition score under § 902.25(e)(2), the score shall be considered for the physical condition portion alone, as HUD will not be calculating an overall PHAS score for PHAs in their transition year, and HUD may take action accordingly. In such cases, where appropriate, HUD will give inspected PHAs in their transition year credit for the physical condition and neighborhood environment factor. The physical condition of projects is of utmost importance to HUD, and providing safe, decent, sanitary housing, and housing in good repair is the primary responsibility of PHAs. Physical condition inspections of projects will be conducted on the same schedule as past inspections, and conducted, if applicable, in the quarter prior to a PHA's fiscal year end. These physical condition inspection scores for projects on a 100 point scale will be available in Secure Systems, through the Integrated Assessment Sub-system (NASS). Physical condition inspection scores for projects on a 30 point scale will be available in Secure Systems, through NASS, beginning September 30, 2008.

PHAs will continue to be able to request a technical review or database adjustment for their physical condition inspections during the transition year in accordance with the current PHAS regulations.

C. Financial Condition Information Submission

1. Unaudited Financial Condition Information Submission

During the transition year, in accordance with 24 CFR part 5, subpart H, PHAs are still required to submit their unaudited financial information and audited financial information, if applicable. Although an overall PHAS score will not be issued during the transition year, HUD will still be reviewing the unaudited financial condition submission. HUD may take appropriate action based on the submission.

For low-rent, low-rent combined (low-rent and section 8 units), and section 8 only PHAs with fiscal years ending June 30, 2008, HUD, on a one-time basis, will not enforce the regulatory 2-month deadline for reporting unaudited financial condition information. Instead, HUD will accept, without penalty (see § 902.60(e)(2) for the penalty provision), these reports within a 3-month time frame. Thus, these PHAs will have 3 months from the release of the software for the Financial Data Schedule (FDS) under asset management to submit their unaudited financial condition information. Notification of the FDS software release date and the submission due date will be posted on HUD's Financial Assessment of Public Housing Agencies (FASS PH) Web site at: *http://www.hud.gov/offices/reac/products/prodpha.cfm*.

For low-rent and low-rent combined PHAs with fiscal years ending September 30, 2008, December 31, 2008, and March 31, 2009, HUD, on a one-time basis, will not enforce the regulatory 2-month deadline for reporting unaudited financial condition information. These PHAs will have 3 months after their fiscal year end dates to submit their unaudited financial condition information.

For section 8 only PHAs with fiscal years ending September 30, 2008, December 31, 2008, and March 31, 2009, HUD will enforce the regulatory 2-month deadline for reporting unaudited financial condition submissions. These PHAs will submit their unaudited financial condition information within 2 months after their fiscal year ends.

2. Audited Financial Condition Information Submission

All PHAs will submit their audited financial information, if applicable, within 9 months after their fiscal year end dates in accordance with 24 CFR part 5, subpart H.

D. Management Operations Certification

PHAs with fiscal years ending June 30, 2008, September 30, 2008, December 31, 2008, and March 31, 2009, will not be required to submit their management operations certification.

E. Resident Surveys

During the transition year, resident service and satisfaction surveys will be conducted only for PHAs with fiscal years ending June 30, 2008, for informational purposes. These PHAs will not be issued resident survey scores, implementation plan scores, follow-up plan scores, or resident indicator scores. They will not be required to submit and certify to their implementation plans, and will not be required to develop follow-up plans and certify that they have done so. Resident survey response information will be available in Secure Systems, through the Resident Assessment Sub-System (RASS).

III. Transition Year Changes to the Uniform Financial Reporting Standards (UFRS)

This notice provides that HUD, on a one-time basis, will not enforce the regulatory 2-month deadline for reporting unaudited financial condition information for most PHAs under 24 CFR part 5, subpart H, UFRS. For low-rent, low-rent combined, and section 8 only PHAs with fiscal year end June 30, 2008, HUD will accept, without penalty, these reports within a 3-month time frame. Thus, these PHAs will have 3 months from the release of the new FDS asset management software to submit their unaudited financial condition information. For low-rent and low-rent combined PHAs with fiscal years ending September 30, 2008, December 31, 2008, and March 31, 2009, HUD will accept, without penalty, unaudited financial information within a 3-month time frame.

For section 8 only PHAs with fiscal years ending September 30, 2008, December 31, 2008, and March 31, 2009, HUD will enforce the regulatory 2-month deadline for reporting unaudited financial condition submissions. These section 8 only PHAs shall continue to submit the unaudited financial information within 2 months of their fiscal year end, in accordance with 24 CFR part 5, subpart H.

V. Environmental Review

This notice provides operating instructions and procedures in connection with activities under a **Federal Register** document that has previously been subject to a required environmental review. Accordingly, under 24 CFR 50.19(c)(4), this Notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

Dated: August 7, 2008.

Paula O. Blunt,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. E8–18751 Filed 8–20–08; 8:45 am]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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H.R. 4040/P.L. 110–314

Consumer Product Safety Improvement Act of 2008 (Aug. 14, 2008; 122 Stat. 3016)

H.R. 4137/P.L. 110–315

Higher Education Opportunity Act (Aug. 14, 2008; 122 Stat. 3078)

H.R. 6432/P.L. 110–316

To amend the Federal Food, Drug, and Cosmetic Act to revise and extend the animal drug user fee program, to establish a program of fees relating to generic new animal drugs, to make certain technical corrections to the Food and Drug Administration Amendments Act of 2007, and for other purposes. (Aug. 14, 2008; 122 Stat. 3509)

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